TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

John H. Reagan Building
JHR 140
1400 Congress Avenue
Austin, Texas 78701

November 10, 2021
9:05 a.m.

BOARD MEMBERS:

LEO VASQUEZ, III, Chair
PAUL A. BRADEN, Vice Chair (absent)
BRANDON BATCH, Member
KENNY MARCHANT, Member
AJAY THOMAS, Member
SHARON THOMASON, Member (absent)

BOBBY WILKINSON, Executive Director

I N D E X

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their adoption for submission to the *Texas Register*

f) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing their submission for adoption to the *Texas Register*

g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order adopting new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for adoption in the *Texas Register*

h) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*

HOUSING STABILIZATION SERVICES

I) Presentation, Discussion and Possible Approval of an Award of Emergency Rental Assistance Funds to the Texas Homeless Network for Housing Stabilization Services

MULTIFAMILY FINANCE

j) Presentation, discussion, and possible action to revise prior Board action related to requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds

COMMUNITY AFFAIRS

k) Presentation, Discussion, and Possible Action on the 2022 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

P R O C E E D I N G S

MR. VASQUEZ: It is 9:05 a.m. on November 10, 2021, and I'm calling to order the meeting of the Governing Board of the Texas Department of Housing and Community Affairs.

We will start out with a roll call, and Chairman Vasquez is present.

Mr. Batch?

MR. BATCH: Here.

MR. VASQUEZ: Mr. Braden has asked for an excused absence.

Mr. Marchant?

MR. MARCHANT: I am here.

MR. VASQUEZ: And Mr. Thomas?

MR. THOMAS: Present.

MR. VASQUEZ: And Ms. Thomason also needed one more excused absence.

So we do have four members present, and we do have a quorum.

Let's start out the meeting with Mr. Wilkinson leading us in the pledges.

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

MR. VASQUEZ: Just a few housekeeping measures. Again, glad everyone is here, and as I can see, masks are optional. So when we have speaking we have people sit up in this front row; we're still just every other seat. When we get to the speaking part -- and I assume one or two of you might want to chime in today -- remember to come up here to the front couple of rows when you're getting ready to speak in that topic and sign in at the front desk.

We will move into the consent agenda as posted. Do any members of the Board or public wish us to move something from the consent agenda to the action agenda?

(No response.)

MR. VASQUEZ: Hearing none, seeing none, the chair will entertain a motion to adopt the consent agenda.

MR. BATCH: I'll make a motion, Mr. Chairman. I'll just make a motion that we adopt the consent agenda.

MR. VASQUEZ: Motion made to adopt the consent agenda by Mr. Batch. Is there a second?

MR. MARCHANT: Yes, sir.

MR. VASQUEZ: Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

We will not be having an executive session. If we do, it's a surprise to me. And we'll go straight to the executive director's report.

Mr. Wilkinson.

MR. WILKINSON: Thank you, Chairman.

Several days after our October meeting, the third called legislative session ended without any legislation that impacts the Department. As we look ahead to the interim, legislative leadership offices have begun discussions about possible interim charges for next year, and we'll be ready to serve as a resource to our oversight committees and look forward to those discussions.

Texas Rent Relief. Big news for anyone who didn't see in the papers this week, we shut down the application portal. We just had more requests than we do in dollars, and money has been flying out the door as we're having over $15 million days, and we might have all the funds disbursed by Christmas. There will be some stragglers, but things are moving very well.

We've asked Treasury for more, so the first wave of rental assistance money had a provision where locals and states that didn't expend 65 percent by September 30 of this year are subject to a recapture, so there's plenty of jurisdictions that didn't meet that. We did, of course.

It remains to be seen how much and when we'll get any money. Treasury has been kind of lenient in letting those jurisdictions like send in a plan for how they're going to expend funds, but there's got to be states that won't ever get close to their small state minimums, and that should be reallocated interstate eventually.

We asked for $3 billion, and that's the rate we can spend it at in the next year. We have like a September 2022 cutoff at our current approval rate, and so we'll see how much we get. More updates to come.

MR. MARCHANT: Can I ask a question?

MR. WILKINSON: Certainly, sir.

MR. MARCHANT: Bobby, when you look at the legislation itself, does the money go back in the Treasury or does it go into a fund that they then are obligated to redistribute it?

MR. WILKINSON: I can't say off the top of my head. I know Treasury has the option; it's not a must claw back. And I think they have options on how they choose to reallocate as well.

MR. MARCHANT: So have you heard one way or the other whether they have included a prospective clawback number in the new legislation that's being proposed? In other words, sometimes they'll go in and say, oh, well, this much won't get used over there, so we're going to appropriate it in this new bill and sweep it basically out, and if it doesn't, it will become available.

MR. WILKINSON: So not to my knowledge. I think it's still Treasury's intention, and there isn't legislation to change it, where they will reallocate to successful programs.

A subset of rent relief is housing stability services. We contracted with a legal aid organization to help people with their evictions, and we're helping a lot of homeless service providers as well.

Cate Tracz and her team are doing a great job with almost all the contracts signed for the first round. Trainings and porting and draws occurred in the last two weeks, and we're releasing a NOFA for $84 million from the second rental assistance pot for housing stability services.

Mortgage Assistance Program. We continue to do all we can to have a Mortgage Assistance Program, known as the Homeowners Assistance Fund, or HAF, ramped up. Monica has hired a director, two program managers, an outreach manager, and we procured a vendor. And now we're just waiting on Treasury's approval of our submitted plan.

The contract was executed with the vendor, and we're getting the website ready and all that stuff. Treasury has not approved any plans in the nation, so we're not behind anyone else on that. As a reminder, that's going to be $842 million to provide assistance to qualified Texas households who need help catching up with their mortgages.

Multifamily Finance. We learned several weeks ago that Texas is going to receive an additional $1,012,000 in National Pool Housing Tax Credits. These credits are added to the remaining credits and are awarded to the next application on our waiting list for the state collapse, and so the next application on the waiting list is Cypress Creek Temple, which was previously approved by the Board for a 2022 forward commitment where we had that ranking issue.

And so we gave some forwards to people who got awards in July, and then we had to take back their awards later in the year. So this is one forward that we're not having to do, which means a little bit more in credits in 2022, which is, I think, a good outcome.

The division, we hired Cody as the director, and so the division has hired a 9 percent housing tax credit manager as of November 1, and it is Colin Nickells, who worked in Michael Lyttle's Policy Division since January. Colin is a hardworking bright young man, and we believe he will do a great job.

Colin, stand and wave.

(Applause.)

MR. WILKINSON: I stole him from GLO to get him here, and so now we're sliding him over to programs. Good fun.

Multifamily Finance continues to work on a draft version of the Uniform Multifamily Application, which we intend to have posted to our website in mid-November for testing and feedback by our partners and the public.

Staff is also working on materials related to supplemental tax credits. The form for the required notice of intent will be posted on Friday, and the forms for the actual request will be posted on November 19.

And 4 percent world. The 2022 private activity bond lottery was held last Thursday and there were 191 applications of which 185 were for residential rental. Of particular interest is the fact that requests total $6.6 billion, and the 2022 ceiling amount is likely to be approximately $3.3 billion. To give perspective, last year's lottery requests were only $2.5 billion. The 4 percent program is in high demand.

MR. VASQUEZ: The secret is out.

MR. WILKINSON: Yeah. That's it for my prepared remarks. Members, I'm ready to answer any questions.

MR. VASQUEZ: Do Board members have questions for Mr. Wilkinson?

(No response.)

MR. VASQUEZ: Great. And thanks for that report, Bobby.

And again, congratulations to all the staff, the team on the amount of funds that have gone out the door in the rent relief program. That's just amazing. Hopefully we will get some more, because the demand is definitely there.

Okay. With that, let's move right along to item 4(a) on the agenda, Presentation, discussion, and possible action regarding the issuance of Multifamily Housing Revenue Bonds Series 2021, Resolution No. 22-009, and a determination notice of housing tax credits.

Ms. Morales.

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

Meadowbrook Apartments proposes the new construction of 180 units in Dallas that will serve the general population. Of the 180 units there will be 18 that will be at market rate, and the rest will be affordable, serving households at 60 percent of the area median income.

Under the proposed financing structure, the Department will issue fixed-rate tax-exempt multifamily bonds in the amount of $30 million that will be initially purchased by R-4 Capital Funding, who will serve as both the construction and permanent lender. The interest rate will be locked prior to closing, but the formula by which the interest rate will be determined is identified in the bond resolution, along with the maturity date.

With this being a private placement, the specific terms are identified in the bond resolution and must be approved by the Board instead of delegated to another party as seen in our publicly offered transactions.

Staff recommends approval of Bond Resolution No. 22-009 in the amount of $30 million and the issuance of a determination notice of 4 percent housing tax credits in the amount of $1,823,422.

MR. VASQUEZ: Great. Thank you.

By the way, everyone in the audience, could you hear her okay?

(General acknowledgment.)

MR. VASQUEZ: All right, great.

Does anyone have any questions for Ms. Morales on item 4(a)?

(No response.)

MR. VASQUEZ: If not, I'll entertain a motion.

MR. THOMAS: Mr. Chairman, I move the Board issue a determination notice of 4 percent tax credits for Meadowbrook Apartments and approve Resolution No. 22-009 regarding the issuance of tax-exempt multifamily housing revenue bonds, all as expressed in the Board action request on this item.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. BATCH: I'll second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Moving on to 4(b), Presentation, discussion, and possible action regarding the issuance of a governmental note, Resolution No. 22-010, and a determination notice of housing tax credits.

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

Fiji Lofts is the last of the bond transactions that the department will issue for 2021, closing out the calendar year at just over $359 million in multifamily bonds issued for 15 applications that total 2,800 units.

Fiji Lofts proposes the new construction of 174 units, also in Dallas, all of which will be affordable at 60 percent of the area median income and will serve the general population.

Under the proposed financing structure, the Department will issue a fixed-rate tax-exempt multifamily note in the amount of $23,849,000 that will be initially purchased by Community Bank of Texas, who will serve as both the construction and permanent lender.

Staff held a public hearing on September 9, and there was no one who provided public comment during that hearing; however, the Department did receive a letter of support by a Dallas City Council member who represents the district.

Staff recommends approval of Bond Resolution No. 22-010 in the amount of $23,849,000, and the issuance of a determination notice of 4 percent housing tax credits in the amount of $2,080,856.

MR. VASQUEZ: Great. Again, do any Board members have questions for Ms. Morales on this governmental note?

(No response.)

MR. VASQUEZ: Okay. Hearing none, is there a motion on item 4(b)?

MR. BATCH: Mr. Chairman, I move that the Board issue a determination notice of 4 percent housing tax credits for Fiji Lofts and approve Resolution No. 22-010 regarding the issuance of tax-exempt unrated governmental note, all as expressed and subject to the conditions in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Batch. Is there a second?

MR. MARCHANT: Second.

MR. VASQUEZ: Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MS. MORALES: Thank you.

MR. VASQUEZ: Thank you, Teresa.

Moving on to item 5 under Rules, should I read this whole thing? Not to lengthen this discussion any more, but item 5 is Presentation, discussion, and possible action on an order approving and recommending to the governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the governor in accordance with Texas Government Code Section 2306.6724(b) the New 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and upon action by the governor, directing its publication in the *Texas Register*.

Ms. Boston, you have a concise presentation for us.

(General laughter.)

MS. BOSTON: Ish. I'm Brooke Boston, deputy executive director for Programs. This item is the QAP.

