

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Capitol Extension
Hearing Room E2.030
1100 Congress Avenue
Austin, Texas 78701

November 10, 2022
10:00 a.m.

MEMBERS:

LEO VASQUEZ, III, Chair
ANNA MARIA FARIAS, Member
BRANDON BATCH, Member
KENNY MARCHANT, Member
AJAY THOMAS, Member

BOBBY WILKINSON, Executive Director

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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	
EXECUTIVE	
a) Presentation, discussion, and possible action on the Board meeting minutes summary for October 13, 2022	
COMMUNITY AFFAIRS	
b) Presentation, Discussion, and possible action on the 2023 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)	
ASSET MANAGEMENT	
c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application 19330 Avanti Legacy at Emerald Point McAllen 19331 Avanti at Emerald Point McAllen 21608 Fiji Lofts Dallas	
d) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement 19603 Northgate Village Dallas	
e) Presentation, discussion, and possible action regarding a Material Amendment to the HOME Land Use Restriction Agreement 531001 Crystal Falls Crossing Leander	
MULTIFAMILY BOND FINANCE	
f) Presentation, discussion, and possible action on Inducement Resolution No. 23-005 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for Palladium Oak Grove (#22617)	
RULES	
g) Presentation, discussion, and possible action on amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations, and directing that this be published for adoption in the <i>Texas Register</i>	
h) Presentation, discussion, and possible action on an order proposing the readoption with	

amendments of 10 TAC §1.11, Definition of Service-Enriched Housing and directing its publication for public comment in the *Texas Register*

- I) Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 1 Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements and directing that it be published for public comment in the *Texas Register*
- j) Presentation, discussion, and possible action on the proposed repeal and proposed new sections 10 TAC §7.8, §7.25, §7.34, §7.36, §7.39, and §7.40, and directing their publication for public comment in the *Texas Register*.

SINGLE FAMILY & HOMELESS PROGRAMS

- k) Presentation, discussion, and possible action on State Fiscal Year 2021 Homeless Housing and Services Program Reallocations and Authorization to Reallocate Future Deobligated Funds.

LEGAL

- l) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning SA Union Pines II (HTC 02092 / CMTS 3243) and Rene O. Campos

MULTIFAMILY FINANCE

- m) Presentation, discussion, and possible action on multiple 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 in the 2021 competitive 9% tax credit round

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Media Analysis and Outreach Report, September 2022
- b) Report on TDHCA One-Time or Temporary Allocations B Pandemic Response and Other Initiatives
- c) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures
- d) Report on the closing of the Department's Residential Mortgage Revenue Bonds Series 2022B (Non-AMT) (Social Bonds)
- e) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions

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21017 Hughes House Fort Worth

ITEM 5: LEGAL

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Mission Pointe Club f/k/a Country Villa (HTC 91040 / CMTS 958) 23

ITEM 6: BOND FINANCE

- a) Presentation, discussion, and possible action regarding Resolution No. 23-006 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 103, approving the form and substance of the program manual and the program summary, authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 103, and containing other provisions relating to the subject 40
- b) Presentation, discussion, and possible action on Resolution No. 23-007 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds and containing other provisions relating to the subject 47
- c) Presentation, discussion, and possible action on Resolution No. 23-008 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2022 Series B (Non-AMT), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject 48
- d) Presentation, discussion, and possible action on Resolution No. 23-009 authorizing the filing of one or more applications for 52

reservation with the Texas Bond Review Board with respect to qualified mortgage bonds, authorizing state debt application, and containing other provisions relating to the subject

- e) Presentation, discussion, and possible action regarding Resolution No. 23-010 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject 54

ITEM 7: RULES

- a) 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* 57

- b) Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, adoption of new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for adoption in the *Texas Register* 59

ITEM 8: MULTIFAMILY FINANCE

Presentation, discussion, and possible action on the timely appeal of termination of HTC application 22106, Mariposa Apartment Homes at Plano Parkway, and waiver of 10 TAC §11.901(6) under the Department's Multifamily Program Rules 112

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS none

EXECUTIVE SESSION none

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts

with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item; Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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ADJOURN

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P R O C E E D I N G S

(10:02 a.m.)

1
2
3 MR. VASQUEZ: I'd like to call to order the
4 meeting of the Board of Directors of the Texas Department
5 of Housing and Community Affairs. It is November 10, 2022,
6 at 10:02 a.m. We will start out with the roll call. Mr.
7 Batch?

8 MR. BATCH: Here.

9 MR. VASQUEZ: Ms. Farias?

10 MS. FARIAS: Here.

11 MR. VASQUEZ: Mr. Marchant?

12 MR. MARCHANT: Here.

13 MR. VASQUEZ: Mr. Thomas?

14 MR. THOMAS: Here.

15 MR. VASQUEZ: And I'm present. We have full
16 attendance, very good.

17 We will start out, as usual, with the pledges
18 led by Bobby Wilkinson.

19 (Whereupon, the pledges to the flags were
20 recited.)

21 MR. VASQUEZ: Okay. Before we get on with the
22 posted agenda items, I'd like to take a moment of personal
23 privilege. On behalf of myself, of the Board, of the
24 entire Department, on behalf of the Governor and the State,
25 we'd like to officially recognize the Houston Astros as the

1 World Series champions.

2 (Applause.)

3 MR. VASQUEZ: Yes. In case you missed it.

4 MR. BATCH: It was a great series.

5 MR. VASQUEZ: It was a great series. Yes. We'd
6 also like to note today's the birthday of the Marines. So
7 any Marines . . . OoRah!

8 Moving on with the consent agenda, is there any
9 items that a Board member or member of the public wants to
10 move to action items?

11 (No response.)

12 MR. VASQUEZ: If not, I'll entertain a motion
13 for the consent agenda as posted.

14 MR. MARCHANT: I move.

15 MS. FARIAS: Second.

16 MR. VASQUEZ: Motion made by Mr. Marchant,
17 seconded by Ms. Farias. All those in favor, say aye.

18 (A chorus of ayes.)

19 MR. VASQUEZ: Any opposed?

20 (No response.)

21 MR. VASQUEZ: Hearing none, the motion carries.

22 Moving right along to action items, we'll go
23 into the Executive Director's report with Mr. Wilkinson.

24 MR. WILKINSON: Thank you, Chairman. The
25 Homeowner Assistance Fund is doing well. HAF is funded or

1 approved by 22,000 applicants. Have about 215.6 million
2 out the door, another 6-1/2 million in progress. Our
3 average assisted amount per applicant is over 9,900.
4 That's been inching up as we've kind of expanded throughout
5 the state, and our mortgage numbers are bigger than our
6 property tax numbers now.

7 As a reminder to folks who might be listening,
8 this is a program, federally funded, that can help with
9 your mortgage, property tax, homeowners insurance, HOA
10 fees, and we've added utility assistance now. So it's more
11 generous utility assistance than LIHEAP that we have, year
12 in and year out, and it's available only to homeowners, but
13 up to 100 percent of area median income, which is a pretty
14 generous eligibility. And you had to have been financially
15 impacted in some way during the pandemic, which that's a
16 self-attestation.

17 The call center average, more daily calls than
18 at any time since the program began last week, averaging,
19 2,100 calls per day. Still been doing a good job with
20 picking up the phone, though.

21 The average time to pick up is pretty
22 reasonable. I think it's still under a minute. We've been
23 working with Media Affairs and doing a number of print and
24 broadcast media interviews on the program, and it appears
25 to be helping.

1 You know, we added utilities. That was a
2 newsworthy item. And then we've added these physical
3 intake centers around the state. This week, five new
4 centers opened in Brownsville, Laredo and Austin for a
5 total of 18 intake centers.

6 And so unlike rent relief, it was all online,
7 because of the pandemic at the time. This is an in-person
8 way for someone who might not be computer-savvy to get some
9 help to apply.

10 Related to the utilities that we're doing
11 through HAF, we've reopened the electric part of the
12 TexasUtilityHelp.com, and so this is money that's LIHEAP
13 from HHS, that Low Income Heating and Assistance Program.
14 We have a network of subs, but we've gotten such, you know,
15 additional funds that we did a separate statewide effort.

16 The electric -- the water portal is going to be
17 open for a while. It's moving slower. Electric, we had
18 opened it in July, had a huge spike in apps, closed it
19 again. Now, it's open again and will remain open for a
20 week or so, and then we'll see.

21 There's been some new awards from the federal
22 government that we might be able to feed more to Texas
23 Utility Help, but we also have our subrecipient that we're
24 statewide as well. The Texas Utility Help is available to
25 homeowners and renters, and it covers past-due utility

1 payments, plus up to \$2,400 in prospective payments, and
2 future payments. And to qualify, household income has to
3 be at or below 150 percent of federal poverty income, which
4 is a much lower threshold than the 100 percent AMI.

5 And at least one occupant in the household has
6 to be a U.S. citizen or qualified alien. It's a federal
7 requirement. And once again, it's TexasUtilityHelp.com.
8 So we have TexasHomeownerAssistance.com. If you're a
9 homeowner, that's the better path; otherwise,
10 TexasUtilityHelp.com.

11 Texas Rent Relief Program still exists.
12 Treasury, since the last Board meeting, announced that
13 we'll receive an additional 67 million in reallocated ERA
14 funds. We will continue processing existing applications
15 in the order received. This is not the last of the re-
16 allocations.

17 At some point, we'll have enough where opening
18 the portal will be the right thing to do and necessary. We
19 continue to contact individuals who have already applied
20 and are next in line for their application to be reviewed.

21 We're going to continue, you know, processing until funds
22 run out. The Texas Supreme Court emergency order
23 establishing the Texas Eviction Diversion Program has now
24 been extended through January 2023.

25 In Community Affairs -- this is related to the

1 LIHEAP that I mentioned before -- big federal funding news.

2 In the last month, we learned that TDHCA will receive
3 about 245 million in LIHEAP funds for utility assistance
4 and weatherization activities. That's our regular annual,
5 plus a boost from the -- I think it's IIJA, and then the --
6 an additional supplemental as well.

7 This is our largest annual allocation ever, in
8 nominal terms. I don't know, in real terms. You know,
9 we'll have to do some analysis on that. So far, Texans
10 needing help paying those utility bills, more help is
11 coming, beyond the help we currently offer in -- through
12 Texas Utility Help and our subrecipient community action
13 agencies.

14 For compliance, on October 25, our Compliance
15 Division hosted a virtual training on Housing Tax Credit
16 Developments that have completed a federal compliance
17 period. The training focuses on monitoring and inspection
18 requirements for developments that have completed the first
19 15 years of the affordability period.

20 For those who missed it, you can view the
21 training on our agency YouTube channel. No TikTok still.
22 We're not doing that.

23 That's the end of my prepared remarks. As you
24 all are probably aware, the QAP is back to us today. We
25 had formal comment. You've seen the Board book, the

1 comments, plus reason response.

2 I'm sure we'll have some testimony today on it,
3 and you know, as a review, it's due to the Governor's
4 Office from this Board November 15, and the Governor can
5 sign, disapprove or modify and approve by December 1. And
6 then that's the rule set for next year, and it starts over
7 again, and we're all excited about that.

8 Any questions from the members about what's
9 happening with the Department or -- yes, sir? Teamwork.

10 MR. MARCHANT: Teamwork. Is the surge in
11 interest rates for home mortgages affecting any of our
12 programs?

13 MR. WILKINSON: So when Scott comes up to talk
14 about our next bond issuance, he'll talk about that, but
15 just briefly, reservations have been high for us. I don't
16 know if people want to lock in soon, or if we're so much
17 more attractive now in a rising rate environment, because
18 we offer down payment assistance. Whatever it is, this has
19 been good for TDHCA.

20 MR. MARCHANT: Okay. Good.

21 MR. WILKINSON: Yeah. And in the --
22 specifically, bond finance, the TBA where we just package
23 them and somewhere -- direct securities, that one is not as
24 viable right now, but --

25 MR. MARCHANT: Okay.

1 MR. WILKINSON: -- yeah. Another 190 million in
2 issuance is --

3 MR. MARCHANT: Yeah.

4 MR. WILKINSON: -- going to be requested today.

5 So --

6 MR. MARCHANT: Great. Thank you.

7 MR. VASQUEZ: Any other Board members have
8 questions for Mr. Wilkinson?

9 (No response.)

10 MR. VASQUEZ: No? Hearing none, thank you for
11 that report.

12 Moving right along to Item 4 of the agenda,
13 Presentation, discussion, and possible action regarding a
14 Material Amendment to the Housing Tax Credit Application,
15 Project 21017, Hughes House Fort Worth.

16 Mr. Banuelos?

17 MR. BANUELOS: Good morning, Mr. Chairman and
18 members of the Board. Rosalio Banuelos, Interim Deputy
19 Director of Rent Controls and Oversight.

20 So Hughes House received a 9 percent housing tax
21 credit award in 2021 for the reconstruction of 210
22 multifamily units in Ft. Worth. Earlier this year, the
23 development was granted a reallocation of credits under
24 force majeure. And at this time, due to increased costs,
25 the development owner has requested approval for a material

1 amendment to, among other changes, reduce the number of
2 units from 210 to 162 by eliminating 48 of the 65 market
3 rate units that were originally proposed.

4 The number of low income units is not changing
5 by this amendment. As originally proposed, the development
6 would be on three adjacent tracts totaling approximately
7 8.4 acres with 11 residential buildings. With this
8 proposed amendment, the number of units will decrease to
9 162, and it will eliminate nine of the buildings and
10 decrease the acreage of the development site to 4.888.

11 This development is part of a larger
12 redevelopment that will be done in separate tracts. So the
13 developer does plan on coming back later with either a 4
14 percent development or a 9 percent development and build
15 additional phases. So it's not that they're expected to
16 eliminate these units completely.

17 As part of the amendment, the common area is
18 also decreasing from 40,929 to 30,060 square feet.
19 However, the owner pointed out that the majority of the
20 reduction was to elevator, lobby, stairs and corridors, and
21 the amenity space available to the tenants is actually
22 increasing by approximately 3,900 square feet. Some of the
23 amenity spaces were also reconfigured.

24 So they will be adding additional spaces with
25 additional amenities, but due to the reduction in the

1 number of units, the number of required points for common
2 amenities is actually decreasing from 22 to 18. This will
3 address the requirement.

4 The development was re-underwritten based on the
5 proposed amendment and the analysis indicates the
6 development is still feasible with the changes to the costs
7 and the financing structure. The underwriting analysis
8 does not indicate a need to change the recommended credit
9 amount of \$2 million annually. Additionally, the changes
10 that are proposed have no negative impact on the
11 recommendation for an award.

12 Staff recommends approval of the requested
13 material amendment. And I am available for any questions.

14 MR. VASQUEZ: I have a question. Can someone
15 explain how, by getting rid of a huge chunk of the market
16 rate units, this project is still viable?

17 MR. BANUELOS: Part of that is they have
18 project-based vouchers. So it's not the typical
19 development where it's limited to the program brands. And
20 in terms of the financing structure, I don't know if the
21 developer would be better to explain how, but like I said,
22 we did re-underwrite the development and we do show that
23 it's still feasible.

24 If you are interested, I can explain the changes
25 in the financing, if that makes any difference.

1 MR. VASQUEZ: Again, I mean, what's the -- where
2 do our numbers work out, ratios from before the change to
3 afterward? Because I didn't see it evident here in the --

4 MR. BANUELOS: The revised underwriting is part
5 of the Board book. Let me walk through that.

6 In terms of development costs, the development
7 was previously underwritten with -- so in theory, the costs
8 are about the same. The financing changed. Fort Worth
9 Housing Solutions is providing more money to the
10 development, so that's how they got the development to
11 work. So same credits, which means about the same amount
12 of equity, but more money from the sponsor.

13 MR. VASQUEZ: So there is more cash being put in
14 the deal?

15 MR. BANUELOS: Correct.

16 MR. VASQUEZ: Are we getting money out of the
17 reduced real estate, the land area?

18 MR. BANUELOS: No. So we re-underwrote that and
19 took that out of the equation, so the land value wasn't
20 just accordingly to take out for the land that was being
21 eliminated. So we're not giving them credits or not --

22 MR. VASQUEZ: I mean, do the -- did the
23 developer sell the additional lands to get cash, or is that
24 just being cut out of the project and it makes no cash
25 change? And I think that -- I sense that the developers

1 are here to --

2 MR. BANUELOS: They are here.

3 MR. VASQUEZ: -- make some comments. These
4 might be better questions for them.

5 MR. BANUELOS: So it was a related party
6 transfer. So they owned the site already.

7 MR. VASQUEZ: But it didn't really put more cash
8 into this project?

9 MR. BANUELOS: No.

10 MR. VASQUEZ: Did not. Okay. Would anyone care
11 to make --

12 MR. THOMAS: Mr. Chairman?

13 MR. VASQUEZ: -- a motion to --

14 MR. THOMAS: Yeah. I was just going to do that,
15 make a motion to accept public comment on this issue.

16 MS. FARIAS: Second.

17 MR. VASQUEZ: On this, or all issues for the
18 rest of the Board meeting?

19 MR. THOMAS: All issues for the rest of the
20 Board meeting.

21 MR. VASQUEZ: Okay. Thank you, thank you. Does
22 the second still stand? Okay. Motion made by Mr. Thomas,
23 seconded by Ms. Farias.

