

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

William B. Travis Building  
Room 1-111  
1701 Congress Avenue  
Austin, Texas

April 27, 2017  
9:02 a.m.

BOARD MEMBERS PRESENT:

LESLIE BINGHAM ESCAREÑO, Vice Chair  
TOM H. GANN, Member  
J.B. GOODWIN, Member  
JUAN MUÑOZ, Member

TIMOTHY K. IRVINE, Executive Director

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LEGAL	
b) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Oakridge Apartments (HTC 93159/CMTS 1189)	
c) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Autumn Creek (HTC 70071/CMTS 906)	
d) Presentation, discussion, and possible action regarding the adoption of three agreed final orders concerning Pinnacle properties, including Rosemont of Oak Hollow (HTC 01435/BOND MF048/CMTS 445), Rosemont at Timber Creek (HTC 010157/ CMTS 300), and Rosemont at Sierra Vista (HTC 04482/CMTS 4179)	
e) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Lakewood Gardens (HTC 91059/CMTS 2305)	
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- g) Presentation, discussion and possible action regarding Ownership Transfers prior to IRS Form 8609 Issuance or Construction Completion
  - 14023 Heritage Square Apartments  
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- h) Presentation, discussion and possible action regarding Material Amendments to Housing Tax Credit
  - 16057 Silverleaf at Mason Mason
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## BOND FINANCE

- i) Presentation, discussion, and possible action on Resolution 17-015 regarding the annual approval of the Department's Investment Policy
- j) Presentation, discussion, and possible action on Resolution 17-016 regarding the annual approval of the Department's Interest Rate Swap Policy

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- k) Presentation, discussion, and possible action on release of the draft Federal Fiscal Years 2018-2019 Community Services Block Grant ("CSBG") State Plan for public comment, with a link to be published in the *Texas Register* 15
  
- l) Presentation, discussion, and possible action on the Program Year ("PY") 2017 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards
  
- m) Presentation, discussion, and possible action on release of the draft FFY 2018 Low Income Home Energy Assistance Program ("LIHEAP") State Plan to be made available for Public Comment and to be announced in the *Texas Register*

## MULTIFAMILY FINANCE

- n) Presentation, discussion, and possible action on the issuance of Determination Notices for Housing Tax Credits with another issuer  
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17417 Fenix Estates Houston
- o) Presentation, discussion, and possible action on the 2016 State of Texas National Housing Trust Fund Allocation Plan

## RULES

- p) Presentation, discussion and possible action on proposed amendments to 10 TAC §1.13, concerning adjudicative hearing procedures, and directing that they be published for public comment in the *Texas Register*
- q) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an Order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing its publication for public comment in the *Texas Register*
- r) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and an Order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing its publication for public comment in the *Texas Register*
- s) Presentation, discussion, and possible action on orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and orders adopting new 10 TAC Chapter 23, Single Family HOME Program ("HOME Rule"), concerning HOME single family activities, and directing their publication in the *Texas Register*

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- a) TDHCA Outreach Activities,  
April 2017 B May 2017

- b) Report on the reallocation of recaptured Program Year 2015 Emergency Solutions Grants Program funding
- c) Report on increase to the escrow account related to an Advances and Security Agreement (the "Advances Agreement") with the Federal Home Loan Bank of Dallas ("FHLB")

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- a) Presentation, discussion, and possible action on an order proposing actions to 10 TAC Chapter 10, Uniform Multifamily Rules including the: 1) proposed amendment in Subchapter F, Compliance Monitoring, of §10.610, Written Policies and Procedures 2) proposed amendment in Subchapter F, Compliance Monitoring, of §10.613 Lease Requirements; and directing that they be published for public comment in the *Texas Register* and 3) adoption of the Department's Emergency Transfer Plan required by 24 CFR §92.359 and 24 CFR §93.356 57
- b) Presentation, discussion, and possible action on orders proposing adoption of a new section §5.2014, VAWA Requirements to 10 TAC Chapter 5, Community Affairs Programs, and orders proposing actions to 10 TAC Chapter 7, Homelessness Programs 60