As you know, you approved the draft QAP in September, which was released for public comment. We received comment from 41 commenters by the October 8 deadline.

In terms of the timeline for the QAP, after your approval today the QAP will be submitted to the governor no later than November 15. The governor then has until December 1 to approve, approve with changes, or reject. Only after that approval will the 2022 QAP then be posted on our website and published in the *Texas Register*.

There are several key issues I want to bring to your attention. First, because of the newness of Subchapter F relating to the supplemental allocation, it was important for us to have more dialogue with the development community so that they could make fully informed comments, so we hosted an in-person roundtable on September 20.

We had great attendance and strong participation, so that we were able to identify quite a few areas to improve, so this section of the QAP is one that has the most changes from the draft version.

I would note that the type of changes made are ones that, were this applicable to our regular cycle, I would have said this is too big; we'll have to wait till 2023. However, in this case, because we needed the supplemental guidance now, not next year, we had to allow some grace for those provisions.

Some of the more significant things we changed in Subchapter F were:

Adding a requirement for a notice of intent so that everyone kind of knows what the other players are doing and they have a better sense of kind of where that stands; adding the at-risk and USDA set-asides as part of the allocation process, which I'm embarrassed to say I had left out that one;

Providing for Board approval of the supplemental allocation subject to underwriting that will let us make the awards earlier than we had originally contemplated, and the timing was a problem for the development community;

Removing the applicability of the supplemental allocation from two of the non-statutory housing deconcentration factors, proximity to development sites and one award per census tract, so we're only applying it when it's statutorily required;

Reducing the maximum supplemental request per award from 15 percent of their original request down to 7 percent;

And providing that all supplemental allocation credits not awarded instead of them going into a waiting list they actually are going to move over to the regular round.

The other item I want to bring to your attention is an issue that has arisen in relation to HR 5376, the Federal Build Back Better Act, which is pending before Congress.

If passed as currently drafted, the bill has several provisions that require they be made applicable to our 2022 tax credit allocation round. Two of the exciting things in that act, if it passes as drafted, the first is that it raises the per capita tax credit amount to $3.14, and that amount will increase over time, and we estimate that that would increase the cycle allocation up to $91 million, so that would be exciting.

The bill also lowers the bond 50 percent test down to 25 percent, which has the potential of potentially doubling the amount of transactions possible, so that would be amazing. The bill also makes some changes to the qualified contract and right-of-first-refusal language that Beau and I are still trying to digest.

And then the bill provision that creates a challenge for us, though -- which is why I really wanted to bring this up -- is a significant timing problem. There's a new provision that requires that at least 8 percent of our state credit ceiling in 2022 must go to buildings with 20 percent or more of units restricted to EOI households, which is people at 30 percent AMI or 100 percent of poverty.

The 30 percent units required by this provision are able to receive a basis boost of up to 150 percent. The bill limits the amount of credits that can receive the basis boost, but from what the National Council of State Housing Agencies is telling me, it is not intended to limit the number of 30 percent units that we can do; it just limits how much credit can go to that 50 percent boost.

So we kind of have to do somewhere between 8 and 13 percent and the bill, as I said, if it passes as drafted, will have that applicable for 2022. We've been looking at ways to implement that.

In broad strokes, a couple of options we're thinking is that you either make the 8 percent applicable to every deal. I've looked at the data, and while it doesn't match exactly because the way the bill is written, it kind of channels through buildings, and so it's not just a certain percentage of units; that would be tidier.

Because it doesn't do that, it's a little more convoluted as to how many units you'd actually need, but in looking at it, I think we're pretty close already just by our developers always going after those low income units for points.

And so I don't actually think deals will deals will have to do that many more units in this category; it's just figuring out how to get it into the QAP in a way that doesn't totally turn over the applecart for '22 and still be in compliance with the new law, if it were to pass.

And so our thinking is that in your recitals what we've shown is that conforming revisions to the QAP will need to be made and that you are authorizing the executive director to make those conforming revisions in coordination with the Governor's Office before the QAP is actually submitted to the *Texas Register*.

MR. VASQUEZ: Before you go on.

MS. BOSTON: Yeah, that's big.

MR. VASQUEZ: So if the Build Back Better is ever actually passed -- and let's say it's February of next year that it gets passed -- do we come back and do a whole new supplemental QAP, or is this authorizing -- it sufficient to authorize the executive director?

MS. BOSTON: This would be authorizing us to do the fix.

MR. VASQUEZ: But you said before it's published in the *Texas Register*.

MS. BOSTON: Right.

MR. VASQUEZ: So this would be a whole new -- the process would occur again. Right?

MS. BOSTON: My hope would be if it passes in

February they'd tweak the language to allow it to begin being effective for 2023, but I don't know.

MR. WILKINSON: Beau says we can do an emergency rulemaking if it passes after publication.

MR. VASQUEZ: Okay. If it passes at all.

MS. BOSTON: And Cody and Homero and I have been working on this, and we're going to try and find a way to do it in the least -- this probably sounds wrong to say the least impactful -- the bare minimum of what we need to do.

MR. VASQUEZ: The least disruptive.

MS. BOSTON: Yes, disruptive.

And then without listing all the changes made, I will share a few of the larger changes we made to the QAP.

We reduced the maximum request limit for a single deal back to what we had in 2021, which is $1.5 million and $2 million for at-risk to address public comment and for us to work on that more carefully.

We added the ability for an application to earn seven points for community revitalization in a non-qualified census tract.

We added in for the tenant right-of-first-refusal scoring item revised it to allow condos, and we had reduced points on that, but I'll talk about that in a minute.

And then we took out the requirement that insurance needed to be provided for tenants' possessions when properties are in the flood plain.

Lastly, as three corrections we are recommending from the version in your Board materials, and we would ask that when you make your motion it's inclusive of this stuff that I'm about to say.

So the first item relates to undesirable site features on page 118 of your materials. This Section 11.101(a)(2) relates to joint land use studies, and currently that clause reads that a development site that is within the boundaries of a joint land use study for any military installation would trigger being an undesirable site feature.

We'd like to revise that now to say that development sites that are located in a clear zone in the accident potential zone that are within any noise contour of 65 decibels or greater as reflected in the joint land use study for any military installation. So it narrows the scope of what areas would be triggered as an undesirable site feature.

The second item relates to the scoring item for right of first refusal. Thanks for Henry Flores for catching this one for us. This is on page 113, and in the introduction to this section we had inadvertently provided that points could be achieved under subparagraphs (a) and

(b) but only one path of right of first refusal -- they can't really be harmonized together unless it's one or the other.

So it should be an "or" so the sentence at paragraph 7 will read: "An application may receive points under subparagraph (a) or (b)." But to continue to ensure that the tenant right-of-first-refusal item still remains a priority, we then are recommending that the points go from one point up to two points.

The last revision that we'd like you to consider is in the special needs item; it's 11.9(e)(6) on page 9. In the introduction to this paragraph I had made what I thought was a fairly ministerial correction increasing the number of points from three to four because we had added a new subparagraph under that for veterans scoring to set aside a new statutory requirement.

So I just thought that because we added in another point option in the subparagraphs below, I should increase the points at the top, and me thinking that was ministerial created a lot of concern.

Because developments have already been looking for their sites for this year, if we increase it to four, then for them to get the maximum points they'd now have to look for a site in a different place, and they hadn't done that. So that was not my intent, so I do think we'll want to look at it more carefully for 2023, but we'd like to put that back down from four points to three points.

And with that, I'm happy to answer any questions.

MR. VASQUEZ: Great. Thanks, Brooke.

So just when we get to the motion, if the Board member making the motion can state "pursuant to the presentation by Ms. Boston."

Do any Board members have questions?

MR. MARCHANT: I have a question, not about this text but a general question. Do you have any -- have you made plans or do you contemplate ever tying the federal opportunity zone funding programs into where our program could fold into that and they could gain points?

MS. BOSTON: You know, we've talked about that a little bit at NCHSA where all the state HSAs get together. I don't know that the tax attorneys, kind of that industry, have figured out exactly how to make them harmonize, and I think there was concern that the investors for the zones would not be the same types of investors who would want to do tax credits. So we have talked about it a little bit, but we haven't tried to integrate it into the QAP yet, but we can look into that for you if you'd like for next year.

MR. MARCHANT: The tax schemes are completely opposite, but I'm looking more from an employment housing standpoint. You get these big opportunity zones and create huge opportunity of employment, and then you end up with a void; you end up with 30 to 45 minutes of driving for the workers to get into those big opportunity zones. And I understand so the feasibility issues are that the tax incentives may not harmonize with each other.

MS. BOSTON: From the last time I've talked about it, yes, that was the biggest concern initially, and I think we wanted to be sure that tax counsels in general felt like it was something that was doable.

MR. WILKINSON: We can certainly give it another look and do another analysis.

MS. BOSTON: We'll do that.

MR. MARCHANT: Yeah. There may be an opportunity. That's what we're experiencing is employment housing.

MS. BOSTON: Yeah. And we had planned for our 2023 QAP to revisit and kind of look again at that issue of proximity to jobs, so maybe that is where that could help tie in.

MR. MARCHANT: Thank you.

MS. BOSTON: So really no one is going to comment?

MR. VASQUEZ: I was about to say.

MR. WILKINSON: Make a motion.
(General laughter.)
MR. VASQUEZ: Does anyone in the audience care -- there they go.
MR. LYTTLE: Mr. Chairman, do you want me to read the letter from Senator Menendez first?
MR. VASQUEZ: So as people are coming up here, Mr. Lyttle has a letter to read into the record.
So Michael, let's do that first.
MR. LYTTLE: Do we need to do a motion to accept public comment?
MR. VASQUEZ: Is there a motion to accept public comment?
MR. MARCHANT: I make a motion to accept public comment.
MR. THOMAS: Second.
MR. VASQUEZ: Motion made by Mr. Marchant, seconded by Mr. Thomas. All those in favor say aye.
(A chorus of ayes.)
MR. VASQUEZ: Any opposed?
(No response.)
MR. VASQUEZ: Okay. Let's hear public comment and start with the letter to be read into the record.
MR. LYTTLE: thank you, Mr. Chairman.
This is a letter sent to Bobby from Senator Jose

Menendez, reads as follows:

"Director Wilkinson, I'm proud to represent much of Military City USA. The San Antonio region is home to one of the largest concentration of military bases in the United States with numerous installations scattered across the city. The mission of our armed forces is critical, but so too is the mission of providing safe, decent, and affordable housing for my constituents.

"The proposed changes to the Housing Tax Credit Program Qualified Allocation Plan include a provision that creates a barrier to the creation of new affordable housing in my district. Section 11.101(a)(2)(K) designates development sites within joint land use studies as an undesirable site feature without an opportunity for mitigation. Much of my district falls within such an area.

"Joint land use studies are a guiding framework assembled by military installations, local communities, agencies and other stakeholders planning together to protect the long term viability of existing and future military missions. In many instances the recommendations of these studies are implemented as policy by local leaders. In San Antonio recommendations have been adopted into the Unified Development Code to cover regulations relating to height limits, lighting, and more near military installations.

"This addition to the QAP would be redundant to local regulations already in place. Please remove this unnecessary burden from the QAP. Affordable housing development will be constructed reasonably in accordance with all local regulations. Texans, including our service members, deserve a decent place to call home.

"Sincerely, Jose Menendez, State Senator, District 26."

MR. VASQUEZ: Great. Thank you, Michael.