24 All those in favor, say aye.

25 (A chorus of ayes.)

1 MR. VASQUEZ: Okay. The Eccles rule is in
2 effect. Please state your name and who you represent.

3 MS. LEMONS: Sorry. I'm trying to do two things
4 at once. I'm Mary Margaret Lemons, and I'm the president
5 of Fort Worth Housing Solutions. So we are the sponsor of
6 this project, and thank you so much for your consideration
7 today.

8 Give you a little bit of background. So Hughes
9 House is the second phase in our Choice Neighborhood
10 application with HUD. So we were a 2020 awardee of
11 \$35 million to redevelop a neighborhood on the southeast
12 side of Ft. Worth.

13 The historically African-American neighborhood
14 has suffered from blight and disinvestment for over 50
15 years. And so we were very proud to be able to get that
16 Choice Neighborhood grant and get started on redeveloping
17 the neighborhood. So we currently have a 4 percent tax
18 credit that is under construction and about almost 50
19 percent complete for our seniors.

20 And so we're -- this is Hughes House. This will
21 be the second phase of probably six phases of total
22 redevelopment. We had 300 public housing units that were
23 built in 1954 that needed about \$43 million of capital
24 improvements.

25 We all know HUD does not fund our capital

1 improvements at the rate that we need them to, and so we
2 asked for permission to demolish those. And in that
3 process, we applied for the Choice Neighborhood grant, and
4 our plan calls for us to bring back over 1,000 units into
5 the neighborhood of mixed-income housing, using tax credits
6 as well as our project-based vouchers to do that.

7 And so when you're asking about why the numbers
8 works, we do have a significant amount of the units in the
9 162 that will be covered by project-based vouchers for our
10 former residents to have a right to return.

11 MR. VASQUEZ: Okay. So again, the loss of the
12 market rate units, that was just all gravy before?

13 MS. LEMONS: Not gravy, but we wanted to make
14 sure that we were building the affordable units that the
15 neighborhood needs, and we have, like I said, multiple
16 phases coming after this. So the land that was cut out of
17 this portion, this phase, will be developed in a future
18 phase, and we will add those units back in there. So we're
19 not going to lose overall units.

20 We're just waiting because of the construction
21 costs and the types of construction. These two buildings
22 that we're completing for this phase are elevator
23 buildings, which is different. They're going to be four
24 stories.

25 The phases that we cut out were more townhomes-

1 and-garden style. So we were attempting to do a lot of
2 different architecture styles and types of buildings. So
3 by being able to simplify the design on this phase, we're
4 saving some money.

5 MR. VASQUEZ: And then with the project-based
6 vouchers, that kind of locks in that --

7 MS. LEMONS: Twenty-year commitment for the
8 operating of those units. Yeah.

9 MR. VASQUEZ: Okay. Did Mr. --

10 MR. WILKINSON: Just a reminder. You know, Fort
11 Worth Housing Solutions, she's the housing authority for
12 Ft. Worth. And I toured the Stop Six project before they
13 did the tear-down, and you know, there's a lot of aspects.

14 There's the HUD Housing Choice -- or what was it
15 called -- the Community --

16 MS. LEMONS: The Hub.

17 MR. WILKINSON: The HUD award is called --

18 MS. LEMONS: Oh, the Choice Neighborhood --

19 MR. WILKINSON: -- Choice Neighborhood award.

20 MS. LEMONS: -- Implementation Grant.

21 MR. WILKINSON: And the city has put in a lot of
22 money. They had this master plan. We actually have a
23 change in our QAP that makes it easier for all communities
24 in Texas that get that award to also get tax credits,
25 because they're on a clock.

1 They have to produce so many units in so many
2 years. So you know, just a reminder.

3 MS. LEMONS: And this is part of an overall
4 neighborhood reinvestment. So the city just passed a bond
5 this year that will bring a brand-new neighborhood
6 Community Hub, with an aquatic center, as well as we have
7 an agreement with CVS to bring a workforce innovation and
8 talent center. So this is part of a larger reinvestment
9 into the community.

10 MR. VASQUEZ: Great. Mr. Marchant, you have a
11 question?

12 MR. MARCHANT: And how feasible is it that you
13 would be able to rent the market rate?

14 MS. LEMONS: So actually, this neighborhood --
15 since we've gotten this award, we've seen a lot of single
16 family home growth in this area. So we have more permits
17 being pulled and more houses being developed than really in
18 the -- I know, in the past 10 years, for sure.

19 So we are creating a market now. This is --
20 it's about eight minutes from our Medical Center and 10
21 minutes from downtown. So now that we have viable housing
22 options for families to move into, they're answering the
23 call.

24 MR. VASQUEZ: Great. Do any other Board member
25 have questions on this item?

1 (No response.)

2 MR. VASQUEZ: Great. Thank you, Mary Margaret.
3 I will entertain a motion on Item 4 of the agenda.

4 MS. FARIAS: Mr. Chairman, I move the Board
5 approve the requested amendment for Hughes House,
6 Application No. 21017, as presented in the Board action
7 request on this item.

8 MR. VASQUEZ: Thank you. Motion made by Ms.
9 Farias.

10 MR. BATCH: Second.

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

13 (A chorus of ayes.)

14 MR. VASQUEZ: Any opposed?

15 (No response.)

16 MR. VASQUEZ: Hearing none, the motion carries.

17 MR. BANUELOS: Thank you.

18 MR. VASQUEZ: Thank you all.

19 Item 5 on the agenda, Presentation, discussion,
20 and possible action regarding the adoption of an Agreed
21 Final Order concerning Mission Pointe Club, formerly known
22 as Country Villa, Project No. 91040.

23 And Ms. Wiggins?

24 MS. WIGGINS: Yes. Good morning, Chairman,
25 members of the Board, Department staff, and members of the

1 public. My name is Nina Wiggins. I'm an attorney, and
2 I've been working in an advisory role with the Enforcement
3 Committee for the past several years, alongside Jeff
4 Pender, who -- after his retirement, I've moved into a lead
5 role in advising the Enforcement Committee.

6 So as you said, I'm here to present Item No. 5,
7 which is an agreed final order for Mission Pointe Club.
8 Before beginning, I would be remiss if I didn't express
9 thanks to Ysella Kaseman, who is not just the Board's
10 secretary, but she has provided countless hours of
11 technical support to properties around the state and
12 provided in-depth analysis of violation of the Department
13 rules, without which my presentation wouldn't be possible.

14 A brief history of this property includes --
15 there are two owners. It's an apartment complex with 260
16 units. It's located in Tarrant County and it receives a
17 tax credit allocation of about \$315,000. The LURA was
18 placed on this property in 1993, and it's set to expire at
19 the end of this year.

20 There is a lengthy enforcement history here,
21 beginning in 2012, 2017, and again in 2021. Each of those
22 years included an agreed final order and a monetary
23 violation. The 2021 order was most recently violated.

24 And I want to reiterate that the goal of the
25 Enforcement Committee is compliance. So the Committee

1 considering that the LURA was set to terminate at the end
2 of this year tried to incentivize the owners into voluntary
3 compliance and to settle, and that was also hinged on the
4 fact that the management had undergone extensive training,
5 and we set to see those improvements.

6 The current issue involves violation of gross
7 rents of about 202 units. The owner acknowledges this and
8 agrees to return overages of \$115,462.86 by December 12th
9 of this year, which is also my birthday. Failure to do
10 this would subject the owner to a debarment referral.

11 So simply stated, gross rents consist of rents,
12 plus all utilities plus any fees. An example of a fee is a
13 fee for something like pest control. The owners
14 overcharged their gross rent by failing to include all
15 utilities. Their ledgers may support their numbers, but
16 our Department rules and the lease do not, and that's how
17 we came to this issue.

18 So in February 2021, when they violated their
19 agreed final order, the owners and the Department disagreed
20 on the calculations of those gross rents. As a courtesy,
21 the Department agreed to re-review the numbers, and when
22 they did that, it started out that it was just seven units
23 that had gross rent violations. When the Department went
24 in and re-reviewed, it was actually 202 units that had
25 gross rent violations.

1 The owners agreed to refund the overages for
2 those seven units. They agreed to reduce the rent for the
3 202 units, but disagreed to refund the overages for the 202
4 units. And that's what continued the violation, because
5 our rules very unequivocally state that any rent overages
6 should be refunded to the tenants.

7 There are three multifamily rules at play here.
8 They are all located in the multifamily rule section, and
9 generally, they speak to rent and allowable rent limits.
10 They speak to utility allowances, and in -- specifically,
11 10 TAC 10.623(b)(7) clearly states that all utilities paid
12 to the owner must be accounted for in the utility
13 assistance.

14 That wasn't done here, and any excess rent
15 collected must be refunded. Utility allowances are very
16 complicated and technical. Very generally speaking, the
17 owner has the opportunity to select which utility allowance
18 they would like to use.

19 Our rules allow six or seven different options.
20 The public housing authority utility option is the most
21 direct and it's the easiest, and therefore, it's also the
22 Department's default, and that is what the owner selected
23 here.

24 And how it works is that the public housing
25 authority in a geographical area provides an estimate to

1 the owner of what the utility allowance will be based upon
2 the energy source and the number of units. So if, for
3 instance, the City of Austin has an apartment complex with
4 two- and three-bedroom units, and they use electricity and
5 natural gas, an owner who elects the public housing
6 authority utilities allowance would get an estimate of how
7 much utilities would cost per month for a two-bedroom and a
8 three-bedroom. If it was just natural gas, then the
9 utility allowance would reflect that.

10 It provides a very streamlined approach for our
11 Compliance Division to conduct their business. Otherwise,
12 they would have to go and look at every single utility bill
13 and every single geographical location and make sure that
14 it matches.

15 So the error that was made here, as I've said,
16 is that the utility allowance only included electricity.
17 They billed -- the owners, is who I mean by "they" -- they
18 billed the tenants for the remaining utilities of water,
19 trash and sewer. And in doing so, they miscalculated their
20 rent, which created a violation of the gross rent.

21 Again, the owners and the Department disagreed
22 on the calculations. So in this past summer, 2022, we had
23 a teleconference. And so since there was the disagreement,
24 the Department asked for the owners to submit a sample of
25 10 leases, so that we could again recheck our numbers.

1 When we received this sample of 10 leases, it
2 was evident that they had been altered. The fonts didn't
3 match up. There was text that was mismatched, and if you
4 looked closely, you could actually see print over the new
5 language. So it was clear that they had altered the rent
6 amounts to make them in alignment with our rules.

7 Given that, the Compliance Division did an on-
8 site, in-person review in August and verified these
9 actions. And an informal conference was set in September,
10 at which point the owners did agree and admit that their
11 leases had been altered. They agreed to refund the
12 \$115,462.96 by my birthday to the tenants, and agreed to
13 the agreed final order.

14 So as I've said, the goal being compliance was
15 to get the tenants the money that they are due. And as an
16 incentive for the owners to do this, there was no other
17 financial penalty, but to do so before their LURA
18 terminates at the end of this year.

19 So the Enforcement Committee is asking that you
20 authorize the agreed final order, that there is no penalty
21 for noncompliance, and that the rent refunds be returned to
22 the eligible tenants by December 12th of this year. And
23 I'm happy to take any questions if there are any.

24 MR. VASQUEZ: Thank you for that report.

25 Mr. Marchant, do you have a question?

1 MR. MARCHANT: Thank you, Mr. Chairman. And I
2 feel like I'm asking questions that everybody knows the
3 answer, but I haven't quite got it yet.

4 MS. WIGGINS: Well, I --

5 MR. MARCHANT: Do you go in there, and are they
6 charged for all of this activity that the agency does? I
7 mean, are -- they took hundreds of your hours. Right?

8 MS. WIGGINS: Yes.

9 MR. MARCHANT: Okay. So is there any -- did
10 they compensate the agency for those hours they're wasting,
11 or --

12 MS. WIGGINS: I mean, I guess it's not a line-
13 for-line type compensation, but there are fees. I would
14 defer to my colleagues in Compliance and Asset Management.
15 Fees that development owners must pay on an annual basis
16 to be part of the program, which in turn does pay for some
17 of these inspections.

18 MR. WILKINSON: Yeah. In general, our fee
19 revenue covers --

20 MR. MARCHANT: So everything --

21 MR. WILKINSON: Yeah. I mean, so maybe --

22 MR. MARCHANT: -- by fees --

23 MR. WILKINSON: -- this particular person
24 probably got more attention than they paid --

25 MR. MARCHANT: Put in?

1 MR. WILKINSON: Right. But in general, we --
2 actually, we collect more in fees than we get appropriated
3 to us. And then we have a little balance at the --

4 MR. MARCHANT: Okay.

5 MR. WILKINSON: -- Texas -- don't tell the
6 appropriators.

7 MR. MARCHANT: No. Thank you.

8 MS. WIGGINS: All right. Thank you.

9 MR. VASQUEZ: Hang on, hang on.

10 MS. WIGGINS: Oh.

11 MR. VASQUEZ: Is there any other Board members
12 that have questions for Ms. Wiggins?

13 MS. FARIAS: I have a question too. First of
14 all, thank you for such a lengthy presentation. It was
15 very good.

16 MS. WIGGINS: Good. Thank you.

17 MS. FARIAS: I think what troubles me, Mr.
18 Chairman: I know which way I'm going to vote, but that
19 there are no penalties, especially since they have agreed
20 that they altered the documents.

21 That is -- you know, I used to run a housing
22 authority and they would always tell us the rule. Go and
23 inspect 10 percent, 10 of the homes. So you only found
24 them in 10, because this is how long that you went -- but
25 the fact that the fonts were -- I don't know much about

1 computers, but I know the difference between one font and
2 the other, and the fact that they wouldn't even take the
3 time, that means that their arrogance was just beyond
4 belief.

5 Probably, they thought, they're not going to
6 read it. They're really not going to see it. But the
7 fact, Mr. Chairman -- they altered and they admitted they
8 altered.

9 And you know, I think if we thought that --
10 which I think the way we know we're going to vote -- can't
11 we also publicize this? They shouldn't just be able to get
12 away with it, because the amount that they're going to pay
13 is really minuscule to the crime that they have committed.

14 And they flaunted it.

15 MS. WIGGINS: I appreciate that, and it also
16 speaks to the countless hours that Compliance spent in even
17 catching this because, like you said, teleconferences took
18 place. This was over COVID. Had they not reviewed the
19 leases in the length that they would have, they might not
20 have uncovered it. So again, compliments to the Compliance
21 Division for that.

22 Because of the very technical nature of utility
23 allowances and these violations, the Committee did
24 deliberate on the aspects that you just mentioned. And I
25 would say that the LURA is set to terminate at the end of

1 this year, so the Department's window of time is closing.
2 Not to say that this matter couldn't be referred to SOAH,
3 but because their ledgers might support what they did, the
4 Committee thought that this was the most efficient way to
5 get the money back to the tenants in the time that we had,
6 and without the risk, I guess, of going to SOAH, and the
7 courts there not understanding what had taken place.

8 MS. FARIAS: Okay.

9 MS. WIGGINS: And if they don't do it by the
10 12th, we can refer them for debarment.

11 MR. VASQUEZ: Okay. I'll follow up on Ms.
12 Farias' comment there, because I agree completely. Who is
13 going to receive the \$115,000? Is it current tenants, or
14 could it be also tenants that have been from the past?

15 MS. WIGGINS: I think in Exhibit 1 of this Board
16 item is the breakdown of how the funds are to be
17 distributed. So for instance, if tenants are no longer
18 residing in this complex, they can deposit the money in the
19 Comptroller's lost property account, but there is
20 mechanisms in place to at least identify the tenants, have
21 proof that they received the check, and that the monies
22 have cleared their bank accounts.

23 So it will go to the 202 tenants whose leases
24 were violated, not necessarily current tenants, but they
25 still might be living there.

1 MR. VASQUEZ: Okay. So if the -- this group
2 will have to pay either directly or where they can
3 identify --

4 MS. WIGGINS: Yes.

5 MR. VASQUEZ: -- what a recipient is --

6 MS. WIGGINS: Yes.

7 MR. VASQUEZ: -- and the rest goes into the
8 unclaimed property funds for the --

9 MS. WIGGINS: Yes, if the tenant can't be
10 located.

11 MR. VASQUEZ: -- Comptroller.

12 MS. WIGGINS: Yeah.

13 MR. VASQUEZ: Okay. How do we catch this type
14 of behavior again in the future with other locations?

15 MS. WIGGINS: The lease behavior or the utility
16 allowance behavior or all of the above?

17 MR. VASQUEZ: I mean, do we wait for a
18 compliant? I mean, how did we find this one? Was it just
19 through regular audit practice or was it someone informed
20 us, hey, this sounds wrong?

21 MS. WIGGINS: So I believe multifamily
22 properties go through a three-year inspection cycle, and
23 properties, to a certain extent, tend to stay on radars
24 because of the diligent work of the Enforcement Committee.
25 So once -- for instance, in this case, this property had

1 been referred in 2017, 2021.

2 They agreed that they violated that agreed final
3 order, because they were on the Department's radar. So
4 that was how this particular instance was caught. But
5 otherwise, I think that we're dealt a certain set of cards,
6 and that's a three-year inspection cycle.