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- c) Presentation, discussion and possible action on proposed new 10 TAC §1.25, concerning information security and privacy requirements for contractors, the repeal of 10 TAC §1.24, concerning Protected Health Information, and the repeal of 10 TAC §5.18, concerning information technology security practices, and directing that they be published for public comment in the 64

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- a) Presentation, discussion, and possible action on Resolution 17-017 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2017 Series A, Single Family Mortgage Revenue Refunding Bonds, 2017 Series B (Taxable) and Single Family Mortgage Revenue Bonds, 2017 Series C (Taxable); 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 65
- b) Presentation, discussion, and possible action on Resolution No. 17-018 authorizing the issuance and delivery of Texas Department of Housing and Community Affairs Series 2017 Issuer Note; 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 (PULLED) 67

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

EXECUTIVE SESSION none

OPEN SESSION --

ADJOURN 153

P R O C E E D I N G S

1  
2 MS. BINGHAM ESCAREÑO: Good morning. Welcome  
3 to the April meeting of the Texas Department of Housing  
4 and Community Affairs. We'll call the meeting to order  
5 and check for quorum.

6 Mr. Gann?

7 MR. GANN: Here.

8 MS. BINGHAM ESCAREÑO: Mr. Goodwin?

9 MR. GOODWIN: Here.

10 MS. BINGHAM ESCAREÑO: Dr. Muñoz?

11 DR. MUÑOZ: Present.

12 MS. BINGHAM ESCAREÑO: All right. And I'm  
13 here, so we have quorum.

14 Let's stand for the pledges.

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

17 MS. BINGHAM ESCAREÑO: There were a few votes  
18 to have the meeting outside today. We thought that might  
19 be a little distracting, though.

20 We have a couple of resolutions to be presented  
21 this morning to get us started. Michael, do you have  
22 those?

23 MR. LYTTLE: Yes, Madam Chair. The first one  
24 deals with Community Action Month. I will go ahead and  
25 read it and then the Board will consider it.



1                   The resolution reads as follows:

2                   "Whereas, Community Action Agencies are  
3 nonprofit private and public organizations established  
4 under the Economic Opportunity Act of 1964 to ameliorate  
5 the effects of poverty and help persons experiencing  
6 poverty to transition to self sufficiency;

7                   "Whereas, Community Action builds and promotes  
8 economic stability, enhancing stronger communities, and  
9 ensuring the opportunity to live in dignity;

10                  "Whereas, nationally Community Action has  
11 enhanced the lives of millions by providing essential,  
12 life-changing services and opportunities;

13                  "Whereas, Community Action serves 99% of  
14 America's counties in rural, suburban, and urban  
15 communities and works towards the goal of ending poverty  
16 in our lifetime;

17                  "Whereas, Texas has a strong vibrant network of  
18 Community Action Agencies to deliver Community Action to  
19 Texans in need;

20                  "Whereas, Community Action will continue to  
21 implement innovative and cost-effective programs to  
22 improve the lives and living conditions of the  
23 impoverished; continue to provide support and  
24 opportunities for all eligible households in need of  
25 assistance; and continue to develop and carry out

1 effective welfare system reforms; and

2 "Whereas, the Texas Department of Housing and  
3 Community Affairs and the State of Texas support the  
4 Community Action network in Texas in working to improve  
5 communities and make Texas a better place to live not only  
6 during Community Action Month in May, but throughout the  
7 entire year;

8 "Now, therefore, it is hereby resolved, that  
9 the Governing Board of the Texas Department of Housing and  
10 Community Affairs does hereby celebrate May 2017, as  
11 Community Action Month in Texas, and encourages all Texas  
12 individuals and organizations, public and private, to join  
13 and work together in this observance of the hard work and  
14 dedication of all Texas Community Action agencies.

15 "Signed this twenty-seventh day of April 2017."

16 MS. BINGHAM ESCAREÑO: Thank you, Michael.

17 This is a resolution for which we would like to  
18 take action. Do I hear a motion to so resolve?

19 DR. MUÑOZ: So moved.

20 MR. GANN: Second.

21 MS. BINGHAM ESCAREÑO: Dr. Muñoz moves and Mr.  
22 Gann seconds.

23 All those in favor, aye.

24 (A chorus of ayes.)

25 MS. BINGHAM ESCAREÑO: Opposed?

1 (No response.)

