TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

January 16, 2020
   9:00 a.m.

MEMBERS:

LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL A. BRADEN, Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
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AGENDA ITEM                                      PAGE

CALL TO ORDER                                         6
ROLL CALL                                           
CERTIFICATION OF QUORUM                             

CONSENT AGENDA                                      

ITEM 1:  APPROVAL OF THE FOLLOWING ITEMS PRESENTED 6
IN THE BOARD MATERIALS:

EXECUTIVE                                                                                                             
  a)  Presentation, discussion, and possible action on Board meeting minutes summaries for October 10, 2019, and November 7, 2019

ASSET MANAGEMENT                                                                                                     
  b)  Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement
      01057 Beckley Townhomes Dallas
      09007 Mill Stone Apartments Fort Worth
      060062 Enclave at Parkview Apartments Fort Worth

  c)  Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Exchange Land Use Restriction Agreement
      07131/09914 StoneLeaf at Dalhart Dalhart

  d)  Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for Program Year 2020 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

RULES                                                                                                                 
  e)  Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication in the Texas
Register

f) Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; the adoption of new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their submission for adoption to the Texas Register

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HOME AND HOMELESSNESS PROGRAMS

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CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

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ACTION ITEMS

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ITEM 4: FAIR HOUSING, DATA MANAGEMENT AND REPORTING

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  20423 Chula Vista San Diego
  20424 Cielo Lindo Edcouch
  20425 La Estancia Sebastian
  20426 La Posada I & II Elsa
  20427 La Reina La Villa
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  20432 Los Naranjos Alton
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  20438 Valley View Valley View
  20439 Villa Vallarta Rio Grande City
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  20442 Windmill Giddings
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  19471 Austin Manor Austin ETJ

b) Presentation, discussion, and possible action regarding a waiver of certain requirements in 10 TAC §11.1(d)(122) regarding the definition of Supportive Housing

ITEM 7: RULES
a) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and directing their publication for public
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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS none

EXECUTIVE SESSION none

OPEN SESSION --

ADJOURN 35
MS. BINGHAM ESCAREÑO:  Good morning.  Welcome to the January meeting of the Texas Department of Housing and Community Affairs.

    I'm Leslie Bingham, and I will be your host for today.  Nice to see all of you.  Happy New Year.

    Let's do roll call first.  Paul Braden?

MR. BRADEN:  Here.

MS. BINGHAM ESCAREÑO:  Sharon Thomason?

MS. THOMASON:  Here.

MS. BINGHAM ESCAREÑO:  Leo Vasquez?

MR. VASQUEZ:  Here.

MS. BINGHAM ESCAREÑO:  And I'm here.  That makes four of us, so we do have quorum to do business.

    Shall we get started with the pledge?

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

MS. BINGHAM ESCAREÑO:  Has everybody had a chance to look at the consent agenda, and does anyone recommend pulling, tabling or moving an item to action items?

(No response.)

MS. BINGHAM ESCAREÑO:  If not, we'll entertain a motion.

MS. THOMASON:  I move to approve the consent
agenda.

MS. BINGHAM ESCAREÑO: Ms. Thomason moves.

MR. BRADEN: Second.

MS. BINGHAM ESCAREÑO: Mr. Braden seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.


MR. DeYOUNG: Good morning. It's been a while since you've seen me. Michael DeYoung, Community Affairs Division director.

Item 3 requests approval of a modification to our 2020 CSBG plan in order to address a need within the network of eligible entities. You'll remember we have 40 eligible entities that we grant fund to though the CSBG grant. Staff is requesting to reprogram approximately $400,000 of our discretionary funds to provide specific financial training.

I'll go back in background for you. In July we came to you with the CSBG plan. We get about $34 million annually. Ninety percent of those funds go to the eligible
entities. Those 40 entities work across the state and
cover all 254 counties. The remaining 10 percent is split
in half, 5 percent for state admin and the other 5 percent
for discretionary activities.

In the past we've used discretionary funds for a
series of activities. You'll recall some of them are some
direct client assistance, migrant seasonal farm worker
initiatives, network operational investments, we've done
some disaster relief funding, there's also some funds spent
on staff to be able to do training at those eligible
entities.