MR. WILKINSON: Chairman, I have a few comments on this.

This is one of the changes that Brooke mentioned in her layout of the QAP. So having it as an undesirable site feature for the entire land use restriction area, it's like a five-mile radius, so it was a great portion of San Antonio.

Tim Alcott, from the San Antonio Housing Authority brought it to my attention, and so the language that Brooke presented is much tighter; it's within certain noise and accident potential zones that we want them not to have the development there.

This was direct experience. In the last round we had the military complaining to us directly and through the Texas Military Preparedness Commission at the Governor's Office about some developments that were a little too close to their runway. I think it was fighter pilot training, touch-and-goes.

So we wanted something in the QAP to kind of prevent that situation, although we were able to use our catchall provision, we wanted to be more clear in the QAP that we don't want things too tight on the bases, especially if we have the military complaining to us, worries about BRAC grounds, et cetera, but the five-mile radius was too much. I think we've struck the right balance, but I'm curious to hear what others might have to say about the matter.

MR. VASQUEZ: Great. Thanks, Bobby. I think it's a good example of public comment and reasoned input and finding a solution.

Okay, with that.

MS. SISAK: Good morning. Janine Sisak, senior vice president and general counsel of DNA Development Company. I'm not going to comment on that issue; I'm going to focus on one issue today, and that is the $2 million per project cap.

Staff had put in the $2 million per project cap and now has reduced it back to 1.5- based on one comment. I don't believe that comment is indicative of the larger development community's feelings about the matter. I'm hoping that some of the people in the front row back me up on this.

But my comments are this. I believe that increasing the per development to $2 million is so important in addressing the construction cost spikes that we're dealing with and that aren't going away. We haven't seen anything come down -- lumber has come down, everything has come up, we're still on an upward trend there. And so raising the per development cap issue, in my opinion, doesn't need further study or consideration; it's a no-brainer. It will make deals work better; that is the long and the short of it.

Because of cost issues and the current cap of 1.5-, deals are getting smaller. I was looking at some deals from last year's round, 60-unit deals, 50-unit deals, 70-unit deals. Well, those are more difficult to operate and maintain long-term viability because you have a lot of the same operating costs to manage 60 units and 100 units. So I don't think under-leveraging these deals with credits is good policy.

Again, the only way to maximize the leverage of the tax credits with the $1.5 million cap is making them smaller. With a higher cap we can get closer to 80- or 100-unit deals and they will be more feasible. The cap increase represents an addition 4- to $5 million in equity; it goes a long way to solving the problems we're addressing now with the supplemental credit policy, so why not get the credits in the deals now. We know they're going to need them; why are we fixing things on the back-end?

I think I mentioned the one commenter on the issue, with all due respect to him and his organization, which does great work, the comment came from a nonprofit organization that has a lot of access to soft funds that most of us for-profit developers don't have access to. It's just a different structure. On a for-profit development structure we need these deals to be leveraged with tax credits.

I really feel like the $2 million cap is the right policy for the state in general, and next year we really need to look at cost per square foot in leveraging. We need to address this cost issue, we're just putting out deals that are stretched too thin, and it's not good for the reputation of the Texas housing tax credit portfolio, which is known as one of the best in the country.

So thank you for your time and service, great seeing everyone in person. Thank you very much.

MR. VASQUEZ: Thanks, Janine.

Who's up next?

MS. MYRICK: Good morning, everyone. My name is Lora Myrick, and I'm with BETCO Consulting.

And number one, thank you for the special needs population point clarification correction that Brooke just spoke to, and that was in 11.96(c), so we do appreciate that. That was going to be one of our comments, so now all I want to say about that is thank you.

I would also like to echo Janine Sisak's comments on the $2 million request. When we saw that we thought, wow, TDHCA is looking at all of these deals that are coming across their desk and looking at what the lumber prices have done, what labor issues have done, we were starting to see that we need to increase that cap, and so we were very grateful.

And perhaps I should have stressed that more in my letter, but I was very grateful to see that $2 million cap increase, because it's going to help these transactions. And I agree that we are a different model than the commenter that spoke and we were just very happy to see that.

I think the other thing is some things were made -- a statement was made earlier when I was talking to someone about how there's a lot of things that have already been in the QAP that people are scoring, well, when we saw that $2 million cap, we were also looking at sites and the pricing of those sites, keeping in mind that $2 million request. So we would really love to see that go back to the $2 million, please. So that's all I will say about that.

Undesirable site feature. Thank you very much for the clarification again for the joint land use study; however, I still feel that we ought to take it out and talk about it some more.

I had a chance to look at those two letters, I had a chance to look at what the Department of Navy said and what the RCC said. I think adding those two items that Brooke spoke about, those are already in the QAP; that's why we don't build in those zones because those are already part of the QAP.

And the other thing is that the 65 decibel, when we mitigate for noise we come down to 65, that's what HUD wants to do. When I looked at the letters from the RCC and the Department of Navy, they don't like to see things 70 to 75 percent without mitigation, so they understand that that can be mitigated and should be mitigated.

So if we come across a property that's at 69, 70, 71, we should be able to mitigate that. Anything at 75 and above, that's where it's a no-starter for them, and we would agree because the costs would wreck our budget to try to do the noise attenuation for that.

There's a lot that we need to think about. San Antonio -- 70 percent of San Antonio is in a joint land use study. That's a lot of land. Killeen is another area, anywhere -- sorry, I'll wrap it up. I really think we need to think about it some more, maybe talk to the industry a little more about it before we move on that.

Last thing is the ROFR. Thank you again very much for that clarification. What I think we would like to do, though, is keep it at one and one instead of one and two. I don't think the industry and I don't think us collectively, industry or TDHCA, are really ready to do the one and the two, so I would like to see that point category go to one or one instead of one or two. That would be my comment on that.

Thank you very much.

MR. VASQUEZ: Great. Thank you.

MR. ALCOTT: Hi. I'm Tim Alcott, San Antonio Housing Authority, and I don't want to be redundant, so I'll be really short.

Yesterday I reached out to Bobby Wilkinson about the joint land use study and had a lot the same concerns you heard from Senator Menendez. I didn't talk to Senator Menendez, that was independent of me, but I had the same sort of concerns.

I reached out to Bobby -- I just want to state this -- at 2:52 yesterday when I first became aware of it. He responded at 3:02, I responded at 3:15, and then he had new language at 3:29. That's pretty amazing as far as being responsive as a governmental entity to a person's request. I haven't ever seen that before, so I want to thank you very much for being so responsive with new language. I can tell you I'm not nearly that responsive, so you can be my mentor on being responsive to the community.

MR. VASQUEZ: I wish I could get my calls returned that fast.

(General laughter.)

MR. ALCOTT: Well, we went back and forth several times, and I do like the new language. My only request would be that we had more time to review it, because I'm not an expert in all these different areas that he mentioned with the changes, and so if we could table it or have a roundtable on it, that would be my preference.

The language did look better, but I can't say I'm 100 percent for it, because I haven't had the opportunity to look at it since the last response was at 3:30 yesterday.

But thank you very much and I appreciate your time. Thanks.

MR. VASQUEZ: Thanks, Tim.

MS. MARTIN: Good morning. Audrey Martin with Purple Martin Real Estate.

First I want to thank staff for all their work in putting out this proposed final QAP. I also want to say thank you for the change on residents with special housing needs to clarify that that total available score will be three points instead of four. I think that's a great change.

I did want to echo the comments made by Janine Sisak related to the max credit request amount having changed from $2 million to $1.5 million. I just agree with pretty much everything she said so I won't repeat it all. I do want to also say that that provision also works in concert with the cost per foot scoring item, and I do think that the Department would have received a lot more comment on cost per foot and request to see that increase had we known that the max credits would be left at that $1.5 million amount. Those work in concert to help us structure feasible deals.

So I would ask that if it's possible to get that max request back up to the $2 million that was presented in the draft QAP. That would go a very long way toward helping us to structure feasible deals and help us avoid the problems we're trying to solve with the supplemental credit policy right now.

And then finally, I wanted to echo Lora Myrick's comments as it relates to the right of first refusal. I do appreciate that clarification that those items should be --

there should be an "or" you can achieve a ROFR the traditional way or through a single-family or condo structure.

I do think those probably should be one point and one point, particularly given that I think there are a lot of really technical issues that go along with the single-family and condo structures that we really should spend some time working on as a development community as well.

So those are my comments. Thank you so much.

MR. VASQUEZ: Thank you, Audrey.

MS. FINE: Good morning. I'm Tracey Fine with National Church Residences.

I wanted to speak on the residents with special housing needs, and everyone is really appreciative of the change in the QAP, but I wanted to really point out that it really impacts the at-risk set-aside.

As a reminder, the at-risk set-aside is a competition for the entire state, and the veterans point is only applicable to a handful of counties in the state, so only some properties in the at-risk may be able to capture this point.

Unlike the regional pools, there's a choice between the veterans two-mile point and/or the continuum-of-care point, but in at-risk you can't take the continuum-of-care point, so there is no other option but to try to get that veterans point, unlike in the regional pools.

The at-risk pool is going to be entirely a flat scoring round, is my prediction, because there's very little ability to get additional points except for this veterans point in a couple of handful of counties. And so I'm asking that for the at-risk pool that that veterans point is either not applicable to at-risk or the continuum-of-care point is applicable to at-risk so that we have the same ability on those special needs points as the regional pools.

I feel like you guys look confused. It is confusing.

(General laughter.)

MS. FINE: So for the most part in at-risk you're looking at properties that cannot be moved; they are there and they're not going to go anywhere. You may be lucky enough to have your property within the two-mile radius in Travis County or Bexar County, and you might be lucky enough to get that point. Those are the deals that will get funded this year. That is going to be the deciding factor.

I have properties that are adjacent to health clinics, they're not vet clinics, adjacent, but this other deal, just because it is in a two-mile radius it will get that award, it will be the deciding factor. That is not the case in the regional pools. They will pick the continuum-of-care points.

The request is to either say at-risk can take the continuum-of-care point or the veterans point does not count towards at-risk, they cannot take it.

MR. VASQUEZ: Who on staff has analyzed this, or have we talked about it? Because I don't recall having specifically heard.

MS. BOSTON: We did talk about this quite a bit, and I think there was concern -- not to put words in counsel's mouth -- but I think we felt like if we were excluding the ability to claim those points for a whole grouping, then that was not necessarily meeting the statutory requirement, the bill's intent.

MR. WILKINSON: But what about her other option of adding the continuum-of-care point to at-risk?

MS. BOSTON: That hadn't been suggested before but, I mean, I don't mind doing that. I don't know how other -- because no one would have commented on that, there may or may not have been some implications to that.

MR. VASQUEZ: Mr. Eccles, do you have something to add?

MR. ECCLES: Sure. We didn't respond on the CoC adding that into the availability for at-risk. That's not adding a new regulation or regulating new people in a way that it excludes folks, I think, so I think that might be something that we could consider here.

As to the eliminating the option for the at-risk, keep in mind that the statutory addition of 2306.6710(b)(4) is phrased to encourage applicants to provide that preference, which is identical to the language, believe it or not, in the preceding paragraph, which is encouraging applicants to provide fee notary services. So it's the same kind of thing, it's supposed to have that sort of broad applicability, so I share that concern of saying but not at-risk.

MR. VASQUEZ: So with the continuum-of-care option, that wouldn't be limiting more.

MR. ECCLES: Right. So I don't believe the Board would be precluded from considering adding that to the QAP.