2 MS. BINGHAM ESCAREÑO: That motion carries.  
3 Good.

4 MR. IRVINE: And might I recognize that  
5 leadership of the Texas Association of Community Action  
6 Agencies is here to share in our recognition of all that  
7 their group does and the entire network of community  
8 action agencies is just fantastic. Thank you so much.

9 MS. BINGHAM ESCAREÑO: Thank you.

10 (Applause.)

11 MR. LYTTLE: The second resolution is in honor  
12 of May 2017 also being National Mobility Awareness Month.

13 The resolution reads as follows:

14 "Whereas, May 2017 is National Mobility  
15 Awareness Month, which is dedicated to showing the  
16 community at large how People with Disabilities can live  
17 active, mobile lifestyles, and raise awareness of the  
18 mobility solutions available in the local community;

19 "Whereas, the goal of the Texas Department of  
20 Housing and Community Affairs is to ensure that all Texans  
21 have access to safe and decent affordable housing;

22 "Whereas, it is the policy of the Department to  
23 support equal housing opportunities in the administration  
24 of its all its Single Family and Multifamily Programs,  
25 especially in regards to People with Disabilities

1 accessing new home construction, home rehabilitation,  
2 housing vouchers, and rental assistance programs and  
3 services;

4 "Whereas, this year, the Department is  
5 celebrating 7 years of offering the Amy Young Barrier  
6 Removal Program, named in honor of the late advocate for  
7 Texans with Disabilities who helped shape the state-funded  
8 program to improve the quality of life for People with  
9 Disabilities throughout the State of Texas;

10 "Whereas, the Amy Young Barrier Removal Program  
11 provides one-time grants of up to \$20,000 for Persons with  
12 Disabilities, both renters and homeowners earning up to  
13 80% of the Area Median Family Income, who need home  
14 modifications to increase accessibility and eliminate  
15 hazardous conditions in their homes;

16 "Whereas, since 2010, the Amy Young Barrier  
17 Removal Program has completed approximately \$16.8 million  
18 worth of accessibility modifications on approximately 880  
19 homes of Texans with Disabilities, such as constructing  
20 roll-in showers, installing shower wands and lever  
21 faucets, widening doorways, modifying kitchens and laundry  
22 rooms with accessible cabinetry and appliances, building  
23 ramps, and improving walkways with handrails, paving, and  
24 lighting to accommodate program participants' specific  
25 needs;

1                   "Whereas, the Department applauds the  
2 approximately 25 nonprofit organizations and local  
3 governments around the state who are Amy Young Barrier  
4 Removal Program Administrators who advocate for improving  
5 mobility and longevity of their clients through quality  
6 construction, pragmatic solutions and compassionate  
7 service; and

8                   "Whereas, the Department encourages Texans to  
9 explore the numerous TDHCA programs and resources related  
10 to increasing and maintaining mobility during National  
11 Mobility Awareness Month and throughout the year;

12                   "Now, therefore, it is hereby resolved, that in  
13 the pursuit of the goal and responsibility of increasing  
14 mobility opportunities of Texans with Disabilities, the  
15 Governing Board of the Texas Department of Housing and  
16 Community Affairs, does hereby celebrate May 2017 as  
17 National Mobility Awareness Month and encourages all  
18 Texas individuals and organizations, public and private,  
19 to join and work together in this observance of National  
20 Mobility Awareness Month.

21                   "Signed this Twenty-Seventh Day of April,  
22 2017."

23                   MS. BINGHAM ESCAREÑO: Do I hear a motion to so  
24 resolve?

25                   MR. GOODWIN: So moved.

1 MS. BINGHAM ESCAREÑO: Mr. Gann makes the  
2 motion.

3 DR. MUÑOZ: Second.

4 MR. GANN: J.B. made the motion.

5 MS. BINGHAM ESCAREÑO: So I have a motion by  
6 Mr. Goodwin?

7 MR. GOODWIN: Yes, ma'am.

8 MS. BINGHAM ESCAREÑO: Okay. And a second by  
9 Dr. Muñoz. Thank you very much.

10 All those in favor, aye.

11 (A chorus of ayes.)

12 MS. BINGHAM ESCAREÑO: Opposed?

13 (No response.)