Since that time, staff has received the results
of the American Community Satisfaction Survey, which
surveys all the eligible entities and asks them how we do
as an entity.

One of the things that was highlighted in the
survey, this most recent survey which came out just a few
months ago, was that they requested more training on cost
allocation plans within their organizations.

That also lines up with what our monitoring
group is seeing when they go out to these community action
agencies. So what we're proposing is to take some of the
funds that end up from each pot not being fully utilized
and some unobligated funds and rolling those together so we
can provide some third-party training on cost allocation

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plans.

I don't know exactly how this will line up. We'll do an RFP, we'll ask for the consultant to give us an idea of what the best way to do this, and the goal would be that we provide over the next two years each of the eligible entities personalized training for cost allocation, if they desire that training.

Staff anticipates that this would begin -- with your approval, hopefully -- quickly, we'll do an RFP and hopefully before too far into the summer we would begin with the first training starting across the State of Texas, and that would continue over the next year, year and a half.

We do have some unobligated balances that are already available, and then as we go through the year and we see any balances that remain, we'll move those balances over to assist with this contract, with your approval.

MS. BINGHAM ESCAREÑO: Does anybody have any questions for Michael?

(No response.)

MS. BINGHAM ESCAREÑO: So of the 5 percent, how much of the 5 percent do you think goes into those new plans?

MR. DeYOUNG: So when we came to you in July with the CSBG plan, we showed the figure as $1.6 million in

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CSBG discretionary. With what our anticipated funding is, it's really $1.7- now that we're getting closer to a true budget figure.

From the plan that we presented to you, there's about $300,000 already unobligated, so this is asking for us to be able to grab that $100,000 of the seven or eight pots that we have. If they're not used, we would pull those dollars into this contract.

I don't know if this would be a $400,000 contract, it could be a $200,000 contract. We want to go out for the RFP first and figure out how much we're going to spend. If it goes higher than $300,000 -- the approval is for that -- should we be able to find unused balances, we would pull those back into this contract and utilize them for the network.

These entities have had a contract with TDHCA, many of them, for 35-40 years. We've been working with these eligible entities and they get funding annually through the CSBG grant.

Many of them also get our LIHEAP contracts as well. LIHEAP, you'll remember, is about $170 million a year. So we have a lot of dollars flowing into these entities. It's in our interest to see them get their cost allocation plans in alignment and actually execute them.

MS. BINGHAM ESCAREÑO: I'll entertain a motion.
MR. BRADEN: Move to approve.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

No further discussion. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

MR. DeYOUNG: Thank you very much.

MS. BINGHAM ESCAREÑO: Thank you.

Item 4, Brooke. Good morning.

MS. BOSTON: Good morning.

I'm Brooke Boston. I'm presenting item 4 to you.

The item is requesting that you authorize staff to submit an application to HUD in response to a notice of funding availability, or NOFA, for their Fair Housing Initiative Program, specifically the Education and Outreach Initiative. The action item also includes, if we apply and are awarded, those funds that we're allowed to operate the program.

On December 19, 2019, HUD released a NOFA for their Fair Housing Initiative Program, specifically for education and outreach. The funds are made available so
that applicants, which include state agencies, can develop, implement, carry out and coordinate education and outreach programs.

Essentially, the funds allow agencies to develop or bolster their capacity to educate members of the public about fair housing rights and responsibilities.

HUD has made available $7.5 million. Applicants may request up to a million, however, most applicants are expected to apply for much lower amounts. Staff estimates that we think we would apply for $200- to $300,000.

As you know, the Department just wrapped up its 2019 analysis to impediments of fair housing choice which included recommendations on expanding outreach and training. These funds would help support that effort. We do have a fair housing data management and reporting unit at the Department that has the appropriate expertise and partnerships and systems in place to operate the grant if it were awarded.

Our NOFA submission to HUD would propose the funds be used in two primary ways. The first would be expanding our training efforts to increase the number of attendees and registrants that we have participate in our Fair Housing Month webinars, to offer the webinars and other similar webinars at other times throughout the year, and then to offer training in other formats across the
The second would be to produce some fair housing materials that are specific to the State of Texas and TDHCA's programs that could be distributed by Department staff when attending conferences and could also be provided to local organizations who serve low income households.