MR. VASQUEZ: Mr. Marchant.

MR. MARCHANT: I'm just wondering if we added it, which seems reasonable, will there be a great deal of opposition to that from those that don't want that project to get an added point?

MR. VASQUEZ: All of you against veterans, please raise your hand.

(General laughter.)

MR. VASQUEZ: I don't see any opposition.

MR. MARCHANT: Okay.

MS. FINE: A quick note on what Beau said, on the free notary, that's in a menu of services that don't -- there's like 30 services to pick from and notary is only one of them. I mean, and I see we couldn't do it this year, could not distance to a veterans clinic be in the same menu of services as a free notary clinic -- or free notary? I'm sorry. I mean, the notary isn't going to decide who wins or loses an award, but the veterans point will be a deciding factor in at-risk if someone is lucky enough to be near one.

MR. VASQUEZ: Again, there's the continuum-of-care option addition.

MR. WILKINSON: Right.

MR. VASQUEZ: That's easy-ish for us to say. Right? Again, I'm asking counsel. At this point adding that provision, I'm seeing staff kind of shaking their head it's okay. From my perspective, I'd be amenable to accepting that addition, that modification, unless there's a reason why we cannot.

MR. ECCLES: I will say that from the legal perspective, which I know is all you're asking me, I don't see that as being legally precluded from the Board to do. From a policy standpoint, that's a question for the audience; from a programmatic standpoint, that's something that Brooke can address.

MR. WILKINSON: If the Board wants to make changes as we go, we'd just have staff write up the changes, and then we'll discuss them again in the move to adopt the QAP as changed. Do we need to do motions one at a time for things like this, or all at the end?

MR. ECCLES: I think that probably since Brooke started with a list of three modifications, if she could come up and this could be the fourth and we could talk through what language would be right here.

MR. VASQUEZ: Can we authorize the executive director and staff to finalize the actual language pursuant to this theme approved by the Board?

MR. ECCLES: The more specific we can do here, the better.

MR. MARCHANT: And if it's brought back to us, will it then be able to be opened up yet again?

MR. VASQUEZ: Well, it will be published, and there will be more comments.

MR. ECCLES: No, we can't do that. Statutorily the QAP must go to the governor by November 15.

MR. WILKINSON: And then he sends it back to us by December 1 in its final form.

MR. MARCHANT: Okay. So do we need to act today?

MR. WILKINSON: Yeah, for these little changes. So staff will keep a list, and we'll discuss them at the end when you make your final motion.

MR. VASQUEZ: Okay, very good. Next.

MR. MOREAU: Walter Moreau, director of Foundation Communities. We're overall grateful for the staff work on the QAP.

I wanted to speak to the $2 million cap. Right now when we apply for a project we can get up to $15 million, a million-five per project. It would be wonderful to get $20 million. Construction costs have increased.

The problem will be that you have a super competitive program, and if you increase the amount that each project can get from roughly $15 million to $20 million, you're going to fund 25 percent less projects. You're still going to have a competitive program. I think the main concern we all share is how do we build more units for Texans, and we need to look at ways in the QAP to maintain productivity.

Our comment was if you're going to do a $2 million cap, you've also then got to maybe make the tiebreaker credits how many units you produce so that you're funding the projects that are getting more production done. Another option is go from, say, a million five to a million six but not a whole 25 percent jump.

I think it would be a whole different conversation, too, if the Build Back Better bill in Congress passed and Texas was getting a flood of more credits, that would be awesome because then you'd have more credits to award and increase the amounts. Who knows whether that bill will pass?

So Foundation Communities' position is support keeping it -- not going to the full $2 million. Thanks.

MR. VASQUEZ: Walter, let me ask. Who else is supporting your position?

MR. MOREAU: I think Texas Housers made comment along these lines as well. I understand from an individual developer's perspective we would prefer to have $20 million per project, but if you think about it as an overall program, it's a challenge.

MR. VASQUEZ: We recognize the pluses and minuses.

MR. MOREAU: Thank you.

MR. VASQUEZ: Thanks.

MS. MEYER: Good morning, Chairman, Board. My name is Robbye Meyer. I'm going to speak on one item really, and it has to do with Section 11.53(a), the at-risk set-aside.

Staff has added one small portion in there that says no more than 5 percent of the state housing credit ceiling will be associated to the set-aside to be given priority for rehabilitation developments under the USDA set-aside. That's not consistent with statute. Statute actually says the Department shall allocate 5 percent of the housing tax credits in each application cycle to USDA.

In the section right above the at-risk set-aside and the USDA set-aside, it says the set-aside -- it will at least have 5 percent of the state housing credit ceiling for each calendar year.

So both of those sections are inconsistent with each other, and the at-risk set-aside now with the "no more than" is now inconsistent with statute. So staff needs to revert back to the "at least 5 percent" to be consistent with statute.

The USDA set-aside is no different than the 10 percent set-aside federal regulation for nonprofits, it's no different than the 20 percent set-aside for rural allocation, and it's no different than the 15 percent allocation for at-risk. It is a requirement for the Department to at least hit that requirement of that percentage. And so having in there "no more than 5 percent" is not consistent with statute.

MR. VASQUEZ: We've had this discussion before. Right? I mean, I don't know if it was this exact conflict in language, but I thought we resolved that.

MR. WILKINSON: Yes. I think we made the QAP more in line with statute, statutory intent, with this change.

MR. VASQUEZ: Well, the "not more than 5 percent" versus -- and I think, as I recall, the discussion was, well, you can't hit exactly 5 percent.

MR. WILKINSON: That's true. Because you need to hit 5 percent and with that final deal you're going to go slightly over. Right?

MS. MEYER: Well, and that's just it.

MR. VASQUEZ: I see the point that Robbye is making about if we say "up to 5 percent," that's different than saying "at least 5 percent."

MR. WILKINSON: And then if you don't keep it close to 5 percent, you could run into scenarios where USDA takes over the whole at-risk set-aside, which is a concern and not consistent with statute.

Maybe a wording change, you know, at 5 percent, or deals awarded until the 5 percent threshold is reached but then no more. We just can't have a situation where it would be all USDA in the at-risk.

MS. MEYER: I get what happened this year, I mean, I understand that issue, but that was on the Department. It should at least hit the 5 percent.

MR. VASQUEZ: Can't we just leave it broad?

MS. MEYER: But the way it's written now is "no more than" and that's not consistent with statute.

MR. VASQUEZ: Right. I recognize that. Can't we just say must meet the statutory requirement, the federal statutory requirement?

Well, Robbye, thank you, and I think we recognize, just is there a way.

MR. WILKINSON: There's got to be a way, so hit 5 percent but then go no further, if it's 5.03 percent that's great.

MR. ECCLES: I think Brooke probably has something to say.

MS. BOSTON: I was going to say I think so one of the distinctions here is the actual set-aside, and then there is the priority, which is within the at-risk, so I think we felt like that this does harmonize as closely as you can with the statute, knowing that the statute is asking for a fixed number, which you can't achieve.

MR. VASQUEZ: Obviously.

MS. BOSTON: I mean, I guess on this one I would ask that this be one of the ones where you just give us the authority to let Beau keep wordsmithing it to be sure like he feels it meets statute. But I mean, I do feel like we thought this was getting us as close as you could while still be realistic about the fact that you can't hit exactly 5 percent.

MR. MARCHANT: Does USDA and the rural allotment, do they end up being the same project, or can the same project fill up and use both of those categories?

MS. BOSTON: Applicants can check a box and be considered with at-risk and USDA. We actually added a clarification about that this year in the QAP changes that USDA would only compete in at-risk.

Like I say, we've done the first 5 percent, and then if your question is can they then still compete in the rest of at-risk based on their score, only if they've checked the box and indicated that in their application materials. That was not as clear before.

MR. MARCHANT: But USDA, they tend to be rural projects. Right?

MS. BOSTON: Almost always. There's some nuances to that. Applicants can ask for a deal to be considered rural.

MR. MARCHANT: But if they are rural as well, do they fill both the rural category and the at-risk category?

MS. BOSTON: No, no. They only compete within the USDA at-risk, which is statewide. They don't compete in the rural sub-allocation for a region. So like they wouldn't compete in like Region 6 Rural.

MR. MARCHANT: Okay.

MR. VASQUEZ: So we have directed to wordsmith it.

MS. BOSTON: I have it on the list.

MR. VASQUEZ: Okay. I think over on the side are you wanting to come up? Yes, I see everyone cutting you off over here in the front.

MR. ARECHIGA: Hello, Board. Good morning. My name is Jason Arechiga with the NRP Group. I'm going to speak on two items.

The first one will be brief, just echoing Ms. Sisak's comments regarding the $2 million cap. We do think it's appropriate, especially to combat rising construction costs, and we do believe, at least in our opinion, that not only does it combat the rising construction costs.

You'll still get the same amount of units, if not more units, you'll just get them in fewer deals. So those deals will actually be larger deals or deals that are consistent with the ones that have already been being built -- is that the right way to say that, yeah -- as opposed to fewer units now.

Additionally, that will also help us with a few other items such as expense ratios. As we have more units on the deals we can spread out the expenses. So the $2 million cap we are certainly in favor of that, and like I said, I just don't want to be redundant and echo anything else, that's just simply our position.

The second item is more important. I really appreciate what staff has done with item (k), the undesirable feature regarding the joint land use study areas; however, I do want to point out two things.

One, the undesirable site features already covers APZ zones and clear zones, and in our phase 1 ESA assessment required by TDHCA, we must include a noise study and we must mitigate to HUD standards, so the development community must already meet that. Therefore, I feel that adding the language right now is a little redundant and something I do want to point out to you as is.

Leaving it at 65 decibels is a very, very large area. It's not five square miles, granted, Mr. Wilkinson, but on Randolph alone, Randolph Air Force Base in San Antonio, it is over 2741 acres that are located in the -- well, excuse me -- in the 65 to 69 range is 1,900 acres; in the 70 to 74 is 644 acres, and in the 75 up greater range is 156.

In Seguin -- I didn't even know that Seguin had a noise study around their airfield -- it actually is similar numbers, it's a little bit lower and I don't want to waste too much time here, but it's 1,200 acres, 400 acres and 21 acres.

So you're still impacting to do that area a very large -- not only to mention Martindale Army Airfield, Lackland, Camp Bullis, Fort Sam, once you start drawing those noise corridors out, it gets very, very impactful. So if you're going to leave the language, I really highly recommend raising it from 65 to 75.

As it was, the letters that were sent from the Joint Naval Station Fort Worth to the deal in question was actually asking about deals that are between 70 and 75 and above 75. So the 65 to 70 becomes very restrictive. We've built several deals and mitigated in that area, and in fact, we're even looking at one right now that is currently in that area.

The last thing I want to point to conclude -- thank you very much -- is that those noise studies are done at a point in time where the equipment that the Air Force currently has on the area versus what's required by TDHCA now is a noise study that's current, so as the equipment changes as the military evolves.

One of the reasons why you got that noise study from Joint Naval Air Station was the introduction of the F-35 fighter, which is four times louder than the F-16, so it ended up pushing it out. I just think you already account for it; it may be a little redundant, that's all.

Thank you.

MR. WILKINSON: Brooke, are we at 65 or 70 decibels?

MS. BOSTON: Sixty-five.

MR. WILKINSON: Okay. Thank you.

MR. MARCHANT: In understanding Senator Menendez's letter, which way were his comments?

MR. WILKINSON: They're in line.

MR. MARCHANT: They're in line?