7 And we go there and we look at tenant files and
8 do physical inspections and do as thorough job as we can.
9 And if the owner does not correct those findings in the
10 time provided for in our rules, our Committee is where they
11 get sent to in order to hear why those corrections weren't
12 made and whether or not a penalty is appropriate.

13 So I don't know if I answered your question of
14 how we prevent this, but --

15 MR. VASQUEZ: Mr. Marchant?

16 MR. MARCHANT: But that person isn't allowed to
17 apply for any other projects with the agency. Right?

18 MS. WIGGINS: If they are debarred, they won't
19 be able to.

20 MR. MARCHANT: But short of being debarred --

21 MS. WIGGINS: Does the previous participation
22 look at these agreed final orders. I don't know. I
23 didn't -- so if they were to pursue additional funds from
24 the Department, I imagine the previous participation -- I
25 don't remember the acronym -- will go through their history

1 with the Department, and this enforcement action would
2 certainly be part of their history and be taken into
3 consideration.

4 MR. MARCHANT: And --

5 MR. WILKINSON: And I think they rank them one,
6 two and three, and three is no-go, and then two
7 sometimes -- or even one, with conditions. They might say,
8 you have to do this and this in order to get this award.

9 MR. MARCHANT: And at what point would there be
10 a referral to the AG's Office for civil --

11 MR. WILKINSON: It would go through SOAH, right?

12 MS. WIGGINS: Sometimes. So for instance, I
13 have referred matters to the Attorney General's Office when
14 the owner owes us money. I don't know if Southmore Park
15 sounds familiar to any of you.

16 That is another multifamily development that was
17 before the Enforcement Committee, that had a penalty of
18 about \$90,000. That went through SOAH. And that was, I
19 think, in 2017, and we just got their check last week.

20 MR. MARCHANT: But the offense is -- you're
21 going about it as the offense is against the agency. I
22 would say that fraud has been committed against the tenant,
23 in my belief. And so is there some -- have they violated
24 some law between them and the tenant that is punishable --

25 MS. WIGGINS: I don't know.

1 MR. MARCHANT: -- outside of going through this
2 whole process?

3 MS. WIGGINS: I don't know that I would speak to
4 that directly, but what I would say is that, if you have a
5 lease and you want to make amendments to it, there's a
6 certain way to do that. You would cross it out and have
7 the tenant initial it and give them a copy, right. And
8 that was not done here.

9 At the same time, the development owner,
10 throughout the informal conference, indicated that their
11 ledgers supported the amounts that they charged the
12 tenants. Now, that might be the case. And if you were to
13 go to court, that also might be the case.

14 So whether or not it was fraud, because it
15 wasn't reflected on the lease, would be what the court
16 would be deciding. But again, that's where the Committee
17 took into consideration the LURA termination date at the
18 end of this year, and to get the tenants their money that
19 was owed.

20 MR. MARCHANT: Okay. Thanks. Good job.

21 MR. VASQUEZ: Following along the same theme,
22 I'd want to make sure that, assuming that we're about to
23 approve this 115,000, and again, for the tenants that
24 receive back this average, what, \$550 check, it's going to
25 be meaningful to them --

1 MS. WIGGINS: Sure.

2 MR. VASQUEZ: -- but if we don't get actual
3 confirmation and evidence that all these items were paid
4 and as agreed, I think the pursuit of other legal action
5 doesn't have to do with the Department's processes here.

6 But this group, from the sounds of it, submitted
7 falsified documents to a government agency. That, to me,
8 is the pursuable course of legal action and prosecution.
9 If we don't get confirmation that this has been all paid
10 out as agreed, I'd urge staff to follow up and see about
11 referring this to -- whether I -- I don't know about the
12 AG, but you know, a DA or something somewhere, because
13 it -- that, I'm sure, rankles every Board member here
14 that --

15 MR. MARCHANT: Certainly --

16 MR. VASQUEZ: -- and staff that that --

17 MR. MARCHANT: Certainly send a message to
18 everybody else that you've dealt with that that was a
19 possibility.

20 MR. ECCLES: To that point, the bar specifically
21 says that if the owner fails to comply by Nina's birthday,
22 then TDHCA will pursue debarment. So that is the next
23 step, and that is the agency's ultimate "thou shalt not
24 darken our door" approach. So it begins with that.

25 Certainly criminal prosecution is a little bit

1 outside of this agency's purview, but referral to the
2 Attorney General's Office, certainly discussion with them
3 about what other options there may be. But as Nina said,
4 our first responsibility is trying to make the tenants
5 whole and as quickly as possible. So that has been our
6 focus.

7 And thank you, Nina. It's a good example of
8 some of the passionate attorneys that we have in TDHCA
9 Legal.

10 MS. FARIAS: One last question, Mr. Chairman.
11 On the debarment -- I know, for the Department of Labor,
12 whenever we used to debar someone, was for five years.
13 Here, how long is it for?

14 MS. WIGGINS: In the debarment rule, there are
15 different categories.

16 MS. FARIAS: Oh, okay. I just needed to know.

17 MS. WIGGINS: I'm sorry?

18 MS. FARIAS: I just needed to know that there
19 was going to be more than a month or --

20 MS. WIGGINS: Yes.

21 MS. FARIAS: -- about six months --

22 MS. WIGGINS: For sure.

23 MS. FARIAS: Sure. Okay.

24 MS. WIGGINS: Absolutely.

25 MR. ECCLES: This Board has debarred up to

1 20 years --

2 MS. FARIAS: Good.

3 MR. ECCLES: -- I believe.

4 MS. FARIAS: Yeah. Thank you.

5 MR. VASQUEZ: Nina, thank you for this report.

6 MS. FARIAS: Thank you very much.

7 MS. WIGGINS: You're quite welcome.

8 MR. VASQUEZ: If there's no further questions,
9 I'll entertain a motion on Item 5 of the agenda.

10 MR. BATCH: I move that the Board approve the
11 agreed final order regarding Mission Pointe Club, as
12 presented and conditioned in the Board action request on
13 this item.

14 MS. FARIAS: Second.

15 MR. VASQUEZ: Thank you. Motion made by Mr.
16 Batch, seconded by Ms. Farias.

17 All those in favor, say aye.

18 (A chorus of ayes.)

19 MR. VASQUEZ: Any opposed?

20 (No response.)

21 MR. VASQUEZ: Hearing none, the motion carries.

22 And again, thanks to the staff for all the -- I mean that
23 obviously a lot of time was put into this.

24 Moving on to Item 6, Bond Finance.

25 Presentation, discussion, and possible action regarding

1 Resolution No. 23-006 authorizing the Department's Mortgage
2 Credit Certificate Program 103, approving the form and
3 substance of the program manual and the program summary,
4 authorizing the execution of documents and instruments
5 necessary or convenient to carry out Mortgage Credit
6 Certificate Program 103, and containing other provisions
7 related to this subject.

8 Mr. Fletcher?

9 MR. FLETCHER: Chairman Vasquez, thank you very
10 much. Board, thank you. My name is Scott Fletcher. I am
11 the Director of Bond Finance, as of late July of this year,
12 and very happy to be at the agency.

13 Little bit of history. On November 6, 2020, the
14 Department issued municipal -- sorry -- Mortgage Credit
15 Certificate Program 96, using 800 million in volume cap.
16 Program 96 offered 30 percent credit, up to a \$2,000 annual
17 maximum for loans below 175,000, and a 20 percent credit on
18 loans above 175,000.

19 That does not have a maximum when it's a
20 20 percent credit. Since the program's inception, Program
21 96's inception, through October 31 of this year, the
22 Department has assisted approximately 6,800 homeowners with
23 MCCs on loan totaling over \$889 million.

24 MCCs issued by the Department are approximately
25 50 percent combo loans, where the Department finances the

1 first loan and provides down payment and closing assistance
2 costs, with the other 50 percent being loans where a third-
3 party lender finances the first loan and TDHCA issues the
4 mortgage credit certificates.

5 The Department has approximately 9 million in
6 MCC authority remaining from that program, which gives us
7 the ability to make around 45 million in additional MCC
8 loans before the end of the year. This program does
9 expire -- excuse me -- on December 31 of this year, 2022.

10 Publication -- moving to this Program 103 --
11 publication of the required public notice for Mortgage
12 Credit Certificate Program 103 was completed in July --
13 July 22, 2022. And if approved by the Board, Program 103
14 is scheduled for release in January 2023.

15 The attached resolution seeks for the conversion
16 of 300 million of single family volume cap to MCC authority
17 and the issuance of new MCCs. The resolution also seeks
18 approval of, as the Chairman said, program manual and
19 program summary, initial MCC credit rates of 20 percent for
20 all loans, and use of up to \$250,000 of Department funds to
21 pay for the costs of implementing Program 103.

22 As mentioned previously, Program 103 is going to
23 differ a little bit from Program 96 in that we're only
24 going to offer the 20 percent mortgage credits on the new
25 program. Eliminating the 30 percent credit and using only

1 20 percent credit rate is the result of staff analysis of
2 prevailing interest rates and the resultant benefit to
3 homebuyers. It's intended to maximize the benefit to
4 eligible homebuyers while effectively leveraging and
5 managing the Department's allocated volume cap.

6 This significantly reduced volume cap for
7 Program 103 from Program 96 is really a function of several
8 factors. One, a general reduction in demand for MCCs that
9 we've experienced over the last four fiscal years. Most
10 notably in 2022, we've seen that drop-off, which we really
11 feel is a function of rising home prices and rising
12 interest rates, and so just fewer people that are applying
13 for it.

14 Desire -- our desire to preserve volume cap for
15 the mortgage bond program, as interest rates continue to
16 rise. And Mr. Marchant, you had addressed this earlier,
17 and I'll kind of go into more detail later, but bond
18 program mortgage rates are materially below what's
19 available in the TBA market right now, and so we continue
20 to have very strong demand for our mortgage bond program.

21 So we're really trying to manage our cap right
22 now. We understand that, with this smaller size, we may be
23 standing in front of you again next year for a new program,
24 but we believe it's important to maintain the flexibility
25 in how we utilize volume cap and allocate our resources

1 while we remain in a volatile interest rate environment,
2 continue to see aggressive tightening by the Fed, wait to
3 see the impact of inflation on housing in the broader U.S.
4 economy.

5 I -- the staff recommends approval of 6(a).

6 MR. VASQUEZ: Do any Board member have questions
7 on this item?

8 MR. MARCHANT: I have a question. I'm sorry.

9 MR. VASQUEZ: Go ahead. Just --

10 MR. MARCHANT: If you get caught in a situation
11 where you make a commitment to loan the money, and then in
12 a short period of time, there is a crossing of the interest
13 rate, and a person finds that they can get that loan at a
14 cheaper price somewhere else, what's the penalty of them to
15 drop you?

16 MR. FLETCHER: There's really no penalty. It's
17 part of, kind of, the process and part of the risk
18 management process that we take on. We will generally --
19 and you know, this applies more to, you know, mortgages
20 than on the MCC program.

21 But you know, we have a constant flow that we're
22 looking at. We're managing to spread over our most recent
23 bond deal and our most recent bond rates. As those rates
24 change, we will adjust. We adjust --

25 MR. MARCHANT: So for --

1 MR. FLETCHER: -- for --

2 MR. MARCHANT: -- purposes, that doesn't happen?

3 MR. FLETCHER: Yeah. We'll see fallout on --
4 from our reservations to what actually turns into actual
5 mortgages of around 80 percent. And you know, depending on
6 what's happening with interest rates, you can expect that
7 to fluctuate.

8 Certainly, if you saw a dramatic decrease in
9 rates, you could probably expect higher fallout. As you
10 have an increase in rates, you probably expect lower
11 fallout, because people are going to do everything they can
12 to lock in that rate that they set, you know, a month ago.

13 But it's kind of a -- and it's a great question.

14 It's just kind of an ongoing portfolio management process
15 that we go through on a daily basis.

16 MR. VASQUEZ: Okay. Are my finance expert Board
17 members good with this?

18 MR. THOMAS: Yeah.

19 MR. VASQUEZ: I have a simple question. So this
20 is Program No. 103?

21 MR. FLETCHER: Yes.

22 MR. VASQUEZ: The prior one was Program 96?

23 MR. FLETCHER: Correct.

24 MR. VASQUEZ: What happened to 97 through 102?

25 MR. FLETCHER: You don't want to know. No.

1 Every program that we do, whether it's a bond issuance to
2 fund mortgage -- bond mortgages, or it's MCC program, each
3 of those are assigned a number. And so the last number
4 that we issued was Program 96.

5 Since then, we're issued bonds -- would that
6 be -- four, five issuances taking us to this Program 103.
7 The bond that we're going to be requesting approval for is
8 Program 102. So we're just kind of -- we constantly
9 monitor.

10 We track the program that we're on, because
11 there are tax implications and rules related to how you use
12 those funds. So that's why we track everything, individual
13 program, based on where we've utilized volume cap.

14 MR. VASQUEZ: Okay. So it's not exclusive to
15 the MCC for --

16 MR. FLETCHER: Exactly.

17 MR. VASQUEZ: Okay.

18 MR. FLETCHER: Correct. That was a long answer
19 to a short question.

20 MR. VASQUEZ: Okay. All righty.

21 Hearing no other questions, this is a multi-
22 part, I guess, 6(a), (b) and (c), on the agenda? So we're
23 only addressing Item (a) at this point, 6(a). And I'll
24 entertain a motion.

25 Mr. Thomas?

1 MR. THOMAS: Mr. Chairman, colleagues, I move
2 the Board adopt Resolution No. 23-006 regarding the
3 implementation of the TDHCA Mortgage Credit Certificate
4 Program 103, approving the form and substance of the
5 program manual and program summary, and authorizing the
6 execution of documents to carry out MCC Program 103, all as
7 expressed and subject to the conditions in the Board action
8 request on this item.

9 MR. VASQUEZ: Thank you. Motion by Mr. Thomas.

10 MS. FARIAS: Second.

11 MR. VASQUEZ: Seconded by Ms. Farias. All those
12 in favor, say aye.

13 (A chorus of ayes.)

14 MR. VASQUEZ: Any opposed?

15 (No response.)

16 MR. VASQUEZ: Hearing none, the motion carries.

17 Now we're moving to Item 6(b) of the agenda,
18 Presentation, discussion, and possible action on Resolution
19 No. 23-007 authorizing the filing of one or more
20 applications for reservation with the Texas Bond Review
21 Board with respect to qualified mortgage bonds and
22 containing other provisions relating to the subject.

23 Mr. Fletcher again.

24 MR. FLETCHER: Hello. This one is -- there's
25 not a lot to say on this. An allocation of private

1 activity bond authority is required for the issuance of
2 tax-exempt single family mortgage revenue bonds for the
3 issuance of mortgage credit certificates.

4 Staff is requesting authorization to submit one
5 or more application for a maximum of 300 million of volume
6 cap to be used for MCC Program 103. Staff expects that MCC
7 Program 103 will use volume cap received in 2021 and
8 carried forward for this purpose. Final approval of MCC
9 Program 103 was the item that we just considered and
10 approved.

11 MR. VASQUEZ: Great. Thank you. I assume no
12 questions on this item?

13 (No response.)

14 MR. VASQUEZ: So I'll enter a motion on Item
15 6(b) of the agenda.

16 MR. BATCH: Mr. Chairman, I move that the Board
17 adopt Resolution No. 23-007 regarding the filing of one or
18 more applications for reservation with the Texas Bond
19 Review Board for qualified mortgage bonds, all as expressed
20 in the Board action request on this item.

21 MR. VASQUEZ: For the record, Mr. Batch made a
22 motion, even though his microphone was off.

23 MS. FARIAS: Second.

24 MR. VASQUEZ: Seconded by Ms. Farias. All those
25 in favor, say aye.

1 (A chorus of ayes.)

2 MR. VASQUEZ: Any opposed?

3 (No response.)

4 MR. VASQUEZ: Hearing none, the motion carries.

5 And then finally, Item 6(b) [sic], Presentation,
6 discussion, and possible action on Resolution No. 23-008 --

7 MR. WILKINSON: That's (c). Right?

8 MR. VASQUEZ: (c), 6(c). I'll start over.

9 Presentation, discussion, and possible action on Resolution
10 No. 23-008 authorizing the issuance, sale and delivery of
11 Department Single Family Mortgage Revenue Bonds, 2022
12 Series B, approving the form and substance of related
13 documents authorizing the execution of documents and
14 instruments necessary or convenient to carry out the
15 purposes of this resolution, and containing other
16 provisions relating to the subject.

17 Mr. Fletcher?

18 MR. FLETCHER: Thank you. With this item, staff
19 is requesting final Board approval to issue Single Family
20 Mortgage Revenue Bonds, Series 2022B, in an amount not to
21 exceed 190 million for new issued single family loan
22 origination.

23 The bonds will be tax-exempt and fixed rate.
24 And the structure is expected to be substantially similar
25 to the Department's 2022A Single Family Mortgage Revenue

1 Bonds issued in June 22 of this year. Redundant there,
2 sorry.

3 Proceeds of the bonds will be used to originate
4 mortgage loans to low and moderate income homebuyers, to
5 pay all or a portion of down payment, closing costs or
6 related expenses, including lender compensation and
7 servicing seconds associated with the loans and to pay all
8 or a portion of the cost of issuance.