One additional note for you. TDHCA has a very close relationship with the Texas Workforce Commission who oversees enforcement of the Fair Housing Act for the State of Texas. When the properties involved are in our portfolio, we share information and collaborate with the Texas Workforce Commission as needed.

TWC has indicated interest in collaborating with TDHCA on this grant application, with the likely effort falling under the category of training in other formats because they're interested in producing a guide or manual to assist property owners.

If our executive director and counsel find that their proposal is ultimately acceptable, we would include that collaboration in our request to HUD, but we haven't reached that point yet.

I'm happy to answer any questions you have.

MS. BINGHAM ESCAREÑO: Does anybody have any questions for Brooke?

(No response.)
MS. BINGHAM ESCAREÑO: Motion?

MS. THOMASON: I make a motion to approve.

MS. BINGHAM ESCAREÑO: Mr. Braden moves acceptance.

MR. VASQUEZ: Second.

MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

If there's no further discussion, all those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

Thank you, Brooke.

Item 5, Raul.

MR. GONZALES: Good morning. My name is Raul Gonzales, the director of OCI, HTF and NSP.

Today I'm presenting item 5, which is to amend an NSP contract with a nonprofit developer, Citywide CDC, who will be developing a 23-acre parcel of land in Dallas County known as Kleberg Village.

Citywide CDC has requested to amend their NSP contract in three ways, all of which staff has found to be reasonable and which uphold the ability of the property to be brought into what NSP calls final eligible use.

First, some brief background on the contract.
The Department originally executed an NSP contract in 2013 with a different nonprofit developer called Urban Progress CDC to develop the Kleberg Village property with $1.87 million in NSP funds. Capacity and personnel issues prevented Urban Progress from starting the project. In 2018, Urban Progress, with consent from the Department assigned the NSP contractor responsibility and ownership of Kleberg Village to Citywide CDC.

Citywide CDC reassessed the feasibility of the original plans for this tract of land and requested three main modifications to the project scope and contract.

First, to modify the project from multifamily units to single-family units. All future single-family buyers at Kleberg Village shall earn less than 120 percent area median income and will receive homebuyer assistance. In addition, Citywide will transfer 12 acres of the parcel to the City of Dallas for parkland and community center which meet NSP national objectives.

The second modification is to increase NSP funding by up to $700,000 in the form of a non-amortizing zero percent interest loan. Citywide will repay this loan proportionally as it completes each unit.

The third and final modification to Citywide's NSP contract is to waive an NSP requirement that at least
25 percent of the award be used to develop housing for those earning less than 50 percent of the area median income.

The federal requirement is not imposed on a per project basis, just on TDHCA's overall NSP portfolio. TDHCA has chosen to enforce this set-aside requirement on this project but with some flexibility, if granted by the Board.

Based on TDHCA's most recent NSP quarterly report, the Department's entire portfolio has well exceeded the 25 percent set-aside requirement with more than half of the entire portfolio assisting households earning less than 50 percent.

The NSP program as a whole is already meeting the federal requirements, so staff believes it is not necessary to incorporate into Citywide CDC's project. All households in this project will earn less than 120 percent of the area median income, and the Department will still require that six of the 48 units be available to households earning less than 50 percent.

In summary, the three modifications of this contract are to change the scope from multifamily to single-family, to increase the original NSP award by up to $700,000, and to waive the NSP requirement that 25 percent of the units be set aside.
A footnote regarding this developer: Last week the Department was notified of a tax suit related to the 23-acre tract of land. Citywide CDC owes approximately $4,700 for 2018 taxes.

Staff recommends approval of the contract modification but upon confirmation that all property taxes to the Dallas County taxing entities have been received for both 2018 and 2019. In the meantime, the Department has referred this tax suit to the Office of the Attorney General to reply and preserve the Department's land use restriction agreement.

With that, I'm happy to answer any questions?

MS. BINGHAM ESCAREÑO: Do you have any questions? Mr. Vasquez.