MR. WILKINSON: Yeah.

MS. HICKS: Good morning. Jennifer Hicks with True Casa Consulting. I wanted to thank Brooke and staff for the changes proposed this morning, because it also made my comments a lot shorter.

I just want to comment on one section; it's the supplemental credit section, specifically Section 11.001. There was a clause added to call out those folks that applied for multifamily direct loan funds under the 2021-3 NOFA.

The clause says that developments that have contracted for multifamily direct loan funds, the increased expenses must have occurred after the execution date of the multifamily contract. The issue that I'm worried about with that clause is that right now some of those multifamily direct loan awards under that NOFA are going through the contracting process, and that's taking a little bit of time; meanwhile, the intent to apply for the supplemental credits is going to be due in a couple of days.

And so this clause is concerning and a little bit confusing. I'm not sure how it will be interpreted in the case that something runs afoul we're not able to get under contract with the multifamily direct loan funds, and then all of a sudden all those expenses that were incurred before that contracting process will be applying to supplemental credits for those expenses. So that's one concern.

The second concern is just the multifamily direct loan NOFA was only for vertical construction costs; it was limited to just the vertical construction costs. The supplemental credits is for total development costs, and there have been increase in soft costs and costs of capital from the delay in starting construction, and so those will be captured with the supplemental credit request, whereas, that was not eligible for multifamily direct loan.

So you can see that those costs were incurred before the contracting process started with the multifamily direct loans, but they are eligible expenses for the supplemental credits.

So my request is if this clause -- if this wasn't added to meet any sort of federal requirement or definition, I guess I'm just asking if we can delete this clause, because I think it causes more confusion and concern than potentially help.

But that's just my comment.

MR. WILKINSON: It's general counsel's contention that we are federally required to add this clause.

Meaghan is our expert on it if she wants to come discuss.

MS. BOSTON: I can speak about it.

MR. WILKINSON: Okay, Brooke.

MR. VASQUEZ: Thank you, Jennifer.

MS. HICKS: Thank you.

MS. BOSTON: We also had someone else point that out to us several days ago, and we've talked about it with counsel, and so the requirement is for NHTF, National Housing Trust Fund, or HOME for multifamily: The costs at the time that you sign your written commitment have to be the true picture of your costs.

And so there's really two options for any applicant that wants to take advantage of supplemental and a loan. The options are to either wait to sign their written agreement, which is the contract, until after they know they have the tax credit supplemental award, or they can sign and then their costs are limited to only those costs that have been incurred after the signing of the written agreement. So if they want to be able to include these other costs that were known beforehand but are excluded from the loan process, then they would need to wait to sign their agreement.

Did I say that right, Meaghan?

MR. VASQUEZ: There's a real timing issue here. Right?

MS. BOSTON: It is a timing issue, yeah. And even if we took it out of the QAP -- and this is what we emphasized to the person who reached out to us earlier -- even if we take it out of the QAP, we still have to operationalize that requirement because it's a federal requirement on the loan funds, and so we'd still have to do it even if I take it out of the QAP.

MR. VASQUEZ: Is there an option, a method available to a developer stuck in not knowing what the final costs are and still wanting to get either a loan or supplemental? Is there a way, a path that they can follow to make that happen, or is it just kind of stuck between them?

MS. BOSTON: I think the path is one of the two choices that we said. So you either wait to sign and don't sign your loan commitment until after you know you have the award of the supplemental, or if that's untenable for someone, you just have to know that you're limited in what costs you can request through the supplemental to only newly known costs.

MR. WILKINSON: I think our efforts to speed up the award of supplemental credits helps the situation a little bit.

MS. BOSTON: Our plan is to award in February so they would know quickly.

MR. VASQUEZ: Jennifer, do you have anything to add?

MS. HICKS: My concern wasn't so much as there's additional costs to be added to apply for supplemental credits, it's that we're all good with MFDL funds, but if something goes wrong with the contracting process, I want to just make sure that the costs that were eligible under the multifamily direct loan would be we can go in for supplemental credits for that.

And we're not adding costs, they're the same costs, but the way that reads is the costs have had to occur after, and we're going through the contracting process right now.

So I'm just making clear that if something runs afoul we're not able to -- some reason the multifamily direct loans don't work that we're able to apply for supplemental credits, nothing has changed about the costs from the multifamily direct loan application. That's all I'm saying.

MS. BOSTON: But I think if something goes afoul, you won't have signed the written agreement so then you're okay.

MS. HICKS: We want to sign the contract as soon as possible.

MS. BOSTON: Right.

MS. HICKS: We can figure this out.

MR. VASQUEZ: Okay. You may be reading too much into this one.

MS. HICKS: Yep.

MR. VASQUEZ: Okay. Thank you.

Who's up?

MS. SAAR: Hi. Kathryn Saar with the Brownstone Group.

I want to echo the comments that you've heard about increasing back up to the $2 million in credits. It's not just this last year where we've seen these increases. Construction costs have been going up and to the right for a decade, and every year we talk about the cost per square foot cap, and every year we might get a very small increase to that particular scoring item.

Right now with the 5 percent increase that we have in the QAP this year, it's only $85 a foot for building costs, hard costs in a high-cost area. I don't know anybody that's been able to build for $85 a foot in probably a decade.

So it's really important for these deals to be well capitalized up front so that when things like insurance costs, which have been going through the roof recently -- those costs can be supported, you're not setting your debt so high that your property suffers. By helping capitalize these deals up front, it really helps stabilize the housing and make sure that you have good quality housing that's operated well.

The other thing is Brooke mentioned that there's a possibility that we might have an increase in the percentage of 30 percent units required. Thirty percent units don't cover, they don't break even, they actually cost money, so if we have to have more of those units -- and I think we should have 30 percent units, we do, but if we have to have more, it's even less debt that we're able to carry, so that has to be made up somewhere and credits, more credits is the best way to get there.

Thank you.

MR. VASQUEZ: Great. Thanks, Katherine.

MR. FLORES: Good morning, Mr. Chairman, members, Mr. Eccles, Mr. Wilkinson. My name is Henry

Flores. I am with Madhouse Development.

Thank you for your patience through this public comment process. Thank you for your service to the state.

I wanted to acknowledge staff in their approach to this year's QAP and thank them for acknowledging the semantical error in the right of first refusal. Changing it to "or" is critical; they're mutually exclusive concepts. And it's critical that those concepts remain in place.

I started in affordable housing in 1979 when I went to work as program manager in my hometown, Corpus Christi. I was there 15 years and then had the honor of being the first executive director of this agency under Governor Richards, reappointed by Governor Bush, and served in both administrations, and worked for Clinton and Bush at the national level. So I've seen every housing program imaginable.

I think it's critical that for the Tax Credit Program that when you get to the end, when you get to what they call the ROFR, that they have a public benefit there. The idea of selling it to a nonprofit is currently the case. The idea is now nonprofit or tenant condoization, again another sound concept.

But what we're proposing now with two points being available for only the condo concept is I can assure you this industry is going to react and they're all going to do condos, and we're not ready to do condos.

Having come out of city government, I don't think cities are ready to accept that premise. There's a process if you go through condoization that involves platting and a hundred water meters, a hundred electrical meters, a hundred bills that's going to occur at the front-end.

It's a sound concept, and there will be some perhaps nonprofits who will be prepared to meet that challenge, but I would suggest that you have two -- that you bifurcate both aspects of that ROFR to give one point to each. If in the future you want to prioritize to ownership, then do it next year, give the industry time, give staff time to be able to approach this thoughtfully.

So that's my first comment.

Second comment, I don't want to echo it too much what everyone said, the $2 million, there was a comment made about less transactions. There will be less transactions but there will be larger transactions and more efficient transactions.

Now, I've seen this concept of credit per unit used before across the United States, in local government, et cetera. Please don't advocate for that. That leads to a race to the bottom. If I buy cheaper land, if I cheapen the quality of the product, if I reduce my costs, I can reduce my credit allocation. That's not what you want. You want the best quality product. So again, I don't think credit per unit is the right thing, and I do think $2 million per allocation is critical.

Gentlemen, thank you for your time.

MR. VASQUEZ: Thank you.

MS. RICKENBACKER: Donna Rickenbacker with Marque.

My comments are limited to how the QAP is ranking supplemental credit applications. As drafted, staff is using the 9 percent score from the applicable tax credit cycle to determine prioritization for supplemental allocation.

This automatically puts 2019 deals at a disadvantage because the points associated with certain scoring categories increased from '19 to '20. This built-in priority for 2020 applicants will be particularly problematic in subregions where only one transaction is reached in any given cycle and the supplemental credit amount available in the subregion is not large enough to support two awards.

The purpose of the supplemental credit process is to award credits to those deals most harmed by COVID disruption. I realize that 2020 applicants don't believe the '19 transactions were impacted, but unfortunately, some were and probably more so because these deals were closed and under construction when COVID-related problems started. Based on a good-faith timeline, most 2019 deals close between March and July of 2020.

We were shutting down offices and businesses, including mine, in March of '20. By July of '20, Texas deaths tragically reached 10,000 people and hospitalization reached over 260,000.

Lumber prices started escalating in December of 2020 and reached their peak the first quarter of this year. We called for lumber on one of my '19 projects and the lumber contractor walked the contract, to name a few cost implications to that particular job.

My point is that deals that are closed and have been under construction the longest should be given first priority, and in regions where only one survives there should be some methodology for selecting the one that has been harmed the most, because there are instances where 2020 deals that followed the rules and did close early in ready-to-proceed areas did experience similar COVID-related disruptions.

My suggestion was and still is -- and I hope that you will reconsider -- is giving REA the opportunity to do what I'm calling a harm analysis to re-prioritize developments in a given subregion in order to reach developments that were most impacted by COVID disruptions. To do otherwise means only 2020 deals will receive a supplemental allocation award.

If I've got time, I also wanted to visit briefly about $2 million versus 1.5-. I have been a strong advocate for $2 million for many years. I think that that is a good way, direction for the program to go, and I echo everything that's been said to date.

The only problem this year is that we're already reaching less of 2022 deals because of the supplemental credits, so now if you increase the amount that's available on a per-deal basis, now you're reaching even fewer '22 transactions.

That's my comment. Thank you.

MR. VASQUEZ: Thank you, Donna.

MR. HOOVER: Good morning. Thank you for your service. My name is Dennis Hoover. I represent the Rural Rental Housing Association as chairman of the QAP and Development Committee, and own a bunch of USDA apartments, own and operate across the state.

The USDA 514, 515, and 516 programs, about 23,700 units across the state, most of which are in very rural and very hard to serve areas and serve very low and extremely low income.

And I want to address the same thing that Robbye Meyer did. I agree with her statement about the language about the 5 percent set-aside for USDA apartments. The language needs to be "at least 5 percent" and not "no more than."

When you think about it, if you fund the first six or seven or eight or nine USDA apartments and you're up to 4.5 or .6 or 4.7 or .8 percent, and the next one would go up to 5.1 or 5.2, then you couldn't fund that one if you said no more than and you'd be out of state statute of you did that. So it needs to go back the same way we've been doing it for 20 years, except last year.

Questions?

MR. VASQUEZ: Great. Thanks, Mr. Hoover. And I believe we're going to be addressing that.

MR. HOOVER: Yeah, but what I heard is you were going to fix it at no more than.

MR. VASQUEZ: No. It's going to be "at least."