9 The bond is expected to include serial bonds,
10 term bonds, premium planned amortization class, or PAC,
11 bonds. Mortgage loans will be pulled into mortgage-backed
12 securities guaranteed by Ginnie Mae and those MBS will
13 provide the security for the bonds that are being issued.

14 Department contribution will not exceed
15 10 million. It's expected to be closer to 6 million, which
16 will be used to fund all or a portion of the down payment
17 and closing costs assistance. Capitalized interest will be
18 drawn from the indenture as needed and will not exceed 6
19 million.

20 As is our practice, these are very conservative
21 maximums, and the actual contribution and capitalized
22 interest draws are not expected to reach this levels. But
23 this does allow us some flexibility if the premium is not
24 achieved on the sale of the bonds.

25 As is our practice -- sorry. I just said that.

1 Bonds will be rated -- we just got our ratings
2 updated -- AAA by Moody's and AA+ by S&P, respectively.
3 Those are the rates we've -- the ratings we've had. And we
4 are expected to price the deal on December 1 and close in
5 late December. I believe December 21 is what we're
6 shooting for.

7 Underwriting team, Barclays, will serve as
8 senior manager. RBC and Jefferies serving co-managers,
9 with Morgan Stanley, Piper and Ramirez as co-managers.
10 That is all I have on this item, and --

11 MR. VASQUEZ: Did I hear you say the par value
12 on these?

13 MR. FLETCHER: 190 million.

14 MR. VASQUEZ: Okay.

15 MR. FLETCHER: And our previous program -- our
16 Program 101 was 150 million. That program was reserved in
17 three weeks. And so you know, we are looking for
18 additional funds this time.

19 And just for additional information, where we
20 are right now in the market: we have more flexibility on
21 our loan rates right now than we've had really at any time
22 in the history of the agency, just because of the
23 differential between where municipal bond rates are and
24 where we can fund mortgages, versus the TBA market. So we
25 have a lot of flexibility in how we price these bonds and

1 make these rates -- how we price the mortgages and make
2 them available to the low income homebuyers.

3 MR. VASQUEZ: Great. Any questions on Item
4 6(c)?

5 (No response.)

6 MR. VASQUEZ: Hearing none, I'll entertain a
7 motion.

8 MS. FARIAS: Mr. Chairman, I move the Board
9 adopt Resolution No. 23-008 authorizing the issuance, sale
10 and delivery of TDHCA Single Family Mortgage Revenue Bonds,
11 2022 Series B, approving the form and substance of related
12 documents, and authorizing the execution of documents to
13 carry out the purposes of this resolution, all as expressed
14 and conditioned in the Board action request on this item.

15 MR. VASQUEZ: Thank you. Motion made by Ms.
16 Farias. Second?

17 MR. THOMAS: Second, Mr. Chairman.

18 MR. VASQUEZ: Seconded by Mr. Thomas. All those
19 in favor, say aye.

20 (A chorus of ayes.)

21 MR. VASQUEZ: Any opposed?

22 (No response.)

23 MR. VASQUEZ: Hearing none, the motion carries.

24 And Mr. Fletcher, I'm sorry. I cut -- I thought you only
25 had three, but there -- you're still up on 6(d).

1 MR. FLETCHER: I -- yeah. I wanted to thank you
2 for bringing all of my items to action, rather than --

3 MR. VASQUEZ: Well --

4 MR. FLETCHER: So thank you.

5 MR. VASQUEZ: Let me read this into the record.
6 Presentation, discussion, and possible action on
7 Resolution No. 23-009 authorizing the filing of one or more
8 applications for reservation with the Texas Bond Review
9 Board with respect to qualified mortgage bonds, authorizing
10 state debt application, and containing other provisions
11 relating to the subject.

12 Mr. Fletcher?

13 MR. FLETCHER: Thank you. Like Item 6(b), an
14 allocation of private bond authority is required for the
15 issuance of tax-exempt single family mortgage revenue bonds
16 and for the issuance of mortgage credit certificates.

17 We have submitted an application to the Texas
18 Bond Review Board to draw down volume cap. Staff is
19 requesting authorization to submit one or more application
20 for maximum reservation of \$205,200,000 of volume cap to be
21 used for the issuance of Single Family Mortgage Revenue
22 Bonds, Series '22B.

23 Staff expects the '22B bonds will use bond
24 authority that has been carried forward for this purpose.
25 And that is all I have.

1 MR. VASQUEZ: Any questions on this item 6(d)?
2 (No response.)

3 MR. VASQUEZ: Hearing none, I'll entertain the
4 motion on 6(d) of the agenda.

5 MR. THOMAS: Mr. Chairman, I move the Board
6 adopt Resolution No. 23-009 authorizing the filing of one
7 or more applications for reservation with the Texas Bond
8 Review Board with respect to qualified mortgage bonds, and
9 authorizing state debt application, all as expressed and
10 conditioned in the Board action request on this item.

11 MR. VASQUEZ: Thank you. Motion made by Mr.
12 Thomas.

13 MR. MARCHANT: Second.

14 MR. VASQUEZ: Second by Mr. Marchant. All those
15 in favor, say aye.

16 (A chorus of ayes.)

17 MR. VASQUEZ: Any opposed?

18 (No response.)

19 MR. VASQUEZ: Hearing none, the motion carries.
20 And finally, Item 6(e), Presentation,

21 discussion, and possible action regarding Resolution No.
22 23-010 authorizing request for Unencumbered State Ceiling
23 and containing other provisions relating to the subject.

24 Please explain, Mr. Fletcher.

25 MR. FLETCHER: Absolutely. I will do my best.

1 Each year, State agencies and issuers created on
2 behalf of the State, with authority to issue tax-exempt
3 bonds, may request the Texas Bond Review Board assign as
4 carryforward any volume cap that has not been reserved or
5 designated as carryforward for other issuers or agencies
6 and for which no application for carryforward is pending on
7 the last business day of the year. This is also referred
8 as to the Unencumbered State Ceiling.

9 TDHCA has requested and received carryforward
10 designations from the Unencumbered State Ceiling in
11 calendar years 2010, '11, '13, '14, '15, '16, and '18.

12 Staff is requesting authorization to request
13 carryforward in an amount not to exceed 200 million of
14 unreserved '22 -- 2022 volume cap, to the extent available,
15 from the Unencumbered State Ceiling. All volume cap
16 assigned pursuant to this request will be used for the
17 future issuance of single family mortgage revenue bonds or
18 future Mortgage Credit Certificate programs.

19 Carried forward volume cap must be used within
20 three years. At this time, the staff is not seeking, nor
21 is the Board asked to grant approval for any specific issue
22 or program in using these funds.

23 One thing that we do want to note on this:
24 there's no guarantee that there will be funds available,
25 and we are not cutting in front of any other State agency

1 or any other issuer. We are simply standing in line in the
2 event that there are funds that are available at the end of
3 the calendar year that are unencumbered and not reserved.

4 And I'm happy to try to answer any other
5 questions you might have.

6 MR. VASQUEZ: So this one is us, the Board,
7 authorizing --

8 MR. FLETCHER: Asking the Board --

9 MR. VASQUEZ: -- to take action, if there's --

10 MS. FARIAS: If there's volume cap, if it's
11 available.

12 MR. VASQUEZ: Yeah. I think it's a good idea.
13 Any questions on Item 6(e)?

14 (No response.)

15 MS. FARIAS: Mr. Chairman?

16 MR. VASQUEZ: Ms. Farias?

17 MS. FARIAS: I move the Board adopt Resolution
18 No. 23-010 authorizing the request for unreserved 2022
19 volume cap from the Unencumbered State Ceiling, all as
20 expressed and conditioned in the Board action request on
21 this item.

22 MR. VASQUEZ: Thank you. Motion made by Ms.
23 Farias. Is there a second?

24 MR. BATCH: Second.

25 MR. VASQUEZ: Seconded by Mr. Batch. All those

1 in favor, say aye.

2 (A chorus of ayes.)

3 MR. VASQUEZ: Any opposed?

4 (No response.)

5 MR. VASQUEZ: Hearing none, the motion carries.

6 Thank you, Scott.

7 MR. FLETCHER: Thank you all.

8 MR. VASQUEZ: Moving right along, Item 7 of the
9 agenda, Presentation, discussion, and possible action on
10 an order adopting the repeal of 10 TAC Chapter 12,
11 concerning the Multifamily Housing Revenue Bond Rules, and
12 an order adopting new 10 TAC Chapter 12 concerning the same
13 rules, and directing its publication in the *Texas Register*.

14

15 Ms. Morales?

16 MS. MORALES: Good morning. Teresa Morales,
17 Director of Multifamily Bonds.

18 The multifamily housing revenue bond rule
19 governs applications where the Department is serving as the
20 bond issuer. The rule speaks to the general process of the
21 bond issuance with an emphasis on the pre-application
22 component that requires scoring in addition to threshold
23 and some eligibility. The proposed changes primarily
24 included modifications to existing scoring items and
25 proposed to introduce a new scoring item.

1 There were a couple of comments received. One
2 related to the new scoring item, assisting households with
3 children. The commenter requested that rehab developments
4 and elderly developments be exempt, essentially meaning
5 that those applications would automatically get the point
6 so as to not disadvantage this construction type or target
7 population, and staff is recommending that that change be
8 granted.

9 The other more noteworthy comment relates to the
10 cost per square foot scoring item. The commenter requested
11 that it be increased even more than what staff had
12 proposed. The draft increased it from \$95 to \$125 and the
13 commenter suggested that it be increased to 145.

14 Staff acknowledges that there are challenges,
15 given the rising construction costs, but believed costs
16 will continue to vary across the board and is not
17 recommending any changes at this time, but will certainly
18 revisit the item next year, as we go through the upcoming
19 program year.

20 Staff recommends that the Board approve the
21 adoption of the repeal and adoption of the new Chapter 12
22 multifamily housing revenue bond rules for submission and
23 publication in the *Texas Register*.

24 MR. VASQUEZ: Okay. Just as a more process
25 question, at this point, so these are final rules adopted,

1 and we're going to publish --

2 MR. ECCLES: Yes.

3 MR. VASQUEZ: -- on the site. Right? Okay.

4 Do any Board members have questions on this
5 item?

6 (No response.)

7 MR. VASQUEZ: Is -- are there -- I don't see any
8 people running to the front to comment on this particular
9 item.

10 MS. MORALES: That's the next one.

11 MR. VASQUEZ: That's the next one. In that
12 case, I'd entertain a motion on Item 7(a) of the agenda
13 that we've been discussing.

14 MS. FARIAS: Mr. Chairman, I move the Board
15 adopt the proposed repeal and proposed new 10 TAC
16 Chapter 12 concerning the multifamily housing revenue bond
17 rules, as presented and conditioned in the Board action
18 request and resolutions on this item.

19 MR. VASQUEZ: Thank you. Motion made by Ms.
20 Farias. Is there a second?

21 MR. THOMAS: Second, Mr. Chairman.

22 MR. VASQUEZ: Seconded by Mr. Thomas. All those
23 in favor, say aye.

24 (A chorus of ayes.)

25 MR. VASQUEZ: Any opposed?

1 (No response.)

2 MR. VASQUEZ: Hearing none, the motion carries.
3 Moving on to -- you're done? All right.

4 Item 7(b), Presentation, discussion, and
5 possible action on the adoption and the repeal of 10 TAC
6 Chapter 11 concerning the Housing Tax Credit Program
7 Qualified Allocation Plan, adoption of new 10 TAC Chapter
8 11 concerning the same, and directing their publication for
9 adoption in the *Texas Register*.

10 Mr. Campbell --

11 MR. CAMPBELL: Good morning.

12 MR. VASQUEZ: -- on this?

13 MR. CAMPBELL: Cody Campbell, Director of
14 Multifamily Programs with the Department.

15 This item is the QAP. The Board approved the
16 draft QAP at the September meeting, which was released for
17 public comment. And we received 27 comments by the
18 deadline of October 14.

19 After your approval today, the QAP will be
20 transmitted to the Governor no later than November 15. The
21 Governor then has until December 1 to approve with changes
22 or reject the QAP. Once that approval is obtained, the QAP
23 will be published in the *Texas Register* and made effective.

24 The QAP in front of you today is substantially
25 similar to the version that you approved for public comment

1 in September and introduces no significant new concepts.
2 The changes made to it are largely clerical,
3 administrative, or relatively small changes.

4 You may recall that staff went through two
5 rounds of QAP revision this year, with an informal first
6 draft of the QAP released for comment earlier this year.
7 Comments were accepted on that early draft and responsive
8 edits were made prior to the September meeting.

9 This likely explains why we received fewer
10 comments and made fewer changes than what has typically
11 been done in the past. Staff anticipates continuing this
12 process in the future and should begin having roundtable
13 discussions and work groups for the 2024 QAP this spring.

14 I do have two suggested corrections to the QAP
15 for the Board to consider. Tax credit applications -- tax
16 credit applicants -- I'm sorry -- are required by statute
17 to notify certain entities such as neighborhood
18 organizations and elected officials of their pre-
19 application or application when it is filed. In general,
20 if notifications are made as part of the pre-application
21 process, then re-notification of full application is not
22 required. However, re-notification can be triggered in
23 certain circumstances.

24 This version of the QAP removes a previous
25 requirement to re-notify if there is an increase in density

1 of more than 5 percent between pre-application and full
2 application. This was removed based on the reasoning that
3 applicants do not always have a completed survey at pre-
4 application and instead must rely on appraisal district
5 data to calculate density.

6 Because this data is not always accurate, one
7 commenter expressed reasonable concern that an application
8 might be terminated if the correct acreage from the survey
9 results in a difference in density that would have re-
10 triggered -- would have triggered re-notification. When
11 removing this requirement from the QAP, the requirement to
12 include density at all in the application notification was
13 mistakenly deleted.

14 Staff believes that density should still be
15 included in the notification itself, and therefore,
16 suggests that the Board reinstate this language in 10 TAC
17 11.203(3)(A)(vii) of the QAP.

18 The second correction relates to the required
19 mitigation for schools with low ratings that are considered
20 to be what's called a neighborhood risk factor. If an
21 application is proposed in the attendant zone of one of
22 these schools, certain mitigation actions are required.

23 Among these requirements, the applicant must
24 commit to providing an after-school learning center that
25 offers a minimum of 15 hours per week of on-site,

1 education-based services. The header section of this part
2 of the QAP requires that this mitigation be provided for
3 the duration of the affordability period.

4 However, the subparagraph that addresses the
5 after-school learning center states that it is only
6 required until the school achieves the acceptable grade.
7 This conflict in language was an oversight and staff
8 recommends that the after-school program be required for
9 the duration of the affordability period.

10 The recommended change here is for 10 TAC
11 11.101 -- and this is a long one -- (a)(3)(D)(iii)(II) to
12 be modified to delete the phrase, "until such time the
13 school(s) achieves a rating of A, B, or C."

14 This concludes my remarks. Again, there aren't,
15 you know, too many changes to the QAP versus what you heard
16 in September. But I'm happy to answer any questions that
17 you might have.

18 MR. VASQUEZ: Okay. Do any Board members have
19 any questions for Mr. Campbell at this time?

20 (No response.)

21 MR. VASQUEZ: I see at least one public comment.
22 Why don't we move ahead to the public comment? If you're
23 going to be -- if y'all can come up here to the front, and
24 I guess, Walter, do you want to start out?

25 We did that -- put a whole thing. We got that

1 covered. As a reminder, the Eccles rule is still in
2 effect.

3 Walter, go ahead.

4 MR. MOREAU: All right.

5 MR. VASQUEZ: Please identify yourself for the
6 record.

7 MR. MOREAU: I'm Walter Moreau, the Director of
8 Foundation Communities. Thank you for the chance to
9 comment, and thank you for all the investment that you've
10 made in our communities. We provide housing for about
11 8,000 residents that would otherwise be priced out of
12 Austin and North Texas.

13 I have a very specific request in the rules.
14 We're under construction of our Parker Lane United
15 Methodist Church Apartments. It was an old church site.

16 It was one of those weird projects where it got
17 an award in 2021. There was an honest mistake and error in
18 the ranking, and there were projects. We were one of three
19 that got an award, and then got it taken away, and the
20 Board addressed that by giving us a forward commitment for
21 2022.

22 If you do supplemental credits, which -- in the
23 QAP, it's only for the 2021 awards, so we can't -- our
24 construction costs have gone up, like everyone else's.
25 We're asking that it include the forward commitments for

1 2022.

2 We're in the same timeframe, same construction
3 costs constraints. We could only get the 15 million in
4 credits from 2021. One way we've closed the gaps of the \$6
5 million construction increase is, we did get an award a
6 year ago of National Housing Trust Fund dollars, but
7 there's no contract on that yet. We had to escrow those
8 funds so we could get construction started a couple of
9 months ago.

10 I know it's really minor. It only affects us
11 and one other project, but it's a couple million-dollar
12 change.

13 MR. VASQUEZ: There's always that one project,
14 that one applicant that just can't fit in the --

15 MR. MOREAU: It's one of those snafu, got-you
16 kind of situations.

17 MR. WILKINSON: Yeah. I don't even think we
18 knew we were excluding the two forwards from
19 supplemental --

20 MR. CAMPBELL: We received comment on it. Yeah.

21 MR. WILKINSON: Okay.

22 MR. CAMPBELL: (Speaking from audience.) We
23 wanted [inaudible] 2021 in this draft.

24 MR. WILKINSON: Yeah. I would have thought
25 awards that were received in 2021, whether they were 2021

1 allocation or forwards -- I would be fine, fixing this.