MR. VASQUEZ: A couple of questions. So the $700,000 is non-amortizing but is actually being paid back --

MR. GONZALEZ: That's correct, yes, sir. As each single-family unit is constructed and transferred over to a household, that lien usually transfers over to the household in the form of either a permanent loan or as a homebuyer assistance loan.

MR. VASQUEZ: Okay. Great.

And then did you just say this will be contingent on them paying the back taxes and the 2019
MR. GONZALES: Right. The taxes that the suit was filed for 2018, however 2019 taxes are also coming due at the end of the month.

MR. VASQUEZ: Right, at the end of the month.

MR. GONZALES: So, yes, sir. No contract would be executed until the Department receives confirmation.

MR. VASQUEZ: Okay. Does that include if they in turn do a payment arrangement for the 2019 taxes?

MR. GONZALES: You know, that hasn't been discussed but it's definitely something we would discuss with the executive director and with them and entertain that notion. In a conversation I had with the executive director last night, their intent is to pay both taxes within the next two to three weeks for 2018 and 2019.

MR. VASQUEZ: So 2019 doesn't seem to be a problem.

MR. GONZALES: No, sir.


MR. BRADEN: So this is going from a multifamily project to a single-family project.

MR. GONZALES: That's correct.

MR. BRADEN: Does our LURA envision that, or are we going to have to amend the LURA?

MR. GONZALES: The LURA will be amended, as well.
as the agreement. Yes, sir.

MR. BRADEN: And the money that we are providing to them, that's not being used to make mortgage loans to the people buying the houses?

MR. GONZALES: Well, it could be utilized for that because any household that we assist at a 50 percent or below AMFI is eligible for permanent financing from the Department, so it could very well be used for the families that are 50 percent or below.

MR. BRADEN: But wouldn't those families come to us and get a mortgage through our program?

MR. GONZALES: Right, they would come through us, however, that money is repayable. The money that's been used for land acquisition on this project, along with the $700,000 is repayable back to the Department.

So what we normally do on those situations is that at the time of closing with the homebuyer either the current administrator will have us back those funds, and then those funds are in turn used for permanent financing or homebuyer assistance. If there's any residual funds or funds that are left over, those funds are repaid back to the Department that become program income.

MR. BRADEN: If the homebuyer doesn't get a conventional mortgage, right? So let's say they still qualify under the AMI standards and they get a conventional
mortgage so there's many strings attached to the money
they're getting in terms of income and things like that.
How do we police that, I mean, once they own their house
and then they sell it to somebody else?

MR. GONZALES: There's still an affordability
period because we will put in a second lien or a
subordinate lien on those and we will supply them and
provide them some homebuyer assistance money as well.

As long as they're 120 percent or below, we're
able to provide some homebuyer assistance on that to the
affordability period because that is a requirement of the
NSP program.

MR. BRADEN: Even if there's a subsequent
transfer of the property.

MR. GONZALES: Yes, sir, correct.

MR. BRADEN: And I guess that's part of the LURA
that's on the whole thing?

MR. GONZALES: Correct, yes, sir.

MS. BINGHAM ESCAREÑO: Any other questions for
Raul?

MR. WILKINSON: Raul, is this your last time
addressing the Board?

MR. GONZALES: It is my last time, yes, sir. I
will be retiring at the end of the month.

MR. BRADEN: Oh, my goodness. Pretty young.
MR. WILKINSON: Thank you for your service.

MR. GONZALES: Thank you, sir.

MS. BINGHAM ESCAREÑO: I mean, we could amend the motion that you stay on to monitor this period.

MR. ECCLES: That would be perfectly legal.

(General laughter.)

MS. BINGHAM ESCAREÑO: Thank you very much for your service.

Entertain a motion.

MR. BRADEN: I'll make a motion to adopt the resolution presented.

MS. BINGHAM ESCAREÑO: Mr. Braden moves staff recommendation.

Second?

MR. VASQUEZ: Second.

MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank you.

Teresa, item 6.
And I didn't mention at the beginning, I think we all know, but anybody that wants to speak on an item can come up to the first couple of rows just so we know you're here.