MR. WILKINSON: I think you just say 5 percent and you don't say no more than or at least, because if it's at least, we might run into that problem where USDA takes over at-risk set-aside. So we want to hit 5 percent on that deal and that be the last one that gets priority and not keep going.

MR. HOOVER: Well, that last one is going to hit

5.1, 5.2.

MR. VASQUEZ: And that's okay.

MR. WILKINSON: That's great.

MR. HOOVER: Thank you.

MR. BOWLING: Good morning, Mr. Chair and Board. Bobby Bowling, developer from El Paso. I didn't mean to jump the line. Dennis told me I wasn't allowed to, so I waited my turn.

I want to also just focus my comments on Subchapter (f) supplemental housing credits. Again, I want to echo the same thing that I said at your last meeting: It was an arduous process and we're very grateful for working through the Governor's Office. I actually got to work with Colin on this issue from the Department, as well as Mr. Wilkinson, with Homer, with Brooke, and with Catarina Gonzales from the Governor's Office.

I think what you have in place is excellent. I wasn't aware of Ms. Hicks's concern about the direct loan. Of course, I think maybe you worked through that, and we certainly wouldn't want to preclude anybody that previously applied for a multifamily development loan from also accessing these supplemental credits. This is a far better solution. One of the reasons I didn't apply for the direct loan was because I was hoping we would get this better solution on the table.

With regard to the 2019 and 2020 issue, I believe you've got that covered in the rule as presented to you today. There's a scoring criterion, the original score is what's going to prioritize those awards. I think you have, with this final version, addressed some of the concern about one deal taking all the credits in a region by lowering the cap to 7 percent from 15 percent, which was originally proposed. I think that's fair.

And I just wanted to give you an anecdote. I understand if you didn't get your 2019 deal started in time you would be facing the same problem that those of us in 2020 faced, but I started my 2019 deal on time. It got placed in service in March, it was stabilized occupancy in September, and I'm in the conversion process with my 2019 deal right now.

I don't think I should be penalized for being a good player, I'm not eligible for supplemental credits for that deal. Of course, I had cost increases, of course I would like to have supplemental credits, but the rule is I placed in service and so I can't apply for that, and I'm fine with that.

And I feel for those in 2019 that didn't diligently get their projects started immediately after the award, you know, but this kind of happens, and we have a limited pool of credits to help a limited amount of applications. The 2020 deals had no choice.

I mean, I couldn't get a permit for a year from my city because they were all on furlough and they were working from home, which wasn't really too much, and so I just got my permit for my 2020 deal in June, I mean, and we applied as soon as we got our award last July.

So that concludes my comments, and if there's any questions I'd love to take those, but thank you for listening.

MR. VASQUEZ: Thank you, Mr. Bowling.

Does anybody have any questions?

(No response.)

MR. BOWLING: Thank you.

MS. BURCHETT: Hi there. I'm Sallie Burchett with Structure Development.

MR. VASQUEZ: Be sure to sign in there, Sallie, please.

MS. BURCHETT: Yes, sir.

I've been speaking with Matthew and Jason about this item. It's, I believe, an artifact from last year's QAP in the underserved section on the AHMI points, and it references years 2010 to 2017, and it was the same last year, but the prior year it was -- last year we believe it should have been 2011 to 2018 and this year should be 2012 to 2019 for the data set. And I understand that was an oversight and we would like to get it into the QAP.

MR. WILKINSON: Brooke, let's add that to the list.

You did it.

MR. VASQUEZ: Thanks, Sallie.

Would any other members of the public care to speak? You promised me you weren't going to speak.

(General laughter.)

MS. ABELN: I said I didn't think I would.

Good morning. My name is Emily Abeln. I'm the vice president of real estate development for New Hope Housing.

And I really just wanted to echo what other people had said. I don't want to be beating this dead horse, but I'm a little concerned because I don't hear us having an open conversation with staff about this $2 million limit, whereas, I hear other conversations happening that that change will be made for other areas. It's really important that this cap get increased. I recognize that, yes, you do have fewer deals, but that doesn't mean you have fewer units.

The other problem is that we all have enough trouble with NIMBY in our lives and that just gets blown way out of the water because no one wants to wake up to a project that's got hundreds of thousands of dollars of deferred maintenance over ten years, so that gets even more difficult for us to put these units on the ground.

And we've been doing it, the developers have been skinnying their deals and making them work and forcing them to work, and we haven't seen yet the downside of that and when those units and those deals are struggling to maintain them at the level you all would expect, but you will see it, and then it will be too late, you'll have already gotten all these other deals in the pipeline that are too skinny to really be solvent over the long term.

So I'm really asking that we please talk about this right now with staff, increase it back to the $2 million that we were at. And that's all. Thank you so much.

MR. VASQUEZ: Thank you, Ms. Abeln.

MR. WILKINSON: Mr. Chairman, I've been holding my comments on the $2 million and $1.5 million issue.

MR. VASQUEZ: I have some thoughts on that as well.

MR. WILKINSON: You know, in statute it's $3 million per developer, $2 million per development. The Department by rule has limited to $1.5 million per development for several years.

I had been open to going to $2 million, we did so in the draft for comment, and had a few commenters that gave me second thoughts that maybe we were being too generous, that we should kick the can and talk about it more and maybe add some strings to going up or do something to ensure we had the same number of deals or at least more units.

That being said, I imagine this is disruptive for people who are already penciling out their 2022 deals right now, so it's not a strong recommendation either way. I think if we did want to take us back to $2 million per the draft for public comment that we revisit the issue next year when we have more time to talk about rising more units or better units. It's difficult.

MR. VASQUEZ: And again, I can share that I don't see any problem with moving it to $2 million per project. My question is -- and I don't think this is what we addressed in this year's QAP, but I think that the cost per square foot is lagging the market, the realities of the costs of the market.

Well, I think next year we need to really look at cost per square foot and somehow indexing that for inflation, and Lord knows, under the current situation that we have nationally that inflation is going to keep going up. So we need to look at that next year.

I think there's good argument that's been presented where I would be in favor of moving it to

$2 million instead of the 1.5- per project. I recognize that there's people who might want more projects out there, but at the same time there's that offset on the bigger projects will have more units, so we're kind of balancing out that.

Those are my thoughts on that.

Does Mr. Marchant have any comments, thoughts?

MR. MARCHANT: I'm not opposed to the $2 million, but I think that after we've had some experience with it in a cycle and if it begins to be that everything gets over the $2 million, I think that we probably have to begin to think about making sure that there are a number of smaller projects.

I don't know; you might not be able to do a $2 million in San Angelo. I mean, there may be some parts of the state that it may be the regionality will keep that number down and not be dominant. I can see where in Dallas you need to do it, Houston, et cetera.

So I'm just saying let's try it, let's make sure that we keep an eye on it and it doesn't become only big developers that are taking the big numbers and smaller units.

MS. BOSTON: We'll definitely do some data analysis into next year.

MS. FINE: Can I make one comment?

MR. VASQUEZ: A short comment, please.

MS. FINE: Tracey Fine, National Church Residences.

It sounds like you've already made your decision, but I want to point out that I actually did a really deep analysis on some of these projects last year, and I think Foundation Communities listed an average ask this past year was about $16,000 a unit in new construction, some of those went up to $28,000.

The ones that were at the highest, $27,000 a unit and $28,000 a unit, some of them were in the Valley, they were nothing special, not downtown, did not have stacked parking, et cetera, et cetera, they were not adding additional units.

So it sounds like you guys have made your decision, but people did take advantage of additional credit ask per unit last year, and we're not doing anything to clamp down on some of those. I would say the majority of people will not do that, but people did take advantage of it and have been in prior rounds. I can point exactly to those applications if you want.

MR. VASQUEZ: Thank you, Ms. Fine.

MS. BOSTON: So do you want me to go through and recap the ones that I flagged as thinking you wanted changed to add to the list?

MR. VASQUEZ: Do any Board members have any more comments, questions of staff?

(No response.)

MR. VASQUEZ: Let's then recap where we are. I think we're at five different changes now. Right? The original three --

MS. BOSTON: So the original three.

MR. VASQUEZ: Let's say them out loud so everyone can hear.

MS. BOSTON: Yes. Okay. Do you need me to restate the original three?

MR. VASQUEZ: Let's restate the original three so that whoever makes the motion on this will please incorporate the change Brooke is about to say.

MS. BOSTON: So the first was relating to undesirable site features, the language change for the joint land use study. Unless you guys indicate differently, right now that would read, "Development sites that are located in a clear zone, in an accident potential zone, or with any noise contour of 65 decibels or greater, as reflected in the joint land use study for any military installation."

I would note that I did just double-check, and we did have in there already both the accident potential zone and the noise abatement requirement, and so I think the comments that this is a little redundant are true, although this may pull in other areas, so I don't know that it harms it to have it in. I'm sure others would disagree. So that's the first one.

The second was under right of first refusal we are revising the introductory paragraph, instead of it being A and B, it's going to say A or B, and we were going to increase it up to two points.

The third was that under special needs we were making sure that the points were reduced from four to three in the introductory paragraph.

So that's how we'll make those unless you tell me otherwise.

Then the additional ones are that we would do the ability for the CoC points to be claimed by at-risk and USDA. There's a sentence in there right now that says at-risk and USDA are exempt, so we'll just strike that sentence. I know you wanted detail about what the revision would be, and in that case it's just striking one sentence that said that they weren't allowed to claim it.

And then I also have that we would be kind of wordsmithing the at-risk set-aside and Beau looking at the statute and making sure he feels like it's as close to compliant with the statute.

MR. ECCLES: With my understanding being that the effect would be a clarification that the rule referenced to no more than 5 percent would mean no more deals once 5 percent has been achieved.

MS. BOSTON: And then so that's all I have. I mean, there are obviously other issues that they talked about. I can talk about a few of the other issues if you want me to.

MR. VASQUEZ: Did we add -- I missed the $2 million.

MS. BOSTON: I did not include that yet; I wasn't sure.

MR. VASQUEZ: Please include that and then we'll see if we get a motion that includes that.

MS. BOSTON: Okay, got it, up to $2 million.

I did want to mention one other thing. Mr. Marchant, when you had asked me about the opportunity zones, several years ago when those first came out, we did add that a deal can get a basis boost if they're in an opportunity zone. Teresa said she doesn't think that anyone has ever done it, but it is in there.

MR. MARCHANT: Okay. Thanks.

MR. VASQUEZ: Were there any final, final short comments? I'll give you real quickly.

MS. MYRICK: Lora Myrick with BETCO Consulting.

Back on the undesirable site feature, right now it reads 65 decibels, and that's what we normally mitigate to or mitigate under, so I guess I want some clarification. So is it that we mitigate down to 65 or is it 65 it's out of bounds?

MR. VASQUEZ: It's mitigate down to 65. Right?

MS. MYRICK: We are allowed to -- you know, you can go up to 70 and still be able to mitigate, and even with the RCC and the letters that were received on behalf of those two developments, it's 75 and above where it's a non-starter.

MR. VASQUEZ: You can't even mitigate. Right?

MS. MYRICK: Right. But below 75 you can still mitigate, so if you're at 65, that's going to be problematic. That's my comment.

MR. WILKINSON: And it is ineligible at 65 is the way we have it now. Right? Just if you're in the joint land use area.

MR. VASQUEZ: Right. And no mitigation.

MR. WILKINSON: The Board could move it to 70.

MR. VASQUEZ: So I guess the question is whether there's an opportunity to mitigate down to 65. Where does it stand now?

MR. WILKINSON: Now there's no opportunity to mitigate for that one.