2 MR. VASQUEZ: Would -- I mean, I'm saying, would
3 this -- this sounds like an easy tweak --

4 MR. MOREAU: Yeah.

5 MR. VASQUEZ: -- whether it's adding that
6 received --

7 MR. MOREAU: Correct.

8 MR. VASQUEZ: -- and that is not a material
9 concept change. I mean, that's the intent of -- I think
10 the intent of our rules was to accommodate this. Okay.

11 We have no lawyerly objections to this? Of
12 course we do.

13 MR. ECCLES: I suppose not.

14 MR. VASQUEZ: Okay. Well, I mean -- okay. I
15 mean -- okay. Well, at the end, I think we're going to
16 have an ultimate motion noting these items, and then
17 whatever we disagree with here.

18 So next?

19 MR. FOGEL: This is related. I'm the other
20 developer with the same project, and I was just -- Michael
21 Fogel with Trinity Housing Development. And I would just
22 add, and I think y'all know this, but these two deals were
23 submitted in 2021.

24 They had 2021-4 commitments, 2021 applications
25 with the same assumptions as the other 2021 deals at the

1 same time. So there wasn't, you know, updated
2 applications. So you know, as such, we made the
3 assumptions of costs at that time, you know, which were
4 appropriate at that time.

5 So we're just asking to be treated the same as
6 the other deals that -- it's a unique situation. So that's
7 all.

8 MR. VASQUEZ: Okay. Yeah. Great, Michael.
9 Thank you for --

10 MR. FOGEL: Yes, sir.

11 MR. VASQUEZ: Sounds like we're going to
12 accommodate y'all.

13 MR. FOGEL: Right. Thanks.

14 MR. VASQUEZ: That was our intent. Okay.

15 MS. MEYER: Good morning, Board, Chairman. My
16 name is Robbye Meyer, and I'm speaking to you as the chair
17 of the QAP and Development Committee for Rural Rental
18 Housing. We represent 660 rural properties, over 20,000
19 units, and over 33,000 residents in the state of Texas.

20 The Association does appreciate the Board and
21 staff's recognition of rising costs in making those
22 adjustments in the rules. However, it has been a
23 disappointing year for rule-making for the Association, as
24 they tried in good faith to make rule changes reasonable
25 for the Association.

1 The Association met with staff early on in this
2 process and were specifically asked by staff what changes
3 we would like to see made and what would benefit our
4 Association. And we had three specific areas that we
5 addressed.

6 One was the elimination of an exemption that was
7 put into the QAP for residents with special housing needs.

8 When this point item was added in 2021, USDA developments
9 were exempted. In 2022, that exemption was eliminated with
10 no reason for the exemption.

11 USDA was asking for that exemption to be
12 reinstated, because USDA developments are located in areas
13 that don't have continuum of care and don't have local
14 homeless service providers that we could partner with in
15 order to provide those services, and those units are being
16 held open for no reason for six months.

17 The second was readiness to proceed. USDA
18 developments are occupied rehabilitations. The majority of
19 those developments are rehabbed with tenants in place.

20 So those units are never taken out of service,
21 so there's nothing to get ready to proceed. So it doesn't
22 really make sense for readiness to proceed to apply to USDA
23 developments. Also, the closing mandate for readiness to
24 proceed is November 30, which is a no-win situation for
25 USDA owners, because that is in the control of the USDA

1 process.

2 MR. VASQUEZ: Robbye, before you go on, could
3 you repeat the first half of that point two that you just
4 described?

5 MS. MEYER: The readiness to proceed or the
6 homeless one?

7 MR. VASQUEZ: The readiness to proceed --

8 MS. MEYER: The readiness to proceed --

9 MR. VASQUEZ: -- that doesn't apply, that -- not
10 the date -- the November date. That's -- what you said
11 right before that.

12 MS. MEYER: Okay. So there are rehabilitation
13 developments that are occupied, and most developments
14 don't -- we rehabilitate with tenants in place. So we're
15 not relocating them so we don't take units out of service.

16 So the units are -- I mean, there's no readiness to
17 proceed like you would have for a new construction, because
18 you're not trying to get units in service earlier, because
19 they're never taken out of service.

20 So that point -- it doesn't make sense for a
21 readiness to proceed -- you're not trying to get something
22 in service quicker, because it's already in service.

23 (Buzzer sounds.)

24 MR. VASQUEZ: Don't worry about that one. Okay?

25 MS. MEYER: So that -- I mean, that's the

1 reason, because it just -- it doesn't make sense for --

2 MR. VASQUEZ: Okay. Okay. All right. I'll ask
3 staff if there's any other twist on that portion of it.

4 MS. MEYER: Okay.

5 MR. VASQUEZ: And also, we understand the date
6 on the USDA's --

7 MS. MEYER: Correct. That -- our hands are
8 tied on that one. We don't have any control over that.

9 The last one was an exemption under neighborhood
10 risk factors that was an exemption for existing
11 developments with encumbered TDHCA LURAs for its school
12 scores. That's been an exemption for several years, and
13 that exemption is being removed for 2023 developments. We
14 asked for that exemption to be put back in place, again,
15 for developments that are already in existence, and now
16 that exemption is being removed.

17 These seem to be pretty easy requests for TDHCA,
18 for specific set-aside that affected a nominal 5 percent of
19 the State's allocation. I appreciate your time and the
20 opportunity to make public comment once again, and we
21 appreciate your consideration on our comments.

22 MR. VASQUEZ: All right. Hang on. So on the
23 school exemption, you're looking for an exemption for --
24 where the project is already --

25 MS. MEYER: Right.

1 MR. VASQUEZ: -- there, already in existence?

2 MS. MEYER: And it's been in a QAP for several
3 years, and that exemption was eliminated this year, not
4 specifically for USDA developments, but for developments
5 that had existing -- that were encumbered by TDHCA LURA.
6 They've had an exemption for several years, and that
7 exemption was eliminated this year -- well, for 2020, going
8 into 2021.

9 MR. VASQUEZ: Okay.

10 MR. WILKINSON: The school mitigation was paused
11 for COVID --

12 MR. VASQUEZ: Right. But I thought we recently
13 did -- I thought we did put something in place. If a
14 development -- if it's a re-development and --

15 MR. CAMPBELL: (Speaking from audience.) Crime
16 and poverty, yes --

17 MR. VASQUEZ: Was it crime and poverty? It
18 wasn't for schools?

19 MR. WILKINSON: The schools are still there.

20 MR. CAMPBELL: It was not for schools. That's
21 correct.

22 MR. VASQUEZ: Okay.

23 MR. WILKINSON: It's about taking action with
24 the after-school program, so they continue to help the
25 kids.

1 MR. VASQUEZ: Yeah. Okay. So you can still put
2 in a -- it's an easy mitigation that there can be an after-
3 school program or something to that effect that gets rid of
4 the --

5 MS. MEYER: Well, it seems easy for a normal
6 development. But when you're talking about a USDA
7 development, those are on limited budgets that are set by
8 USDA. There's not a line item in USDA that you can say,
9 okay, now we have to provide after-school tutoring.

10 That's -- USDA is a different animal from
11 anybody else. And those are very limited budgets. So if
12 you're asking a USDA development in a small, rural town
13 that has 26 units or 30 units or however many it is, and
14 you're asking USDA to now provide 15 hours a week during
15 the school year -- to provide after-school tutoring, you've
16 got to have a line item budget for that.

17 And USDA doesn't have a line item budget for
18 that. It's a very limited budget. That's the reason why
19 we were asking that, for those existing developments that
20 already had a TDHCA LURA, to allow that exemption to stay
21 in place.

22 MR. WILKINSON: So if they couldn't afford to do
23 the after-school program, I mean, would it be just that
24 those developments that have schools that have D or F would
25 just not qualify for tax credits? I mean, what would the

1 end result be?

2 MS. MEYER: Well, we wouldn't -- we probably
3 wouldn't bring the forward, because you're asking us --
4 even the mitigation is going to make it a financial
5 hardship on those developments.

6 MR. WILKINSON: So we wouldn't even see the
7 application, probably.

8 MS. MEYER: Probably.

9 MS. FARIAS: Mr. Chairman, when I ran the
10 housing authority, we had the regular housing authority
11 that's subsidized by HUD through the State Department for
12 the State agency, but we also had the Department of --
13 USDA.

14 And she is correct. It is totally, totally
15 different. And I remember, I posed the question to HUD:
16 can we use HUD monies? And he says, oh, don't you dare do
17 that.

18 That's commingling, and you will end up in a lot
19 of trouble. And since you posed the question, the next
20 time we go and do an audit, this is the first thing we're
21 going to look at.

22 So you -- even when you try to say, "but," they
23 go, "no." That's the quandary.

24 MR. VASQUEZ: Okay.

25 MS. MEYER: And it's not that we don't care

1 about schools. It's just those developments are already
2 there. They've been there for years.

3 Can't -- we're trying to preserve housing that
4 has been in the portfolios since some of those -- since the
5 80s. And we're trying to preserve housing, but I mean, we
6 don't have that opportunity for some of those that are in
7 areas --

8 MR. VASQUEZ: I think --

9 MS. MEYER: -- unfortunately, that don't have
10 the best schools.

11 MR. VASQUEZ: Okay. Thank you for the comment.

12 We'll go through some more comments, and then I'm sure
13 we'll have some discussion here.

14 MS. MEYER: Thank you.

15 MR. WILKINSON: And Cody, you know, before we
16 make the final motion, or the Board does, I think we need
17 to know, of these oral comments, how many did we receive
18 formal comment on? Like, did we get something from Robbye
19 that outlined those two things --

20 MR. CAMPBELL: Yeah, we did.

21 MR. WILKINSON: -- in formal comment? Okay.

22 MR. CAMPBELL: Yes, we did.

23 MR. WILKINSON: Yeah.

24 MS. MYRICK: Good morning. Lora Myrick with
25 BETCO Consulting. I'll make this really brief. I'm sure

1 everyone is going to be pretty tired of hearing this, but
2 I'm here to talk about readiness to proceed.

3 We did ask via TAP and we did ask through BETCO
4 Consulting that we remove readiness to proceed. We've
5 always wanted it removed. But we did say that if possible
6 that we would like to table readiness to proceed this year.

7
8 There is a lot of hardship. I am -- you've seen
9 firsthand the hardship that many developers have had. Half
10 of the 2021 -- almost half of the 2021 allocations received
11 force majeure. And we're hoping to table the readiness to
12 proceed.

13 And if the goal is get units on the ground
14 faster, I think that what we've learned in the last few
15 years is that closing early is not getting us there. And
16 so we need to rethink about how we go about getting units
17 on the ground faster.

18 And we did make one suggestion, that we table it
19 for this year and we come back and we talk to staff and we
20 work through together with staff maybe an incentive to get
21 units on the ground earlier. We've been trying to close
22 earlier and get things done that way, but you can close
23 early all day long. It's the things that happen in between
24 your closing and when you place in service that things
25 start to get out of hand.

1 Costs go up. You have permit issues. Waivers
2 aren't quite finalized. You have all of those things
3 happen in between, not at the beginning.

4 So perhaps we should look at a more incentive
5 program. Our syndicators give us upward adjusters when we
6 finish things earlier, when we do things that are, you
7 know, above and beyond what we agreed to do in our LPA.
8 Maybe we should look at something like that.

9 If you place in service three months early, you
10 get bonus points, maybe three months, six months, nine
11 months. And you go about it that way. That gives the
12 developer an incentive to use those bonus points and to get
13 units on the ground earlier, rather than having something
14 that's very difficult for a developer, especially in times
15 that we're facing right now and then be punitive on top of
16 it.

17 So we would like to see readiness to proceed be
18 tabled and maybe us look at it, maybe turn it on its head.

19 It's not that we don't want to get units on the ground
20 sooner. Of course we do. But we also want to get to a
21 place where it can actually be achievable.

22 Those are my comments. Thank you.

23 MS. FINE: Hi. Good morning. Tracey Fine with
24 National Church Residences.

25 I want to echo with the last two speakers,

1 Robbye and Lora. Obviously, I support full removal or
2 postponement of readiness to proceed. But I really want to
3 echo Robbye's comments that, should there be a carve-out
4 for existing properties because they are already on the
5 ground, already being occupied, that the carve-out be for
6 all at-risk rehabs, and not just USDA.

7 Those HUD deals that are occupied rehabs are
8 very much in the same boat as USDA. USDA does have their
9 own separate carve-out in at-risk, but the same issue
10 applies. If the incentive is to get units on the ground
11 sooner, those units are on the ground, and we also do in-
12 place rehabs.

13 So I appreciate you considering that.

14 MR. VASQUEZ: Tracey, was that specifically for
15 schools or just --

16 MR. WILKINSON: Readiness.

17 MS. FINE: Readiness. Yeah. As the --

18 MR. VASQUEZ: Okay. No. I'm saying, the second
19 part, where you --

20 MS. FINE: So --

21 MR. VASQUEZ: -- talked about the --

22 MS. FINE: -- I'm not going to echo --

23 MR. VASQUEZ: -- ones already in existence.

24 MS. FINE: I'm echoing --

25 MR. VASQUEZ: I guess that's --

1 MS. FINE: -- Robbye's comments on the readiness
2 to --

3 MR. VASQUEZ: Yeah. Okay.

4 MS. FINE: -- proceed point specifically.

5 MR. WILKINSON: She wants a carve-out for --

6 MR. VASQUEZ: Yeah. Okay.

7 MS. FINE: Yeah. I do --

8 MR. VASQUEZ: Okay.

9 MS. FINE: -- senior property, so I don't look
10 at schools.

11 MR. VASQUEZ: We understand.

12 MS. FINE: I appreciate it.

13 MR. VASQUEZ: Okay. Thanks, Tracey.

14 Anyone else before we bring Cody back up?

15 MS. SAAR: Hi. Kathryn Saar with The Brownstone
16 Group out of Houston.

17 I too have a "doesn't fit in the box"
18 development. I mentioned this at the last Board meeting.
19 Richmond Senior Village was awarded credits in 2020.

20 It currently is un-eligible -- ineligible for
21 supplemental credits, but we're in the same situation. We,
22 through no fault of our own, were unable to close last
23 September. We were seven -- we were, like, two weeks from
24 closing, and a tenant of the existing office building filed
25 suit against the landlord that we were buying the property

1 from.

2 It shut everything down. We were delayed for a
3 year. We received force majeure treatment, but because of
4 the way the rule is currently written, we're ineligible for
5 supplemental credits. And I believe we're the only case
6 like this, but we would ask that we become eligible for
7 supplemental credits.

8 MR. VASQUEZ: So was this a '21 award or a --

9 MS. SAAR: It's a 2020 --

10 MR. VASQUEZ: -- '20? 2020 award. Then --

11 MS. SAAR: -- but it received force majeure.

12 I too echo the comments about readiness to
13 proceed. It's difficult in normal situation to achieve
14 readiness, but now, we're applying it across the board to
15 the whole state, and it's -- you're going to receive a lot
16 of requests next year from people saying, please don't
17 penalize me because I couldn't meet readiness for whatever
18 reasons.

19 Thank you.

20 MR. VASQUEZ: Thanks, Kathryn.

21 MR. NAUL: Hello. I'm Alan Naul. I'm a trustee
22 with the Atlantic Housing Foundation in Dallas.

23 I also want to echo the readiness to proceed
24 problems. We've got an older project in Irving that I
25 think would be ideal for next year's cycle to renovate.

1 The city would be very supportive, but it's also got a
2 unique financing structure. It's got tax-exempt bonds that
3 would have to be removed, but we can't start that until we
4 would get the new financing approval, and there's
5 absolutely not enough time to do it.

6 So my prediction is, what readiness to proceed
7 will do: everyone will claim the points and hope for the
8 best, and just like she said, they'll be back to you
9 telling you why it's not their fault. And what I've
10 learned from this process: there's always something that
11 can go wrong in that timeframe with this financing
12 structure.

13 We've got close to 2 billion in assets all over
14 the country, and our folks are -- even though we're based
15 in Dallas, they've really given up on taking advantage of
16 tax credits in Texas because of issues like this. So our
17 main focus has been in the Southeast the last few years.

18 And I've really been trying to get them back to
19 Texas. And there's no way they would apply if the
20 readiness to proceed language is still in. So I'd ask you
21 just to get rid of it or table it, as the other speaker
22 said.

23 Thank you.

24 MR. KROCHTENGEL: Zachary Krochtengel. I wasn't
25 planning on making any comments today, but I went through

1 the roundtables pretty regularly and we talked about a lot
2 of project set-asides.

3 So the highest-scoring supportive housing
4 project is now going to be automatically awarded. The
5 highest-scoring CRP in certain regions is automatically
6 awarded, and then the highest-scoring Neighborhood Choice
7 HUD recipient is also going to be awarded. At every
8 roundtable, we heard how difficult it was to get awarded a
9 HUD Neighborhood Choice grant, and then how difficult it
10 was to get tax credits in those areas.