MS. MORALES: Teresa Morales, director of Multifamily Bonds.

Item 6(a) involves the award of approximately $4-1/2 million in 4 percent housing tax credits associated with 23 multifamily developments totaling just over 1,100 units. The first 22 applications listed under this item are part of a portfolio of rural developments located across the state that involve USDA financing.

I wanted to offer a minor correction to the application ID number listed for the second application from the bottom of this list. Windwood I & II should be identified as application 20443, not 20423.

While the majority of applications funded through the 4 percent housing tax credit program are located in urban areas, combining a number of small rural properties into a single bond issuance is a way to reposition such properties that may not be competitive under the 9 percent program or otherwise have access to funds to make property improvements. Specific information relating to each of these developments is included in your package.
The last application listed under this item, Austin Manor, is separate from the portfolio transaction and proposes the new construction of 280 units in the Austin ETJ.

Included in your materials is a 2019 4 percent application log reflecting the status of those applications that staff has processed throughout this year. Also included in your materials is a 2020 application log that reflects those applications that have been submitted for 2020.

Specifically, those applications noted as being active on the 2020 log are those that were part of the 2020 private activity bond lottery that the Department received on December 13. The number of applications that participated in that lottery and the two regions, Regions 6 and 7, that became oversubscribed demonstrates what could be a return of the competitive nature of private activity bond volume cap.

Staff recommends approval that would allow for determination notices associated with all 23 applications to be issued in their respective amounts as noted in your package.

MS. BINGHAM ESCAREÑO: Does anybody have any questions for Teresa?

(No response.)
MS. BINGHAM ESCAREÑO: Anyone that wants to speak?

(No response.)

MS. BINGHAM ESCAREÑO: Okay. Very good.

And the correction was the second to the last one 20423 is 20443?

MS. MORALES: Yes.

MS. BINGHAM ESCAREÑO: Great.

MR. VASQUEZ: So is this final approval or is this just notice?

MS. MORALES: It's final approval.

MR. VASQUEZ: Okay. Good.

MS. BINGHAM ESCAREÑO: I'll entertain a motion on item 6(a).

MR. VASQUEZ: I move to approve the staff's recommendation.

MS. BINGHAM ESCAREÑO: Mr. Vasquez moves.

Second?

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.
(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank you.

You don't look like Marni.

(General laughter.)

MS. BOSTON: I'm not. Marni is at a conference, so I'm here presenting on Marni's behalf.

MS. BINGHAM ESCAREÑO: Item 6(b). Thank you, Brooke.

MS. BOSTON: Thank you.

At the Board's meeting in November 2019, the Board made a change to the 2020 QAP relating to the definition of supportive housing. They adjusted the portion of units that had to be supported by project-based or operating subsidy from all or 100 percent to 25 percent.

Inadvertently, in the publication of the QAP in the Texas Register that change was not included. Unfortunately, because of the timing of the cycle, that did not leave us time to go in and actually make that change in formal rule.

So to make sure that the wishes of the Board are implemented as needed, staff is recommending that a waiver be provided to that applicable section that would apply to any applicants applying as supportive housing.
So staff is recommending that the waiver be adopted today. This is in the section of the QAP that's 10 TAC, Section 11.1(d)(122)(E)(ii), and that basically we change the wording from all units to 25 percent of units so that that section can be applied equitably to all applicants. And I'm happy to answer any questions.

MR. VASQUEZ: So I assume this mistake was Marni's fault. Is that what you're saying?

(General laughter.)

MS. BOSTON: No. It was just kind of a royal staff mistake.

MR. VASQUEZ: How many people reviewed this after all the discussion we did on this?

MS. BOSTON: Yes. It was just a mix-up.

MR. WILKINSON: So we will be implementing a new process next go-round when we post the final version of the QAP, with more than quadruple, quintuple checks, something like that.

MS. BOSTON: We'll Google check it.

MR. BRADEN: Just to confirm, the correct version was the one approved by the governor. Right?

MR. WILKINSON: I had this argument with my lawyer, like that's the real QAP, doesn't matter what's in the Register, but to avoid this kind of fight we're having, you just waive it to make them match.
MR. BRADEN: I don't disagree with the lawyering involved, but what went to the governor said a minimum of 25 percent?