MS. BOSTON: Well, they come to you guys.

MR. WILKINSON: They could give it to you get it waived, like anything else.

MR. VASQUEZ: So as it stands now, and we're not changing that.

MR. WILKINSON: You have to get a waiver, because our concerns are beyond sound. Right? It's also kind of what the military wants.

MR. VASQUEZ: I'm in favor of leaving it as we have it presented, and there is a chance -- a reasonable chance for appealing if it's close. Right?

MR. MARCHANT: And I want to clarify again. This addresses the Menendez letter.

MR. WILKINSON: Yes. We did it at a five-mile radius, which is ridiculous, so this is going to be much tighter. We could have used a distance but instead we used this accident zone or 65 decibel of sound.

MR. MARCHANT: Thank you.

MS. BOSTON: And then I had forgotten one other thing, which was the last speaker, Ms. Burchett, who had brought up that date that we need to update relating to underserved, so that's on the list also.

MR. VASQUEZ: Did you have one more short comment?

MS. MARTIN: Yes, sir. My apologies. Audrey Martin with Purple Martin Real Estate.

I guess I just wanted to ask for clarification when you guys are talking about the right-of-first-refusal revision. Are you considering making both "or" options one point, or is it one and two? There had been some requests for making both options equal at one point.

MR. VASQUEZ: They can do "or".

MR. WILKINSON: It's currently "or." As amended in the presentation it's "or" and it's one point for the sale to -- ROFR to a nonprofit, keep it all multifamily, two points for condoizing and giving tenants the right of first refusal. That's how it stands now.

MR. VASQUEZ: So did you hear that, Audrey?

MR. WILKINSON: She's telling you she wants it one and one.

MR. VASQUEZ: The way it's written is one or two.

MR. WILKINSON: Right.

MS. BOSTON: And Teresa had a good suggestion for the language about the joint land use areas that we could just say that they need to make sure it's consistent with any HUD regulations and allow for mitigation, which is what we do for railroads.

MR. WILKINSON: Yeah, but we have other concerns beyond sound.

MS. BOSTON: But it wouldn't --

MR. WILKINSON: Texas Military Preparedness Commission, the Governor's Office, et cetera.

MR. VASQUEZ: Well, we can include that. Y'all are going to be cleaning up this language to include all those applicable alternatives.

MR. WILKINSON: I mean, it could get changed when we send it, but I think if we soften it too much, it's just going to get changed when we send it over.

MR. VASQUEZ: Could you repeat what you just offered?

MS. BOSTON: Yeah. The suggestion would be that we just say that, as it would relate to proximity to military base, that they have to at least follow HUD regulations and mitigate consistent with whatever HUD would require.

MR. WILKINSON: Which is probably an easier standard than what we have in there now.

MR. ECCLES: Is that just as it relates to the sound levels but not the rest of the restrictions?

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

So in the QAP right now under undesirable site features if you are within a certain distance to a railroad track you can be exempt from that undesirable site feature if it's a quiet zone or if you engage a qualified third party to do the noise assessment, perform some mitigation in accordance with HUD standards as if they were directly applicable to the development.

So the way that we treat projects and proximity to railroad tracks with respect to this is they have to do noise attenuation or they have to do something with respect to the buildings to get that decibel level in the range that's acceptable to HUD.

So the commenters expressing that what we're doing with the military is inconsistent with what's already here, you know, if this is already here, then what we would be suggesting is that the military be consistent with the noise mitigation that's allowed for railroads. It's just a thought.

MR. VASQUEZ: But in addition, we still have the decibel level.

MR. WILKINSON: You have to be able to mitigate if we changed it. Right?

MS. MORALES: It could be that if you wanted to keep the language in there, you could just adopt the similar language that would be mitigation that they agree to do the mitigation that's consistent with HUD standards and that they certify in the application that they're going to do that noise assessment to determine what that is.

MR. WILKINSON: But once again, it's not just about noise; it's about distance. Maybe we just make it 2,000 feet.

MS. BOSTON: So that suggestion would address the decibel language, but you could still keep in the part about the accident zone and the clear zone. Whatever you want to do.

MR. VASQUEZ: Again, I'm looking for -- do we have another comment?

MR. POLLOCK: I want to echo with what Teresa --

MR. VASQUEZ: We need you to identify.

MR. POLLOCK: Joe Pollock, Streamline Advisory Partners, San Antonio. Thank you.

If we have language in there that complies with HUD, which is the standard in almost every area in the country where there's noise that has to be mitigated, I think that would be the fair approach. Because what's going to happen is it's going to eliminate a lot of deals in San Antonio from being able to be approved under this rule.

MR. VASQUEZ: Okay.

MR. MARCHANT: And that's what I interpreted the Menendez letter to say, is please don't restrict so much of our city that we're never qualified for this.

MR. WILKINSON: Yes, but as we had it before, it was the full area of the land use restriction, a five-mile radius, so it was crazy big, and we're talking about much tighter things now.

MR. VASQUEZ: And I think we're talking about two different issues here. One is the areas subject to, again, not the five-mile but instead the --

MR. ECCLES: Clear zone and the accident zone.

MR. VASQUEZ: -- clear zone and accident zone where it's applicable. So geography, I like what we have in there as identified.

Now, the second separate question, from what I'm hearing, is the noise mitigation and whether there's an opportunity to mitigate and at what point does that get triggered, and are we softening the language -- the federal HUD language is softer than what we're saying? We're not.

MR. POLLOCK: You have the ability under HUD rule or under the HUD map guide, we'll call it, to mitigate by providing a sound study and meeting the requirements.

MR. VASQUEZ: Which is what we've always done.

MR. WILKINSON: But in the item as presented by Brooke before was stricter than HUD, it was 65 decibels that no mitigation.

MR. VASQUEZ: No mitigation.

MR. WILKINSON: Yeah. They could come to you for a waiver.

MR. POLLOCK: But it goes hand in hand with some of the comments that have been made by my colleagues here. With rising construction costs, with other aspects that we have to deal with today as affordable housing developers, having this type of restriction is only going to kill projects in areas where we would have to mitigate.

MR. WILKINSON: That's the idea, is to kill projects that are too close to runways.

MR. VASQUEZ: But there's a balance. I understand what you're saying, but again, I think our position is we're trying to identify and narrow --

MR. POLLOCK: Mr. Wilkinson, none of us are putting projects on runways, I mean, but there are areas in San Antonio --

MR. WILKINSON: We had an applicant last year and it was pretty close, real close.

MR. POLLOCK: But there are areas of San Antonio that are near these Air Force bases, there's Lackland, there's Randolph, there's Kelly Airfield, in Killeen there's an Air Force base, we have Air Force bases throughout Texas. So if we're going to be able to provide or develop quality affordable housing for these communities, there has to be some guidance here that comports with HUD requirements, and HUD is --

MR. WILKINSON: No. We don't have to comport with HUD requirements; we can establish requirements ourselves.

MR. VASQUEZ: And again, what we're proposing does not preclude appealing to us, to the Board, to the Department and to the Board for mitigation opportunities. I mean, that's still allowed.

MS. BOSTON: And I do think our intent was that if they fit in that category you guys would want to know about it and that then you could make the decision yourselves instead of it just being predetermined before submission.

MR. VASQUEZ: Mr. Eccles.

MR. ECCLES: Just to be clear, if we're saying that they could apply for a waiver on a 9 percent, that's got to be submitted at the time of the application as opposed to it could be appealed separately if it was just a sound issue that was regular. Right?

MS. BOSTON: I'd have to double-check what the exact process is in here, but I mean, I do think either through the waiver process or an appeal, there would be some way for them to get here.

MR. ECCLES: Right. I just want to make it clear that if the rule is actually saying that it's not subject to mitigation that they would have to get that waived and that would need to come at the same time as their application.

MS. BOSTON: Right.

MR. ARECHIGA: My I take one minute more of your time? I apologize. May I just make one compromise? This is Jason Arechiga of the NRP Group, for the record.

I went back and looked when I was on my phone after the comment, and we made some last-minute discussions regarding the difference between 65 and 70. The letter in question from the Joint Naval Air Station in Fort Worth was for projects that were over 70.

The military does draw a distinction between 65 and 70 where specifically on their board -- and I was just reading the joint use studies -- between 65 and 70 they do not recommend it unless mitigation is performed, over 70 they don't recommend, and over 75 they say they prohibit. So between 65 and 70 the military itself is saying if you do mitigation it's acceptable, and so it would comport not with HUD but with what the military is.

And I was also looking at some of our deals. This would have effectively required three of our deals that we've already done in San Antonio in the ten years I've been with NRP that we would have requested a waiver, and two deals that I know of in the lottery right now, one of ours and another competitor -- or another developer -- excuse me -- it would also affect them too and require a waiver.

So I think a good compromise maybe if we don't feel like we can't mitigate down to HUD, making it 70 as opposed to 65, because 65 is around 14,000 acres in San Antonio, while 70 and above is around 3,000. That's rough math that I was doing back there. So you would still impact a good area. If it's over 70 I think that that might be a little more realistic than over 65, which impacts, I think, a larger area than what we're anticipating here.

MR. VASQUEZ: But you're saying that over 65, so 65 to 70 it would still require mitigation.

MR. ARECHIGA: Based on what you already have in the QAP, based on the noise study that we already have to do, it would already be required to do so.

MR. VASQUEZ: And you're saying to keep doing that same thing, so I don't think we need to change or add anything.

MR. WILKINSON: But he wants to change it from 65 to 70, the item specific to the joint land use restriction. They can't just mitigate, they have to come to you for a waiver.

MR. VASQUEZ: And it's already the case.

MR. ARECHIGA: I guess the difference would be -- and I stole one of your pens earlier, so I'm returning this -- I guess the difference would be if it's between 65 and 70 I don't have the option to mitigate; I have to come to y'all for a waiver and then mitigate. If it's between 70 and 75 -- what I'm requesting is if it's between 70 and 75 I don't have the option, so right now what it is is between 65 and 70 I don't have the option, what I'm requesting is if it's between 65 and 70, because the military is okay with this and because HUD is okay with this, please allow us a chance to just mitigate it without coming for a waiver. If it's over 70, then okay, then we have to come for a waiver in special circumstances.

But last thing I would point out is those three deals that we do have that are between 65 and 70, they are full of military personnel because they're right next to the base.

Thank you.

MR. VASQUEZ: All right. So as we're having this open discussion, so my understanding -- and I'm getting, I think, a feeling of consensus from the Board, we could go up to 70 but it would have to be mitigated, so between 65 and 70 has to be mitigated, but it doesn't require a waiver from the Board, the Department and staff could do that.

MR. WILKINSON: If you change it from 65 to 70.

MR. VASQUEZ: But it's still required to be mitigated.

MR. WILKINSON: Yes.

MR. MARCHANT: To HUD standards, or to what standards?

MR. WILKINSON: To HUD standards is how we have noise otherwise.

MR. VASQUEZ: Which is 65? Again, I think concern with the Department looking out for tenants, for residents, we're still requiring that mitigation, which is important for them, but it's also giving the developer a clear path on mitigation if you're in that range. Without having to get a formal waiver from all the way up to the Board, the staff can present that.

MS. BOSTON: Yes. We would probably use the same wording that we use on the railroad one, which is just that it would be to HUD standards up to 70. In excess of 70 would be --

MR. VASQUEZ: Well, that has to come to the Board.