11 And I kind of took that at face, but then today,
12 hearing that there was actually a 2021 9 percent award in
13 that HUD Neighborhood Choice area, there's also a 4 percent
14 award under construction. And now, we're saying that the
15 next application cycle, there's automatically going to be
16 another award in that same area, it really seems like we're
17 circumventing a lot of the values of spreading and
18 dispersing housing for this one specific area in Ft. Worth.

19 And that just seems very antithetical to the
20 rules and what we're really trying to do. And then hearing
21 that they have six further phases planned gives me some
22 pause, that are we going to be giving an automatic
23 allocation every year for the next six years to fill up
24 that neighborhood.

25 It's just something that I, at face, took, you

1 know, as -- this is so hard to get tax credits in this
2 area, but now hearing that two projects are already under
3 construction, there's a guaranteed third project that's
4 coming, because it's automatically going to be awarded
5 when, next year.

6 There's only going to be probably six awards in
7 Region 3. So if you take those three set-asides, we're
8 actually leaving it up to possibly only three awards that
9 are really going to be, I would say, held to a standard to
10 comply with all of the rules.

11 Because if you actually know that you're going
12 to get a set-aside award for you, you don't have to do 30
13 percent units. You don't have to do cost per square foot.

14 You don't have to do a lot of the point-seeking things
15 that create what I would say is a good project that's
16 driven by policy and driven by this rule-making procedure.

17 Because you know you're going to get an award
18 just based on your geographic location, you have a huge
19 advantage. And I think it also really waters down a lot of
20 the goals of what we're trying to do through the QAP and
21 through the scoring to get the best projects on the ground.

22 Thank you.

23 MR. WILKINSON: Do you want me to call it? I
24 would just say that it's not just so much that it's so hard
25 to get a tax credit where a Neighborhood Choice award is,

1 but that it's hard to get one the next year because of our
2 dispersion requirements.

3 And so they're on this clock to create so many
4 units in so much time for the HUD award, that that's why we
5 put the measure in, so that they could get a next phase in
6 time.

7 MR. VASQUEZ: But the following year? I mean,
8 year after year after year?

9 MR. WILKINSON: I --

10 MR. VASQUEZ: I guess it's --

11 MR. WILKINSON: -- don't know the extent --

12 MR. VASQUEZ: -- we didn't contemplate it --

13 MR. WILKINSON: -- definitely want to hear from
14 her.

15 MS. LEMONS: Hi. Mary Margaret Lemons, Fort
16 Worth Housing Solutions. So Choice Neighborhood
17 implementation grants are very competitive across the
18 nation.

19 We were one of four that got awarded for FY
20 2019, awarded in 2020. And we do have quite a few
21 threshold items that we have to meet for HUD to even grant
22 you a site visit and then make the final award. And not
23 only are we complying with TDHCA development requirements,
24 but we're also complying with HUD requirements at the same
25 time.

1 So we kind of have a dual track for all of our
2 developments to be reviewed and approved. And so we don't
3 get to just not put in 30 percent units. That's the people
4 we serve.

5 So our public housing residents are going back
6 to these new neighborhoods that we're creating. And we
7 have a six-year grant cycle with HUD, so if we don't use
8 that money, it goes back to Treasury. So we are under the
9 gun to get these developments done.

10 And we do need priority, because our cities, our
11 municipalities, and the federal government have given these
12 projects priorities. And if the State doesn't align with
13 that, it's really a mismatch. I mean, we cannot deliver
14 what we need to for HUD if we do not have the support of
15 TDHCA.

16 MR. WILKINSON: And a special consideration for
17 Choice Neighborhood areas. It's new, and it could be -- I
18 mean, you could yank it in a year or two if --

19 MS. MARTIN: Hi, there. Audrey Martin with
20 Purple Martin Real Estate. I also wanted to comment on the
21 CNI award language and just provide a little clarification
22 that, when trying to deliver the number of units that are
23 required under the CNI in the timeframe required, one of
24 the most problematic things that appears in the QAP without
25 the new language that is proposed is the underserved area

1 scoring item.

2 So that's one of the things that the -- that
3 makes it difficult, probably impossible, to achieve an
4 award in subsequent years, as you pursue additional phases.

5 And that's because you received a scoring incentive for
6 developing housing in a census tract that has not had a
7 prior tax credit award. So you can't access those points
8 after these first couple of phases that have been awarded.

9

10 And furthermore, not every phase is going to use
11 9 percent credits. I want to reinforce that as well.

12 MR. VASQUEZ: Mr. Campbell, why don't you come
13 back up here?

14 MR. CAMPBELL: Sure thing.

15 MR. VASQUEZ: And let's try to go down some of
16 these. I'm going to have to decipher my handwriting --

17 MR. CAMPBELL: Sure.

18 MR. VASQUEZ: -- and with my bad eye
19 combination, it's just -- this is going to be tough. Let
20 me start up just reviewing from the very beginning about
21 even your recommendations, your density notification
22 change --

23 MR. CAMPBELL: Yes, sir.

24 MR. VASQUEZ: -- or notification of a change.
25 We're saying -- you're asking for us to --

1 MR. CAMPBELL: So as part of the required
2 notification, we have historically required developers to
3 inform notification recipients of the density at the
4 development, and that's measured in units per acre.

5 MR. VASQUEZ: Right.

6 MR. CAMPBELL: The potential issue here is that
7 if the developer is working from bad information about the
8 acreage of the site at pre-application, there could be a
9 re-notification that should have been required that would
10 end up with their application getting terminated. So we
11 removed the re-notification requirement, but we do want to
12 continue requiring that density itself be part of the
13 notification, and so that's what we're suggesting be put
14 back into the QAP.

15 MR. VASQUEZ: They're requiring the re-
16 notification if there's a change.

17 MR. CAMPBELL: That when they send the
18 notification, it must include density. So --

19 MR. VASQUEZ: Okay.

20 MR. CAMPBELL: -- okay.

21 MR. VASQUEZ: And if we're requiring after-
22 school programs, we want them for the duration --

23 MR. CAMPBELL: Of the affordability period.
24 Yes, sir.

25 MR. VASQUEZ: Okay. Mr. Moreau and Mr. Fogel

1 talked about, again, these forward commitments --

2 MR. CAMPBELL: Yes, sir.

3 MR. VASQUEZ: -- that were in -- we're going to
4 be able to say --

5 MR. WILKINSON: Yeah. They -- I mean, it's like
6 they were part of the '21 round, but they got 2022
7 forwards, and so they want to be treated like the rest of
8 the 2021 round.

9 MR. VASQUEZ: So they --

10 MR. WILKINSON: Kathryn's was a little
11 different.

12 MR. VASQUEZ: Okay.

13 MR. WILKINSON: She was -- maybe the last of the
14 2020s? I don't know.

15 MR. CAMPBELL: That's a good question, and I
16 don't know that off the top of my head. The way that
17 Subchapter F related to supplemental credits, as written
18 right now, is that in order to be eligible you would have
19 to have received an award from the 2021 competitive
20 ceiling. And so a forward commitment that was made in 2021
21 would have gotten 2022 credits.

22 So they don't actually qualify because their
23 award didn't come from the 2021 ceiling. So if you'd like
24 to make that change, we could do that pretty easily. We
25 would just change the eligibility from the 2021 ceiling to,

1 you know -- maybe we would just append or forward
2 commitments made during that round, into that paragraph.

3 MR. VASQUEZ: Yeah. I mean, I don't -- that
4 seems very reasonable.

5 MR. CAMPBELL: Sure.

6 MR. VASQUEZ: And so we're going to make --
7 okay. That -- okay.

8 And skipping ahead to Kathryn's, it doesn't fit
9 into that category as well, or does it?

10 MR. CAMPBELL: It does not. No. I believe her
11 deal is a 2020 award that has run into some issues that
12 have delayed construction, and they are asking that that
13 one be eligible to apply for credits as well. Because it
14 is not a 2021 award, it is not eligible as the QAP is
15 currently written.

16 MR. VASQUEZ: It's not eligible for supplemental
17 credits?

18 MR. CAMPBELL: That is correct. Yes, sir.

19 MR. VASQUEZ: But we could -- now, I guess the
20 force majeure is a whole different story. Right? Okay.
21 So --

22 MR. WILKINSON: But they already have a force
23 majeure.

24 MR. VASQUEZ: Yeah.

25 MR. WILKINSON: Yeah. You know, so we already

1 had a supplemental round for '19 and '20 deals, but because
2 of whatever complications, they didn't apply at the time, I
3 guess.

4 MR. VASQUEZ: Could this be one of those -- give
5 them back and ask for them again?

6 MR. WILKINSON: Jeanna, please.

7 MS. ADAMS: Jeanna Adams, Director of Real
8 Estate Analysis.

9 I'd just like to point out that Kathryn's
10 situation is different. It's not brought on by COVID.
11 These supplemental credits are supposed to be for increases
12 in things that happened because of COVID cost. Litigation
13 from a tenant has nothing to do with COVID.

14 I personally don't think it's the Department's
15 responsibility to make whole every situation. You would be
16 opening up the Department to have other people come back
17 and talk about other random things that have caused them
18 issues. I just want to make it very clear that
19 supplemental credits were for direct COVID cost, not
20 litigation issues for a specific deal.

21 MR. VASQUEZ: That's a good point. And hang on,
22 Kathryn. Since we're talking about the rules here, I hate
23 making all these fine-tune adjustments for every different
24 possible, weird -- and then that gets baked into the QAP.
25 And then next year, someone tweaks that and that just

1 creates this --

2 MR. WILKINSON: Those come back like a --

3 MR. VASQUEZ: -- monstrosity.

4 MR. WILKINSON: -- heart attack.

5 MR. VASQUEZ: Yeah. I mean, it just sounds to
6 me like that particular issue needs to be figured out,
7 worked out, outside -- the QAP is not the place to be
8 working on fixing that.

9 MR. ECCLES: Yeah.

10 MR. VASQUEZ: Does that sound --

11 MR. ECCLES: From a rule-making standpoint, I
12 don't know how you would distinguish that from every other
13 2020 award that got force majeure.

14 MR. CAMPBELL: Sure. I mean, I was going to
15 say, we would almost have to write that specific deal into
16 the QAP --

17 MR. VASQUEZ: Yeah, yeah. And I'd prefer staff
18 figures out some other way to skin that cat. Yeah. Okay.

19 Okay. Let's keep going down the discussion
20 list. The Rural Rental Association -- okay. The continuum
21 of care in six months -- right now, that just keeps it
22 open.

23 It's written for six months in the rural area,
24 as opposed to 12 months --

25 MR. CAMPBELL: That is correct.

1 MR. VASQUEZ: -- in urban areas or non-rural
2 areas. And what's the staff's feeling about that?

3 MR. CAMPBELL: So there is a statewide continuum
4 of care. It's the Texas Homeless Network. I can't speak
5 to how much the Rural Rental folks have worked with them.

6 The intention of special housing needs is a good
7 intention. It is, you know, intended to help people move
8 out of homelessness. I think staff's position would be to
9 encourage the rural housers to maybe work a little with the
10 Texas Homeless Network and maybe they are. I'm not sure if
11 Robbye is still around.

12 MR. WILKINSON: Yeah. Remind that this was put
13 in by the Governor to help homelessness generally, and both
14 for urban and rural. So yeah. We could have conversations
15 next year.

16 If the Texas Homeless Network is just incapable
17 of making these referrals, you know, maybe staff
18 recommendation would change. But for now, I think we'd
19 want to keep it as is. There's already special
20 consideration at six months, rather than a year.

21 MR. VASQUEZ: And the Governor's Office was on
22 board with that? He -- well, he put --

23 MR. WILKINSON: -- whatever thinking, but --

24 MR. VASQUEZ: -- they put that in.

25 MR. WILKINSON: -- oh, sorry. Yeah.

1 MR. VASQUEZ: I mean, that wasn't like we --

2 MR. WILKINSON: Right. Yeah.

3 MR. VASQUEZ: Okay. The readiness to proceed on
4 the rehab items.

5 MR. CAMPBELL: Yes, sir. So I believe Robbye's
6 point that specifically --

7 MR. VASQUEZ: It's already --

8 MR. CAMPBELL: -- for the USDA set-aside,
9 because they don't take units offline, readiness to proceed
10 is maybe not the most sensible point category to have for
11 them. I don't find that to be a completely incoherent
12 point. So you know --

13 MR. WILKINSON: And her second point was that --

14 MR. VASQUEZ: The November 30.

15 MR. WILKINSON: Yeah, the November 30. Because
16 USDA is so slow, that's unrealistic. Relatedly, Tracey
17 Fine was like, well, what about just all the at-risk, you
18 know, if it's a HUD rehab? So the two different requests,
19 but similar requests.

20 MR. VASQUEZ: Okay. Well, let's take the
21 date -- let's take the rehab of existing properties. I
22 mean, how do we even enforce the readiness to proceed on
23 something that's already there?

24 MR. WILKINSON: It's treated the same, you know,
25 new construction or rehab. It's all treated the same. If

1 they don't close by November 30 --

2 MR. CAMPBELL: Right.

3 MR. WILKINSON: -- you can do a one --

4 MR. CAMPBELL: It's a one-point penalty.

5 MR. WILKINSON: One- or two-point penalty?

6 MR. CAMPBELL: I believe it's one.

7 MR. WILKINSON: One-point penalty --

8 MR. CAMPBELL: Sure.

9 MR. WILKINSON: -- or even go so far as to not
10 let them in the next round. That's how it was originally
11 written. Do you remember, off the top of your head?

12 MR. CAMPBELL: I know that there is a point
13 penalty. So procedurally, it would make sense to -- I
14 mean -- and obviously, everybody on the Board knows a
15 single point can make or break a round. So that's a pretty
16 substantial penalty if it is levied.

17 Procedurally, it would be pretty simple for
18 staff to exempt either the at-risk set-aside or the -- just
19 the USDA set-aside. I do think it gets a little bit
20 hairier when we extend into rehabs across our regional set-
21 asides. You know, do we automatically grant them that
22 point?

23 Do we -- you know, it -- because they're
24 competing against new construction deals in that case,
25 whereas in the at-risk set-aside, you only have

1 rehabilitation development. So there is a pretty sensible
2 procedural path to --

3 MR. WILKINSON: Well, I think our requests have
4 only been for USDA rehab and at-risk rehab --

5 MR. CAMPBELL: Right.

6 MR. WILKINSON: -- and not rehab generally.

7 MR. CAMPBELL: That is correct. Yeah.

8 MR. WILKINSON: Right? Megan, did you want
9 to --

10 MS. SYLVESTER: Just -- so we --

11 MR. VASQUEZ: Megan who?

12 MS. SYLVESTER: Megan Sylvester.

13 MR. WILKINSON: Deputy --

14 MS. SYLVESTER: Deputy General Counsel. But
15 today, in my other hat, which is Federal Compliance
16 Counsel.

17 So rehab is not always a rehab. Sometimes,
18 rehab is reconstruction and they do take those units
19 offline. We have one we're dealing with right now. So
20 just to kind of throw that in there.

21 Did you mean to include just strictly rehabs
22 where units are not off of line, or did you mean
23 reconstruction too, which is where sometimes they do take
24 units offline for quite a long period of time?

25 MR. VASQUEZ: I think the point would be that

1 they're --

2 MR. WILKINSON: Not taken offline.

3 MR. VASQUEZ: -- they're not taken offline. You
4 know, they're --

5 MR. WILKINSON: Right.

6 MR. CAMPBELL: Sure.

7 MR. VASQUEZ: Is that an allowable edit to
8 our --

9 MR. ECCLES: As it's been loosely described, it
10 would be carving out ready to proceed for at-risk, for
11 rehabs where the units are not being taken offline.

12 MR. MARCHANT: Write it down.

13 MR. ECCLES: I think that sounds long enough for
14 it to be legally -- yeah. I think we can work with that.
15 And here comes Tracey Fine.

16 MR. CAMPBELL: So is the Board recommending that
17 for those developments they would automatically get the
18 point or they would be exempt from the point? Because if
19 we have, within at-risk or USDA, developments that are
20 taking units offline, competing with developments that are
21 not taking units offline, we have to create scoring parity
22 between those two groups of deals.

23 Procedurally, to me, it seems like the most
24 sensible thing to do would be, if we are going to create
25 this exemption, to just exempt either one or both set-

1 asides entirely from the readiness to proceed point
2 category, if that is --

3 MR. WILKINSON: USDA is a subset of at-risk.
4 Right?

5 MR. CAMPBELL: Yes. So --

6 MR. WILKINSON: It could just be: at-risk is
7 exempt.

8 MR. CAMPBELL: It could be, yes.

9 MR. ECCLES: Won't they be outscored then by
10 those properties that are not exempt?

11 MR. CAMPBELL: Well, that's my point. We have
12 to --

13 MR. ECCLES: But they have a set-aside.

14 MR. CAMPBELL: -- maintain parity within each
15 set-aside.

16 MR. ECCLES: Within the set-aside.

17 MR. CAMPBELL: That is correct.

18 MR. ECCLES: Yes. And this is why we like
19 making rules in the midst of public comment here, as
20 opposed to five minutes before voting on it. I think,
21 within that, that we've discussed enough, that if that is a
22 motion to bring that parity about by creating such an
23 exemption, as has been described here, that we can probably
24 get that done before sending it off to the Governor's
25 Office.