MR. WILKINSON: Yes. The correct version was sent to the governor and returned with that change intact and unmoved, and then it was from that point that somehow that version, that section was incorrectly posted to the Register.

MR. BRADEN: Okay. I'm fine with it.

MS. BOSTON: Our apologies.

MR. BRADEN: Move to approve.

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Motion by Mr. Braden, seconded by Ms. Thomason. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank you very much.

All right. Moving quickly along, item 7, Rules, item (a).

MS. MURPHY: Good morning. Happy New Year.

MS. BINGHAM ESCAREÑO: Good morning, Patricia.

MS. MURPHY: Patricia Murphy, director of Compliance.
Item 7(a) on your agenda is presentation, discussion and possible action on a proposed repeal of the Department's previous participation rule and a proposed new rule.

Texas Government Code Chapter 2306.057 requires a compliance assessment before Board approval of any project application. This previous participation rule is how we satisfy this requirement. Both the existing and proposed rule classify an applicant's compliance history as Category 1, 2 or 3.

Under the current rule, staff is required to recommend denial of all applicants who are classified as a Category 3 and then bring those disputes before this Board. Under the proposed rule, only disputes where the applicant is classified as a Category 3 and staff believes that the compliance record should prevent them from getting another award would come before this Board.

Although we're doing the rule as repeal and replace, in your Board book it's shown as black line so you can see what we're changing, and it looks like we're changing a lot of stuff because there's a lot of strike-throughs but the proposed rule uses approximately the same method when evaluating an applicant's compliance history, a lot of it is just streamlining things.

We released a staff draft of this rule and we
had a roundtable discussion about it on December 13 with stakeholders, and people did not seem concerned with what we're proposing. So with your approval, this will be published in the Texas Register and out for comment January 31 through March 2.

MS. BINGHAM ESCAREÑO: Any questions from the Board? No public comment, questions?

(No response.)

MS. BINGHAM ESCAREÑO: We'll entertain a motion.

MR. BRADEN: Move to approve.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MR. VASQUEZ: Second.

MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

That takes us to item 7(b). Tom.

MR. GOURIS: Good morning, Madam Chair, Board members. My name is Tom Gouris. I'm the director of Special Initiatives for the Department, and I'm before you today to recommend the repeal and adoption of the rules for licensing migrant labor housing.

As previously reported to you, we've been
working on changes to help providers of migrant labor housing to comply with the state law. To date our efforts have resulted in nearly a sevenfold increase in the number of facilities that are licensed.

Staff believes that the changes proposed in these rules will clarify who is responsible for getting licensed, it will eliminate the duplication of inspections in many cases, and reduce the cost of licensure for many employers using the H-2A visa program, thereby resulting in even more facilities getting licensed.

We received formal public comment from seven parties on eleven different topics and staff is recommending changes to three of the areas that were part of those comments, as well as a couple of administrative clean-ups as suggested by the folks at Texas Register.

The biggest changes are somewhat related having to do with the applicability section and the definition of provider. Who is responsible for getting licensed has been an issue of much concern both from an employer's perspective and worker advocates' perspective.

The rule clarifies that we generally do not require licensing by two different entities on the same property for the same worker residence, and that could happen that there's an owner of a property that leases property to an employer or someone else and that person is...
the provider. So what we're trying to do is eliminate the
duplicate -- the necessity for having two licenses.
Tongue-tied this morning.

(General laughter.)

MR. GOURIS: Let's see. We want to make sure
that everyone understands who is responsible for getting
licensed, and we think that the changes to the rules
clarify that.

We also want to make sure that workers who found
their own housing did not inadvertently fall into having to
be licensed for their personal housing because their
immediate family had three members or something like that,
so we wanted to clear some of those things up.

Before turning it over for questions and public
comment, I wanted to make the Board aware that the last
section of the proposed rules that we presented to you at
the Board meeting was inadvertently left out of the Texas
Register posting. It was Section 90.9.