MS. BOSTON: And just to clarify, the wording "waiver" and "appeal" both are kind of wrong, Teresa was clarifying for me, because that section is these are undesirable site features. They're just determined ineligible, and then they get to come to you for y'all to decide if you want to make them eligible.

MR. VASQUEZ: Okay. That sounds really

reasonable, doesn't it? Yes?

(General laughter.)

MR. VASQUEZ: Can you incorporate that in your recommendation?

MS. BOSTON: Yes.

MR. VASQUEZ: Okay. Were there any other items? So you've got the list, we have it recorded on the edits to be made.

Would a Board member care to make a motion on this item 5 on the agenda, including the recommended edits?

MR. MARCHANT: If I've got it written out for me.

MR. BATCH: Do we have to specifically lay out?

MR. VASQUEZ: No. We can just say, with the comments she said.

MR. BATCH: Mr. Chairman, I move that the Board approve the repeal of 10 TAC Chapter 11 and approve the adoption of the New 10 TAC Chapter 11, as presented at this meeting, including the changes from Ms. Boston. I further move that the executive director or his designees conform these rules to any changes to federal law or regulation upon their becoming law, and the Qualified Allocation Plan, together with any changes, be delivered to the governor by November 15, 2021, all as expressed and subject to the conditions in the Board action request on this item.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Batch. Is there a second?

MR. THOMAS: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Thomas.

Hearing no further discussion, all those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the motion carries, and thank you to all the staff and the participation from the industry participants. I don't think this was quite making sausage but it was making lasagna. Okay? Getting the layers and all kinds of great, and considering the activity and the complexity of this, I think we got a great lasagna out of this.

MR. MARCHANT: I think it's good.

MR. VASQUEZ: Okay. Let's move on along to item 6. We're not quite done with the agenda yet.

6(a) Presentation, discussion, and possible action on awards of multifamily direct loan funds from the 2021-3 Multifamily Direct Loan Notice of Funding Availability.

Ms. Flickinger.

MS. FLICKINGER: Thank you. Good morning, Mr.

Chairman. For the record, Charlotte Flickinger, Multifamily Direct Loan manager, and I'm very pleased to present this resolution for your review and hopeful approval.

Item 6(a) recommends an award of National Housing Trust Funds for Brenham Trails Apartments in Brenham, Washington County, which is in Region 8. Previously approved for competitive housing tax credits in 2020, the application documents a construction cost increase of $900,000, a little more than that.

We are recommending $775,000 in National Housing Trust Fund under the general set-aside. The MFDL loan will have a 15-year term and 40-year amortization.

Brenham Trails will serve an elderly population. Five units will be designated for MFDL at 30 percent AMI of the 49-unit total, and the balance of the units will include housing tax credits and unrestricted units.

Happy to answer questions and respectfully request your approval.

MR. VASQUEZ: Good. Thank you.

Do any Board members have questions for Ms. Flickinger?

(No response.)

(Mr. Batch left the dais.)

MR. VASQUEZ: I can't call for a vote because we do not have a quorum at the moment, so bear with us for a moment.

MR. MARCHANT: Does she have the ability to explain the next motion?

MR. VASQUEZ: Can we table that and have her explain the next -- or I guess have Cody explain the next?

Wait, wait, wait.

(Mr. Batch returned to the dais.)

MR. MARCHANT: Mr. Chairman, I'm ready to make a motion.

MR. VASQUEZ: We'll entertain a motion on item 6(a) of the agenda.

MR. MARCHANT: I move the Board make an award of National Housing Trust Funds to Brenham Trails from the general set-aside of 2021-3 NOFA, adopt the prior previous participation review, and find that the deadline to sign a contract with the Department is July 29, 2022, and all expressed and subject to the conditions in the Board action request on this item.

MR. VASQUEZ: Thank you, Mr. Marchant.

Is there a second?

MR. BATCH: I'll second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MS. FLICKINGER: Thank you very much.

MR. VASQUEZ: Thank you.

Item 6(b) Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC Section 11.65, related to credit returns resulting from force majeure events, for application 18235 Memorial Apartments at McAllen.

Mr. Campbell.

MR. CAMPBELL: Good morning. Cody Campbell, director of Multifamily Programs for the Department.

This is, I believe, the third month in a row that this Board has heard a similar request, so I've abbreviated my speaking notes today just a bit, but if you have any questions, I am, of course, always happy to answer them.

Memorial Apartments was awarded an allocation of competitive credits in July of 2018. A carryover agreement was executed which included a certification from the development owner that each building would be placed in service no later than December 31 of 2020. This date was subsequently extended by the Department to November 30 of 2021, using the relief made available by IRS Revenue

Procedure 2014-49.

On October 4, 2021, the Department received a request to extend the placement in service deadline further, citing difficulties resulting from the COVID pandemic.

Staff's ability to extend this deadline is limited to December 31, 2021 under the previously mentioned revenue procedure, which is not sufficient for the estimated June 30 of 2022 completion date mentioned in the owner's request.

11.65 of the QAP related to credits returned resulting from force majeure events allows a development owner to return issued credits within three years of award and have those credits reallocated to the development outside of the usual regional allocation system if all of the requirements of this subsection are met.

The Department's Governing Board may approve the execution of a current program year carryover allocation agreement regarding the returned credits with the development owner that returns the credits only if those credits are returned as a result of force majeure events before the issuance of Forms 8609.

Staff has reviewed this request and determined that there is sufficient evidence of sudden and unforeseen circumstances outside the control of the development owner for the development in question for the Department to treat this request under an application of the force majeure rule.

If the Board grants this request, the development owners will return the awarded credits and the execution of a 2021 carryover allocation agreement will result in a new placed-in-service deadline of December 31, 2023 for the development. The 2018 Qualified Allocation Plan will continue to be applicable to the development for the purposes of the force majeure event.

If the Board denies this request, the date by which the development must be placed in service will remain November 30 of 2021. Because the development owner has not anticipated meeting the placed-in-service deadline, the credits are expected to be returned.

If the development owner returns the credits, they will first be made available to the at-risk set-aside from which they were originally awarded pursuant to 10 TAC 11.62 related to returned credits.

If there are pending applications on the applicable waiting list from the relevant set-aside, the next application would be awarded, assuming there are enough credits to make the award. If there are not enough credits in the set-aside to make the award, then the credits will go the statewide collapse and contribute to the next award.

Staff recommends the Board approve the request for treatment under an application of the force majeure rule for the listed development, and I can answer any questions that the Board may have at this time.

MR. VASQUEZ: So we either go from November of this year all the way to December of 2023, there's no middle ground in there?

MR. CAMPBELL: The Board does have the right -- under the QAP you do have the authority to limit that further. The development owner has requested July of 2022 as a placed in service date, although their request does mention that they could end up needing more time than that.

MR. VASQUEZ: So if we went to December 31, 2022 --

MR. CAMPBELL: You certainly may do that, yes, sir.

MR. VASQUEZ: -- that still gives them over six beyond even their target.

MR. CAMPBELL: That's is correct.

MR. VASQUEZ: Is there any reason why we need to jump all the way to the end of 2023? Would there be any complaint if we went to December 31, 2022? Assuming that motion is about to be made, do we need to have public comment on this?

SPEAKER IN AUDIENCE: We're here as a resource if you have questions or concerns.

MR. VASQUEZ: Great. Thank you.

Do Board members have questions?

(No response.)

MR. VASQUEZ: The chair would entertain a motion on staff's recommendation, but he would be very pleased to hear it amended to December 31, 2022 as the deadline.

MR. THOMAS: Mr. Chairman, I'm here to aim to please. I move the Board approve the requested return and allocation of tax credits under the force majeure rule for Memorial Apartments in McAllen, as expressed and conditioned on the Board action request on this item, with the amendment that the date of the in-service date be moved up to December 32, 2022.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. BATCH: I'll second.

MR. VASQUEZ: Seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MR. CAMPBELL: Thank y'all.

MR. VASQUEZ: Great. Thank you.

Before we do item 6(c) -- because I know everyone is going to run out the door as soon as we do that -- I want to make sure we recognize our Department liaison with the Governor's Office has graced us with her presence. Catarina Gonzales, do you want to say hello to everybody?

If y'all have any questions or complaints, see Katarina at the end of the meeting, or compliments, see Katarina at the end of the meeting.

Thanks for being here.

(General laughter.)

MR. VASQUEZ: Okay. Item 6(c), Presentation, discussion, and possible action regarding the issuance of a determination notice for Torrey Chase Apartments in the Houston ETJ.

Ms. Morales.

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

Torrey Chase Apartments is a 4 percent application with bonds to be issued through a local issuer. It proposes the new construction of 280 units in the ETJ of Houston. Torrey Chase will serve the general population, and all of the units are proposed to be restricted at 60 percent of area median income.

While the application was under review, a letter of opposition from the state representative who represents the district containing the development and four letters from individuals in the community were received.

This application is one that would normally fall under the new streamlined process; however, given the public comment received, staff went ahead and placed it on the Board agenda for consideration in the event the commenters intended to address the Board directly.

This application has met all of the applicable QAP requirements, and staff recommends the issuance of a determination notice in the amount of $2,584,935.

MR. VASQUEZ: Okay, great. So other than the NIMBY-like voices that we've heard, this is a standard and would go straight through on our streamlined process?

MS. MORALES: Correct.

MR. VASQUEZ: Do any Board members have questions for Ms. Morales on this item?

MR. MARCHANT: Not to prolong things, but the state rep wrote a letter in support or against?

MR. VASQUEZ: Against.

MS. MORALES: Against.

MR. MARCHANT: And is it okay to say that person's name?

MS. MORALES: Sam Harless, State Representative

Sam Harliss, I think from District 126.

MR. MARCHANT: Okay. Thank you.

MR. VASQUEZ: Any other questions?

(No response.)

MR. VASQUEZ: If not, the chair would entertain a motion on item 6(c) of the agenda.

MR. BATCH: Mr. Chairman, I move that the Board approve the requested return and reallocation -- sorry, wrong one.

I move that the Board issue a determination of 4 percent housing tax credits for Torrey Chase Apartments, subject got the Real Estate Analysis report and compliance conditions, all as expressed in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Batch. Is there a second?

MR. MARCHANT: Second.

MR. VASQUEZ: Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

So we've concluded the posted agenda items, we have an opportunity for public comment if anyone cares to make some more.

Again, we appreciate all y'all's participation and thank you for allowing us to move the date up in recognition of Veterans Day tomorrow, and officially from the Department, we recognize and thank all of our veterans who have served our country well.

And my paperwork has the wrong dates of when the next meeting is, so I can't tell you when the next meeting is.

MR. LYTTLE: Thursday, December 9.

MR. VASQUEZ: Thursday, December 9.

MR. LYTTLE: Yes, sir. In this room.

MR. VASQUEZ: In this room we'll have our next Board meeting. I look forward to seeing all of you here.

Again, thank you, thank you, thank you for all your participation on the QAP process. I know it can be painful but I think we're improving it year after year.

So hearing no further business, is there a motion to adjourn the meeting?

MR. MARCHANT: Motion to adjourn.

MR. VASQUEZ: Made by Mr. Marchant.

MR. BATCH: Second.

MR. THOMAS: Second.

MR. VASQUEZ: Seconded by Mr. Everybody. All of us are in favor so we're saying aye.

It is 11:18 and the meeting is adjourned. Thank you.

(Whereupon, at 11:18 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: November 10, 2021

I do hereby certify that the foregoing pages, numbers 1 through 104105, 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: November 18, 2021

(Transcriber)

On the Record Reporting
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