1 If that's kind of loosely referenced in --

2 MR. BATCH: There was more comment on that
3 specifically?

4 MR. VASQUEZ: No. I think they nodded
5 agreement. Or no?

6 MS. FINE: Hi. I'm --

7 MR. VASQUEZ: Tracey?

8 MS. FINE: Tracey Fine, National Church
9 Residences.

10 I'm in favor of exempting the entire at-risk
11 set-aside. If it's going to be more complicated than that,
12 then I would comment. But it doesn't sound like that it's
13 going to be more complicated than that suggestion. Right?

14

15 Okay. Thank you.

16 MR. VASQUEZ: Okay. The --

17 MR. WILKINSON: The other commenter.

18 MR. VASQUEZ: Oh.

19 MR. GORMLEY: Wayne Gormley, co-chair of the QAP
20 Committee for Texas Affordable Housing Providers.

21 Again, just take a step back a little bit and
22 breathe on this one, because I've written this program
23 before. I've written these policies before. I know what's
24 before you.

25 This notice to proceed -- or readiness to

1 proceed is a big task, and I think, as you can clearly see
2 from the discussion that's going on here, there's a lot of
3 thought and process that needs to go around about
4 discussing what's in, what's out, what doesn't work, what
5 needs to happen. Because at the end of the day, you're
6 going to be forcing folks to dive for that exit on the
7 freeway, and the deals aren't going to make it.

8 And then we'll be dealing with -- do we wait?
9 The penalties. What do we do, going forward?

10 So a lot more thought needs to be put into this.

11 So that's why we were recommending that this be tabled and
12 a bigger discussion be had, as we go through how to
13 implement that policy.

14 MR. VASQUEZ: I mean, here at this point, we're
15 narrowing it --

16 MR. WILKINSON: That's seems to be the only
17 consideration --

18 MR. VASQUEZ: -- as far as specifically --

19 MR. MARCHANT: If they table it --

20 MR. VASQUEZ: Okay. What about the -- should we
21 move on, or not?

22 MR. MARCHANT: What subject are we on --

23 MR. VASQUEZ: Well, this is still on the --

24 MR. CAMPBELL: It's to proceed -- yeah --

25 MR. VASQUEZ: -- for the USDA --

1 MR. MARCHANT: I personally think if it's -- I
2 would -- readiness to proceed, the pure definition of it is
3 what?

4 MR. CAMPBELL: So it is the development -- we've
5 been through a couple of iterations within the QAP, but as
6 it's written right now, the development must be able to
7 close their financing by the last day of November in the
8 year of award. And if they fail to do that, there's
9 potentially a penalty that's levied against them in future
10 rounds --

11 MR. MARCHANT: Okay.

12 MR. WILKINSON: That you would have to vote on.
13 The Board would have to.

14 MR. CAMPBELL: Yes, and --

15 MR. MARCHANT: But we could suspend it or put a
16 moratorium on it for a year while they discuss it again?

17 MR. CAMPBELL: I would actually direct that
18 question to Beau.

19 MR. MARCHANT: That's the request that they're
20 making.

21 MR. WILKINSON: So it has been suspended for the
22 last couple years because of COVID. And so it went out for
23 comment, in the version of bringing it back. That's
24 another Governor's Office insertion, readiness to proceed.
25 So they could take it out as well. For sure they could.

1 MR. MARCHANT: But is there an alternative
2 penalty? If you didn't have the readiness to proceed, is
3 there another thing -- deadline they would meet that would
4 lose -- that would kick them out or put them in a line? I
5 mean, is there a backup to that?

6 MR. CAMPBELL: Sure. So federally, the program
7 has a couple of deadlines that they have to meet. There's
8 something called the 10 percent test, which is a deadline
9 by which they must have expended 10 percent of their
10 reasonably expected basis on the project.

11 That's generally pretty easy to get to. Once
12 you close on your land, you're about there. The big one is
13 what's called the placed-in-service deadline. So they have
14 until the end of the second calendar year after the award
15 is made to have that development up and running with the
16 certificate of occupancy, and if they --

17 MR. MARCHANT: So you get that backstop
18 incentive that's there, regardless of these up-front
19 incentives to close?

20 MR. CAMPBELL: The placed-in-service deadline is
21 a -- incentive is a good way to describe it. They actually
22 lose the award if they fail that placed-in-service
23 deadline. So --

24 MR. MARCHANT: And I -- you know, I would argue
25 that the economic situation, the interest rate raising,

1 the -- you know, all of the supply chain, all of the
2 problems we're suffering, are still a consequence of COVID,
3 and could justifiably be put back in as a continuation of
4 that justification.

5 MR. VASQUEZ: Or we could just change to a
6 search and replace for COVID, and put in "Biden."

7 MR. MARCHANT: Yeah. For sure, but yeah. I
8 mean -- so I mean, it's arguable that we're still in the
9 repercussions of COVID.

10 I mean, it's very early. We'll probably hear
11 that all year, won't we? So I'm sympathetic. I'm also
12 sympathetic to the comments that the gentleman made on the
13 back wall about the automatic -- but we're not on that
14 subject now.

15 MR. VASQUEZ: Okay. Well, we need to make sure
16 we have this set. Are we separating the November 30 for
17 USDA projects?

18 MR. WILKINSON: Well, we haven't received a
19 motion yet, but I think --

20 MR. VASQUEZ: Okay.

21 MR. WILKINSON: -- the idea was for the at-risk
22 set-aside in general to exempt -- yeah -- at-risk set-aside
23 on readiness to proceed --

24 MR. VASQUEZ: So that covers the USDA, which --

25 MR. WILKINSON: We can correct that.

1 MR. VASQUEZ: Okay.

2 MR. THOMAS: So just to be clear, the two things
3 with this topic that are before us are: we either carve
4 out the at-risk, provide the exemption for at-risk, which
5 would include the USDA projects; or to Mr. Marchant's
6 point, we extend the moratorium on the readiness to proceed
7 another year, and just take it up next year, as opposed to
8 dealing with it now.

9 That's kind of what the two options are.

10 MR. WILKINSON: Those are the two options being
11 discussed.

12 MR. THOMAS: Okay.

13 MR. VASQUEZ: My preference would be the first
14 one, just carve out --

15 MR. THOMAS: And we did go through the public
16 comment and everything, so --

17 MR. VASQUEZ: Okay. So that's what the ultimate
18 motion will include.

19 MR. CAMPBELL: Is -- exempting the at-risk.
20 Okay.

21 MR. VASQUEZ: Okay. And then the last part of
22 Robbye's -- the school exemptions for -- if all -- if
23 they're already in existence, if the project is already in
24 existence. Again, that seems very related to what the
25 Board discussed in some past meetings about giving some

1 exemptions for if it's already there.

2 If it's brand-new, we probably would not approve
3 it. But if it's already there, it makes sense to let them
4 improve the property. Right?

5 MR. WILKINSON: So her request is more narrow.
6 It's only for USDA deals because they're so small and
7 they're --

8 MR. VASQUEZ: Yeah. That's -- you can't --

9 MR. WILKINSON: -- so tight --

10 MR. VASQUEZ: -- have all the extra --

11 MR. WILKINSON: Yeah. But like, a nice, big,
12 urban deal that's, you know, a rehab, they should -- they
13 couldn't do --

14 MR. VASQUEZ: Okay. Well -- and I'm sorry. And
15 I guess I should have re-specified which -- I believe
16 Robbye was specifying. It's for those rural deals.

17 MR. WILKINSON: Yeah. But she left, so -- oh,
18 no. She --

19 MS. FARIAS: No, no. She's here.

20 MR. VASQUEZ: Okay. All right.

21 MR. WILKINSON: That's good.

22 MR. VASQUEZ: So if the project -- is there a
23 rural deal already in existence?

24 MR. WILKINSON: USDA.

25 MR. VASQUEZ: USDA.

1 MR. WILKINSON: To be more specific.

2 MR. VASQUEZ: Okay. So USDA is not -- yeah. I
3 want to say, rural --

4 MR. MARCHANT: -- going forward. I mean, if
5 it's a rehab where they're staying in place, USDA --

6 MR. ECCLES: It's still --

7 MR. MARCHANT: -- they wouldn't have to fulfill
8 the education --

9 MR. ECCLES: -- USDAs are rural still.

10 MR. VASQUEZ: Not all USDAs are rural. Not all
11 rural are USDA.

12 MR. WILKINSON: Right. Both --

13 MR. ECCLES: Both are true.

14 MR. WILKINSON: Because usually, it would have
15 been rural originally, but then, you know, Kyle grew up
16 around it --

17 MR. VASQUEZ: Right.

18 MR. WILKINSON: -- you know.

19 MR. VASQUEZ: So we're going to focus in on
20 USDA?

21 MR. CAMPBELL: So Robbye mentioned two things in
22 her speaking. One, she mentioned asking for this exemption
23 for USDA, and then she mentioned asking to have the former
24 exemption reinstated into the QAP. And the former
25 exemption related to any development that had an existing

1 TDHCA LURA on it.

2 And so I think staff would need direction from
3 the Board as to whether these schools would be exempt for
4 USDA or for anybody who has a current TDHCA LURA, because
5 those are kind of two separate concepts.

6 On the staff level, we did want to see school
7 mitigation provided by rehabs. You know, it's just an
8 after-school program. I think Robbye's testimony today
9 about the inability of USDA to provide that kind of
10 mitigation is compelling.

11 There might be a reason to provide that
12 exemption, but across the board, I don't know that staff
13 would recommend the exemption be waived -- I'm sorry -- the
14 mitigation be waived for all rehab developments.

15 MR. VASQUEZ: No. I'm not saying for --

16 MR. CAMPBELL: Oh, right, right.

17 MR. VASQUEZ: -- all. Okay? That's just for
18 USDAs in existence. Does that sound right?

19 MR. MARCHANT: Can I just get a clarifying
20 answer?

21 MR. CAMPBELL: Sure.

22 MR. MARCHANT: If a unit was done originally in
23 an area that was USDA, but when it was remodeled, that it
24 had lost the USDA designation because the town was a
25 certain size --

1 MR. CAMPBELL: I don't think it loses.

2 MR. WILKINSON: It doesn't lose --

3 MR. MARCHANT: It does not lose the original --

4 MR. CAMPBELL: Right.

5 MR. MARCHANT: -- okay.

6 MR. VASQUEZ: Okay.

7 MR. MARCHANT: So they don't find themselves
8 gradually stranded. Yeah.

9 MR. VASQUEZ: Okay. Have we already addressed
10 Ms. Myrick's and Ms. Fine's readiness to proceed questions,
11 comments? I think we have. Right?

12 And Mr. Naul was also about the same readiness
13 to proceed. And then Zach's, I think, fair comment about
14 having a bunch of projects slated one after another after
15 another in the area. That wouldn't -- that was -- I can
16 see that that's frustrating for those who aren't in that
17 part of the Ft. Worth official deal.

18 But at the same time, there's other projects
19 that could be proposed that would score higher potentially.
20 I mean, so --

21 MR. WILKINSON: Right. There was a high --

22 MR. VASQUEZ: -- the highest one in that region
23 gets it. On the set-aside, they might beat the Ft.
24 Worth --

25 MR. WILKINSON: It wasn't -- so scoring wasn't

1 totally the issue. It was the requirement on underserved.

2 It's like they wouldn't be eligible for another one in
3 time, because of their clock. And so this was a way to
4 make sure that they could get another project in time to
5 meet their commitment.

6 MR. VASQUEZ: Have we in effect given forward
7 commitments by our rule structure?

8 MR. WILKINSON: No, because that's --

9 MR. VASQUEZ: In effect.

10 MR. WILKINSON: -- from which allocation it
11 comes from. This would be a current year's allocation.

12 MR. MARCHANT: But it would narrow that region's
13 allocation. It would just take an automatic --

14 MR. WILKINSON: Yeah. If you're --

15 MR. MARCHANT: -- spot?

16 MR. WILKINSON: -- and you have a tax credit
17 development proposal in the Ft. Worth area, and you're
18 outside of the, you know, Choice Neighborhood, you're at a
19 disadvantage.

20 MR. MARCHANT: Yeah. And I guess I was
21 wondering, is there a part of the money that we have that
22 could be put into a slot that any situation that arises in
23 the state that qualifies for that situation --

24 MR. WILKINSON: So the way we had written it --
25 it's not a set-aside. It's just that the one highest-

1 scoring 9 percent application that happens to be in a
2 Choice Neighborhood gets an award, and --

3 MR. MARCHANT: And it diminishes that region.
4 It's an automatic in that region.

5 MR. WILKINSON: It will come out of that
6 region's -- yeah. Right.

7 MR. MARCHANT: And I understood that to be your
8 point.

9 AUDIENCE: And there's also only one Choice
10 Neighborhood in the entire region.

11 AUDIENCE: Well, there's only one in the state
12 right now.

13 MR. WILKINSON: Right.

14 MR. MARCHANT: And -- well, not speaking against
15 your project. I'm just saying --

16 MR. VASQUEZ: Yeah. It's --

17 AUDIENCE: But Houston's got a planning grant.
18 So I would imagine that we will have other Choice
19 Neighborhood applications coming from the --

20 MR. WILKINSON: Probably never more than a
21 couple -- one or two awards --

22 MR. MARCHANT: Yeah.

23 MR. WILKINSON: -- in time. Yeah.

24 MR. MARCHANT: I think it distorts in a minor
25 way, but I think they --

1 MR. WILKINSON: I mean, yeah. It's a
2 distortion, but it's a distortion on purpose to help to
3 incentivize that they meet their obligation.

4 MR. MARCHANT: The fix would be much more
5 dramatic --

6 MR. VASQUEZ: Yeah.

7 MR. MARCHANT: -- than the problem.

8 MR. VASQUEZ: I agree. I can understand the
9 frustration, but at the same time, in the bigger picture,
10 we're still getting units developed. Okay.

11 Are there any other items that Board members
12 have questions on? Or Mr. Eccles, can we put together a
13 motion that references all the changes, as we've -- as have
14 discussed and noted by staff, I'm sure, very carefully?

15 MR. ECCLES: Well, as I've heard it and the
16 particulars were as discussed in this meeting, there will
17 be changes made conforming to that discussion regarding
18 density re-notification, the deletion of the -- until the
19 schools achieve a particular rating, as proposed by staff
20 initially.

21 There is also then public comment that's been
22 received and the Board appears to favor a readiness to
23 proceed exemption for at-risk applications, as well as
24 school mitigation requirements for USDA applications,
25 and --

1 MR. VASQUEZ: If already in existence.

2 MR. ECCLES: -- if --

3 MR. VASQUEZ: If the project is already --

4 MR. ECCLES: -- yes. If the project is already
5 in existence, as well as making sure that supplemental
6 credits include those forward commitments awarded in 2021,
7 though they came out of the '22 --

8 MR. CAMPBELL: Our lists match, with one nuance.
9 You said density and the re-notification in density, and
10 it is in the initial notification that goes out that they
11 would be required to report density to the notification
12 requirements. So it's not a re-notification. It's just --

13 MR. ECCLES: Whether that's in pre-app or the
14 app --

15 MR. CAMPBELL: Or at the time of full
16 application. That is correct. The notification would be
17 required to include the density information.

18 MR. ECCLES: Okay. So those are generally the
19 changes in the language that would differ from the posted
20 version of the rule. And if the mover were to incorporate
21 those changes, that's what they reference.

22 MR. VASQUEZ: The Chair will entertain a motion
23 specifically worded as he said. I think you can just refer
24 to all of those things that he just said.

25 MR. ECCLES: Yes.

1 MR. VASQUEZ: Okay. And that's the amendment.

2 MR. THOMAS: Mr. Chairman, I move the Board
3 approve the repeal of 10 TAC Chapter 11 and approve the
4 adoption of the new 10 TAC Chapter 11, as presented at this
5 meeting, including the changes noted and provided by the
6 General Counsel of the Board -- of the agency, and
7 specifically, delivered to the Governor by November 15,
8 2022, for his review and approval, and thereafter published
9 in the *Texas Register*, all as expressed and subject to the
10 conditions in the Board action request on this item.

11 MS. FARIAS: Second.

12 MR. VASQUEZ: Is that an acceptably worded
13 motion?

14 MR. ECCLES: I believe so.

15 MR. VASQUEZ: Motion made by Mr. Thomas,
16 seconded by Ms. Farias. All those in favor, say aye.

17 (A chorus of ayes.)

18 MR. VASQUEZ: Any opposed?

19 (No response.)

20 MR. VASQUEZ: Hearing none, the motion carries.

21 Thank you, Mr. Campbell --

22 MR. CAMPBELL: Of course.

23 MR. VASQUEZ: -- and everyone who participated
24 in that.

25 (Applause.)

1 MR. VASQUEZ: There is still one more item on
2 the agenda. Mr. Campbell's still up.

3 Item 8, Presentation, discussion, and possible
4 action on the timely appeal of termination of HTC
5 application 22106, and waiver of 10 TAC Section 11.901(6)
6 under the Department's Multifamily Program Rules.

7 MR. CAMPBELL: Thank you.

8 MR. VASQUEZ: Mr. Campbell?

9 MR. CAMPBELL: So as the Chairman just said, the
10 next item on your agenda concerns an appeal related to the
11 termination of Application No. 22106, Mariposa Homes at
12 Plano Parkway. This item also includes a waiver
13 requirement in connection with that termination.