The old rules only had 90.8 rules in it. We did
some numbering changes and when it was sent over, it was
sent over through .8 and not .9, so that last section was
something that was in the old rule, there weren't
significant changes to it being proposed.

We're going to go ahead and publish that this
month and so that one piece will come back to you for
adoption at a future meeting. But we don't think that's going to have much of an impact because much of that section has to do with dispute resolution, appeals and hearings, and a lot of that is covered in other areas but included in this rule for convenience sake, so we think we're still covered, we just want to button it up in coming months.

So with that, I will close, but I'm available for any questions.

MS. BINGHAM ESCAREÑO: Any questions?

MR. VASQUEZ: Just more generally speaking, so do you feel like we're getting more momentum built and spreading the word?

MR. GOURIS: I definitely do. I mean, we've had to reach out to folks over the last year and a half or so to try to get folks aware and we have some more to do on our relationship with TWC to make sure we can get information more fluid there, but a lot of the employers who get inspections are providing their inspections to us from TWC.

We're getting the word out. Folks are contacting us to participate in their conferences and such, whereas, we've had to kind of search for them in the past, so I think the word is really getting out.

There's a lot more work to do, but we're making
great progress. Like I said, we've gone from 40 licensees to about 265, and hopefully by midyear we'll be closer to 400 with these rule changes.

MS. BINGHAM ESCAREÑO: Any other questions?
(No response.)

MS. BINGHAM ESCAREÑO: So the recommendation from staff is to publish it in the Register?

MR. GOURIS: We will publish the adoption but we're repealing the old rule finally and adopting the new rule. The extra section is already approved to be published so we're going to just go ahead and do that, and then we'll bring that back for adoption only.

MS. BINGHAM ESCAREÑO: Okay. Very good. Is there a motion?

MR. BRADEN: I'll make a motion to accept the staff's recommendation to repeal the old rule and adopt the new rule.

MS. BINGHAM ESCAREÑO: Very good. Motion to accept staff's recommendation. Is there a second?

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.
(No response.)
MS. BINGHAM ESCAREÑO: Motion carries.

Thank you, Tom, very much.

MR. GOURIS: Thank you.

MS. BINGHAM ESCAREÑO: All right. That concludes all of the agenda items. That's not a record; I think 28 minutes was the record, missed it by a little.

But we do have time for public comment. Anybody that has any comment for future agenda items or anything that's not on the agenda today?

(No response.)

MS. BINGHAM ESCAREÑO: Anything from staff?

MR. WILKINSON: I have a brief announcement.

It's been brought to our attention that due to some wording changes, a feasibility report which previously was not required for a rehab development is now required.

The way it was done, I believe the old language said for construction and for reconstruction this is required, and that part was struck, and then during all the discussion of the QAP process it was never really said out loud "and now this is required for rehabs."

And so actually people are putting their full apps now, it was noticed. So I believe staff will be bringing a waiver request to the February Board meeting to waive some aspects of the feasibility report for a rehab development. And any questions about that, you can feel
free to contact me.

MS. BINGHAM ESCAREÑO: So, Bobby, is that
something that's getting communicated right now? Does it
impact anything anybody is doing right this minute in terms
of pre-application?

MR. WILKINSON: Yes. I would think that if you
knew that we were bringing this waiver request to February,
you could expect, given if the Board agrees, that that
would give you some relief on things like a new survey for
a rehab and stuff like that that would cost money, you
could save that money and not spend it.

MS. BINGHAM ESCAREÑO: Great. Very good.

Anything else?

MR. WILKINSON: We'll also be sending out a
Listserv just for people that didn't happen to watch today.

MS. BINGHAM ESCAREÑO: Is there a motion to
adjourn?

MS. THOMASON: So moved.

MS. BINGHAM ESCAREÑO: Thomason moves.

Thank you guys very much. Happy New Year.

(Whereupon, at 9:36 a.m., the meeting was
adjourned.)
C E R T I F I C A T E

MEETING OF:   TDHCA Board meeting
LOCATION:     Austin, Texas
DATE:         January 16, 2020

I do hereby certify that the foregoing pages, numbers 1 through 3536, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE:         January 21, 2019

(Transcriber)

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