14 This development was awarded an allocation of
15 competitive housing tax credits at the late July Board
16 meeting this year. The QAP requires that certain
17 documentation related to zoning be submitted with the
18 application, and the specific documentation required
19 depends on the existing zoning for the site.

20 For sites that are appropriately zoned, the
21 application must include a letter from a local government
22 official stating that the development is permitted under
23 the existing zoning. For development sites that require a
24 change in zoning, the application must include evidence
25 that a formal application for the zoning change has been

1 submitted.

2 At the time of application, the proposed
3 development site for this project was zoned under the Plano
4 zoning ordinance as regional commercial. The development
5 in question is allowed under this zoning designation, but
6 does require what's called a specific use permit. The
7 application included a letter from the City of Plano
8 verifying the site's zoning designation. Because no change
9 of zoning was required, this letter met the requirements of
10 the rule and the application was allowed to proceed to
11 award.

12 On August 25, a commitment notice was issued for
13 this development. And the commitment notice is just the
14 document that informally commits the credits before the
15 carryover goes out, which is the real official one. As
16 part of the commitment notice process, applicants have 30
17 days to submit certain documentation, otherwise, the
18 commitment notice expires.

19 The expiration date of this commitment notice
20 cannot be extended. And for this application, responsive
21 documentation was due to be submitted no later than
22 September 26. One of the items required to be submitted is
23 evidence of final approval of any zoning that is required
24 or was proposed or needed to be changed pursuant to the
25 development plan.

1 On June 20, 2022, the Applicant requested the
2 necessary specific use permit from the City of Plano Zoning
3 Commission, which voted unanimously to deny the permit.
4 Because of this, the Applicant was unable to submit
5 evidence of final approval of zoning by the expiration date
6 of the commitment notice, and the application was
7 subsequently terminated by staff.

8 The Applicant timely appealed, contending that
9 the specific use permit does not represent a zoning change,
10 and since no change in zoning was required, the conditions
11 of the commitment notice were met. In the appeal, the
12 Applicant likened the specific use permit to a site plan
13 review or a variance, rather than a zoning approval.

14 However, the City of Plano's website describes a
15 specific use permit as a specialized type of zoning.
16 Accordingly, the Applicant's appeal was denied by the
17 Executive Director.

18 To be very clear, the question being presented
19 to the Board today is not whether the Applicant should be
20 granted an extension of the commitment notice in order to
21 secure final approval. It is whether or not the zoning
22 that was in place at the time of the commitment notice's
23 due date satisfies the required conditions of that notice.

24 Staff maintains its position that the condition of the
25 commitment notice requiring final approval of any zoning

1 was not met.

2 Because of this, staff recommends that the Board
3 deny the appeal and uphold the application's termination.
4 In the appeal, the Applicant also requested that should the
5 application remain terminated, the full amount of the
6 commitment fee be refunded.

7 The commitment notice fee of \$80,000 was timely
8 paid in conjunction with the application. 10 TAC 11.901(6)
9 only allows up to 50 percent of the commitment fee to be
10 refunded if the credits are returned by November 1. Due to
11 the circumstances of this termination, staff recommends
12 that, should the Board deny the appeal, the requested
13 waiver be granted to allow a full refund of the commitment
14 fee.

15 I'm happy to answer any questions that you have.

16 MR. VASQUEZ: Okay. So just in the big picture,
17 the City is not going to allow this project to go forward?

18 MR. CAMPBELL: I watched the Zoning Commission
19 meeting where they denied the appeal, and I did not get the
20 impression that --

21 MR. VASQUEZ: The unanimous vote was kind of
22 iffy.

23 MR. CAMPBELL: Yes, sir. Yeah.

24 MR. VASQUEZ: Okay. Well, let's get -- assume
25 we have some comment on this? Let's go ahead and get the

1 comment, please.

2 Identify yourself and your organization.

3 MS. STEELE: Thank you. Andrea Steele with the
4 law firm Frost Brown Todd, here to speak today in support
5 of staff's recommendation to deny the appeal for the
6 Mariposa Apartment Homes at Plano Parkway. I'm here on
7 behalf of Gala at Ridgemore, the applicant next in line in
8 Urban Region 3. Thank you for the opportunity to speak
9 today.

10 So the Mariposa Plano application was terminated
11 for failure to provide evidence of appropriate zoning at
12 the time the commitment expires. This deadline is written
13 into the QAP, a waiver of which can only be granted where
14 there is good cause. Not only does good cause fail to
15 exist here, but the issue was completely foreseeable and
16 preventable by the Applicant.

17 The purpose of the rule is to give the
18 Department and wait-listed applicants enough time to reach
19 deals on the waiting list so that they can meet other
20 various deadlines, such as carryover, 10 percent test,
21 placement in service. And it also provides certainty to
22 the process with regard to zoning availability, which as we
23 know, can drag on and on and on.

24 So the Applicant's appeal essentially states
25 three grounds. Number one, staff didn't include zoning

1 approval in its underwriting report as a condition. Number
2 two, that specific use permits are not zoning changes. And
3 number three, that if specific use permits are zoning
4 changes, then so are site plan approvals and variances.

5 But all of these arguments are faulty. First
6 and foremost, it's not staff's responsibility to provide
7 legal guidance with respect to interpreting zoning
8 ordinances. And they aren't required to make zoning an
9 underwriting condition, because it's already a condition in
10 the QAP and in the commitment.

11 And this is a requirement to have zoning in
12 place by the time of commitment. It's been in the QAP in
13 some form or fashion for about 20 years or so. So it's not
14 a new rule.

15 Now, the notion that a specific use permit is
16 not a zoning amendment is a pretty unique perspective, not
17 because it's innovative, but rather, it's just utterly
18 inaccurate. I've been representing developers in this
19 industry for 13 years. Specific use permits are zoning
20 changes.

21 This is consistent with past TDHCA decisions
22 from staff, from the Executive Director, from the Board.
23 It's consistent with the Attorney General opinions and
24 Texas case law, but most importantly, the City of Plano's
25 own guidance says that this is a specialized form of

1 zoning.

2 And then finally, variances and site plan
3 approvals are treated differently because they are
4 different. They are not matters that involve impermissible
5 uses. They simply modify an otherwise allowable housing
6 use.

7 On the contrary, specific use permits, special
8 use permits, conditional use permit, they come into play as
9 zoning amendments because their requested use is actually
10 not permitted under the applicable zoning unless there are
11 very specific findings that would strongly favor an
12 exemption.

13 There's an arduous process that is gone through,
14 through Planning and Zoning, through City Council, et
15 cetera. That didn't happen here. The Mariposa Plano
16 Applicant attempted multiple times to secure the specific
17 use permit, and every attempt was denied unanimously by
18 Planning and Zoning, and also by full City Council. So
19 yes, the application is currently unavailable at this time.

20
21 I wanted to point out, in comparison, a
22 situation in the past where the Board did grant this type
23 of a waiver. I'm almost done. And that one was in 2011,
24 and that specific example involved a profusely apologetic
25 city manager who, due to his own medical emergency, was

1 unable to schedule the zoning approval hearing in time.
2 And that also came back before the Board, an appeal in
3 November of that Board year, and then --

4 MR. VASQUEZ: Ms. --

5 MS. STEELE: -- at that time, the zoning had
6 already been granted. There are certain things I wanted to
7 get on the record. That's why --

8 MR. VASQUEZ: Okay. Well, it is probably
9 unnecessary to continue.

10 MS. STEELE: Understood. So --

11 MR. ECCLES: Also, if I could just make a quick
12 clarifying point, the waiver that's being considered is not
13 about the requirements of commitment or the commitment due
14 date. The waiver is only dealing with the return of the
15 commitment fee. So any arguments that they haven't shown
16 the waiver requirements for commitment, that's not before
17 the Board.

18 MR. VASQUEZ: And Ms. Steele, I don't believe --
19 I'll give you leeway to make additional comment, but I do
20 not believe anything else you can say is going to help the
21 next-in-line any more than has already been presented on
22 the record.

23 MS. STEELE: I think my point was because --

24 MR. VASQUEZ: Unless you want to change our
25 minds?

1 MS. STEELE: I don't want to change your minds.
2 I want it to be on the record so that when we do research
3 in the future and future things come back on this topic
4 about specific use permits, and we understand that those
5 are zoning amendments --

6 MR. ECCLES: That's not going to be ruled on
7 either.

8 MS. STEELE: I know. I know it's going to be
9 ruled on, but it's important to have the reasoning in
10 history, so it can be looked at in the future.

11 MR. VASQUEZ: Mr. Marchant?

12 MR. MARCHANT: Just -- if she's going to put
13 something on the -- like, in the record, a specific use
14 permit -- as a former city council member and mayor -- is a
15 way to restrict, sometimes arbitrarily -- restrict a broad
16 zone -- something that's usable in a broad zone category,
17 but they just don't want it. And so they use the ability
18 to deny the special use permit simply because they don't
19 want that project. So --

20 MS. STEELE: And for the City of Plano, they
21 have a kind -- it's either permitted use, or it requires a
22 special use permit. So it's not a permitted use for this
23 particular independent living facility -- is what this one
24 was categorized. It's not a permitted use in that zoning
25 area.

1 MR. MARCHANT: I just put that on the record,
2 because it's not clear law.

3 MR. VASQUEZ: Great. Thank you --

4 MS. STEELE: Understood. Thank you.

5 MR. VASQUEZ: -- Mr. Marchant.

6 MS. STEELE: To wrap it up, I think it's pretty
7 straightforward. They don't have a developable project.
8 They missed their deadlines and they didn't follow the
9 rules, and we're asking to please stand by the Board's
10 recommendation not to grant the appeal.

11 MR. VASQUEZ: Thank you, Ms. Steele.

12 MS. STEELE: Thank you.

13 MS. FARIAS: Mr. Chairman?

14 MR. VASQUEZ: Hang on. I'm not -- I assume
15 you're going to -- are you -- you two --

16 MR. KROCHTENGEL: I am.

17 MR. VASQUEZ: -- are together? Okay.

18 MR. KROCHTENGEL: I am.

19 MR. VASQUEZ: Okay. Well, hang on. Does Mr.
20 Krochtengel want to make any kind of comment on this?

21 I mean -- and also, just as he's walking up
22 here, let me discuss. There's no reason that the staff
23 can't request the -- or the Department cannot grant the
24 request to give a full refund of the commitment fee?

25 MR. WILKINSON: We would be able to keep the

1 lights on. Yeah.

2 MR. VASQUEZ: The -- yeah. Okay. I mean, it's
3 not like -- yeah. I mean --

4 MR. WILKINSON: Well, because --

5 MR. VASQUEZ: -- it's not like there should be
6 any penalty, I mean, in that -- in this particular --

7 MR. ECCLES: There's no legal reason to not
8 consider the waiver of the return of the fee. The only
9 restriction that I would offer is, since the rule talks
10 about 50 percent after a certain date or the commitment fee
11 itself, the Board not just come up with a number between
12 zero and a hundred.

13 It should be 50 percent or 100 percent or zero
14 percent of the fee being returned.

15 MR. VASQUEZ: Okay. And just with timing, it
16 was November 1 -- right -- was the --

17 MR. ECCLES: Yeah.

18 MR. VASQUEZ: -- or October 31? And just --
19 this is our next meeting? I mean, yeah. Okay.

20 Well, Mr. Krochtengel, do you want to make a
21 comment?

22 MR. KROCHTENGEL: Absolutely. Zachary
23 Krochtengel. I'm a representative for the Applicant.

24 I think in a lot of cities in Texas there's a
25 lot of things that I would call quasi-zoning. They're not

1 zoning. They're different processes and there's discretion
2 from the PNZ.

3 Every commitment notice I've seen, underwriting
4 report, gives conditions for commitment. We think that
5 this is unfortunately a loophole in the rule where we are
6 under the right zoning. We were not told that that was
7 going to be a commission for commitment or carryover, so we
8 acted accordingly.

9 Had we known that this was going to be a
10 condition based on the REA underwriting, we would have done
11 things differently at the municipal level. We're still
12 exploring things at the municipal level. Lots of people go
13 back for zoning, for variances, for site plan approvals on
14 multiple occasions.

15 I think it's very punitive to have us be aware
16 of this condition after the fact, probably due to the, I
17 would say, contacting of the Department from a competitive
18 applicant.

19 If they had thought we didn't have the proper
20 zoning at application, all of this information was in our
21 application. It was in our feasibility report, and there's
22 a time and a place for that, and that's the RFAD deadline.

23 They could have said they don't believe we have proper
24 zoning, but they did not. And now, they're coming back and
25 saying that now we still have the opportunity to re-file

1 our SUP case with the City of Plano.

2 The City of Plano has a comprehensive plan that
3 is extremely questionable from a fair housing standpoint,
4 and that is what we're looking in and intending to re-file.

5 We talked to staff. There are certain changes to be made.

6 Those 80 denials, those are because of their comprehensive
7 plan.

8 But we are really looking at ways to continue
9 moving this project forward. We have the cooperation of
10 the landowner as well. This is the second year we've
11 actually done this project. We had a state rep negative
12 letter the year before that, you know -- this is an
13 extremely high opportunity area.

14 And had we been given a proper condition on our
15 underwriting report, we probably would have asked the City
16 to table our project so we could have had another hearing
17 by that deadline. We would be open to, you know, you
18 adding that as a condition to our underwriting report and
19 giving us a new deadline that would give us an opportunity
20 to allow this project to move forward.

21 But unfortunately, this is a rule that just kind
22 of doesn't fit with SUP. I don't actually think that there
23 should be a change to the rule, because every city and
24 municipality in Texas has different zoning codes. So it's
25 extremely hard to tailor a rule that's going to fit every

1 single situation.

2 I can give you a great example. We actually
3 needed a site plan approval in the City of Temple for one
4 of our 2021 deals, and it was so contested that we needed a
5 police escort out of the City Council. That's not a zoning
6 case, but guess what? That could have failed then far
7 beyond the carryover, and that was also in our feasibility
8 report.

9 So just saying, oh, this is zoning, it didn't
10 need -- it's over -- I think that's really a
11 misinterpretation. Because if we get this SUP, we're still
12 in the same zoning district.

13 Thank you.

14 MR. VASQUEZ: Okay. Well, just again, to
15 clarify, as it stands right now, the City, the Zoning
16 Commission has said, y'all can't go forward.

17 MR. KROCHTENGEL: Yes --

18 MR. VASQUEZ: Okay. Yeah, yeah.

19 MR. KROCHTENGEL: -- and the City Council too,
20 but we think they're --

21 MR. VASQUEZ: Okay.

22 MR. KROCHTENGEL: -- wrong, of course.

23 MR. VASQUEZ: Okay. Okay. All right. Thank
24 you.

25 So again, my sense is, it's unfortunate this has

1 worked out this way for Zachary, but there's another
2 project waiting in line, as there usually is. And I don't
3 see any problem personally with providing the full refund
4 of the fee.

5 Does anyone else have any comments or wish to
6 make a motion?

7 MS. FARIAS: I want to go, Mr. Chairman. I move
8 the Board deny the appeal of the termination of Application
9 22106, Mariposa Apartment Homes at Plano Parkway, for the
10 reasons set out in the Board action request of this item.

11 MR. VASQUEZ: Okay. And let's take these as two
12 separate items. So --

13 MS. FARIAS: Right.

14 MR. VASQUEZ: -- that's to deny the appeal of
15 the termination. Motion made by Ms. Farias. Is there a
16 second?

17 MR. BATCH: Second, Mr. Chairman.

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

20 (A chorus of ayes.)

21 MR. VASQUEZ: Hearing none -- no -- any noes?

22 (No response.)

23 MR. VASQUEZ: Hearing none, that motion carries.

24

25 I'll entertain a further motion regarding return

1 of the commitment fee payment to the Applicant.

2 MR. MARCHANT: Mr. Chairman, I move that we
3 refund 100 percent of the Applicant's fee.

4 MS. FARIAS: Second.

5 MR. VASQUEZ: Motion made by Mr. Marchant,
6 seconded by Ms. Farias. All those in favor, say aye.

7 (A chorus of ayes.)

8 MR. VASQUEZ: Any opposed?

9 (No response.)

10 MR. VASQUEZ: Hearing none, the motion carries.

11 This brings us -- we've concluded the posted
12 agenda topics. This brings us to the point where members
13 of the public may make comment on items pertinent to our
14 business of the Department. If anyone -- I don't see
15 anyone rushing for that.

16 So again, we will reiterate that the Houston
17 Astros are World Series champions. And the next scheduled
18 meeting of the Board is Thursday, December 8, 2022, in the
19 same location. The start time will be announced. Odds are
20 it's going to be still 10 o'clock.

21 So it is now 10:28 and the meeting is
22 adjourned -- 12:28, 12:28. For the record, 12:28.

23 (Whereupon, at 12:28 p.m., the meeting was
24 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: November 10, 2022

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 126127, inclusive, are the true,
8 accurate, and complete transcript prepared from the verbal
9 recording made by electronic recording by Elizabeth
10 Stoddard before the Texas Department of Housing and
11 Community Affairs.

12 DATE: November 15, 2022
13
14
15
16
17
18

19 _____
(Transcriber)

20
21 On the Record Reporting
22 7703 N. Lamar Blvd., #515
23 Austin, Texas 78752
24
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