14 MS. BINGHAM ESCAREÑO: Motion carries.

15 Anybody we need to recognize?

16 MR. IRVINE: No.

17 MS. BINGHAM ESCAREÑO: Okay. So housekeeping  
18 item, this first row for people that wish to speak on an  
19 item, and just remember, if you're speaking today on a  
20 item, that there will be something to sign right up at the  
21 podium.

22 Well, move to the consent agenda. Does anyone  
23 have anything that needs to be pulled or further discussed  
24 or moved from the consent agenda?

25 (No response.)

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

3 MR. GOODWIN: So moved.

4 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

5 MR. GANN: I'll second that.

6 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

7 All those in favor, aye.

8 (A chorus of ayes.)

9 MS. BINGHAM ESCAREÑO: Opposed, same sign.

10 (No response.)

11 MS. BINGHAM ESCAREÑO: Motion carries.

12 Sorry.

13 MR. SAMUELS: I would like to speak on a  
14 consent item.

15 MS. BINGHAM ESCAREÑO: Thank you very much.

16 MR. SAMUELS: First of all, my name is Eric  
17 Samuels. I'm the president and CEO of Texas Homeless  
18 network, and my comment is in regard to agenda item 1(k)  
19 which references the Community Services Block Grant State  
20 Plan, and it's specifically on Section 7, item 7.9 of that  
21 plan where the Department lays out activities under the  
22 CSBG discretionary funds.

23 I'd like to ask the Board to consider adding  
24 two additional activities under that funding allotment,  
25 number one, funding for training and technical assistance

1 for programs ending homelessness in Texas. We've made a  
2 lot of headway in this work over the past five years,  
3 reducing homelessness by 32 percent over that time. And  
4 then number two, I'd like to ask for funding to support  
5 the coordination and implementation of Texas's Annual  
6 Conference on Ending Homelessness. This is a conference  
7 that last year brought together 500 advocates, homeless  
8 education liaisons and service providers to learn about  
9 the most up-to-date practices on ending homelessness, and  
10 more important, to form partnerships that make ending  
11 homelessness an easier and more efficient process in the  
12 communities.

13 Funding for these activities is currently  
14 provided to my agency through state general revenue  
15 funding. Unfortunately, that funding looks like it will  
16 be cut and most assuredly will be cut, and that will halt  
17 some of our momentum. That funding we've used, that  
18 \$50,000 we've used to leverage \$200,000 in federal funding  
19 for the same purpose and we've helped 20 programs get over  
20 \$5 million in rapid rehousing and permanent supportive  
21 housing for people to end homelessness, so it would be a  
22 shame to discontinue this service. So if we could  
23 allocate some of these funds to this discretionary  
24 allotment for this purpose, we could continue this  
25 momentum and hopefully continue to reduce homelessness in



1 Texas.

2 MS. BINGHAM ESCAREÑO: Very good. Any  
3 questions from the Board members?

4 (No response.)

5 MS. BINGHAM ESCAREÑO: Any comments from staff?

6 MS. BOSTON: Brooke Boston.

7 I just wanted to clarify that if that is  
8 something you want to do, that is something staff can add  
9 before it goes out for public comment. This is the draft  
10 version, so a benefit of adding it now would potentially  
11 be that there's an opportunity to get comment on that  
12 suggestion. Much the way we do with rules, it's helpful  
13 to have ideas out for comment.

14 And I would also just mention I think we'd want  
15 to specify an amount in the section of the plan that he's  
16 talking about outlined out of the amount that's set aside  
17 for discretionary. We kind of break out amounts into  
18 different activities. We do come back to you guys later  
19 in the year to firm that up in a subsequent VAR, but  
20 because this is broken out, I do think we would want to  
21 specify that.

22 MR. IRVINE: And if they're not added at this  
23 time, they could not later be added in response to  
24 comment.

25 MS. BOSTON: I don't know whether that's the

1 case with a plan the way it is with rules, because I know  
2 that HHS would expect us to be responsive to comments from  
3 the network, for instance, if there were a criticism of  
4 something in the plan. I do think it's probably more  
5 transparent for us to try and put it in at this point if  
6 there's an interest to do so.

7 MR. ECCLES: Does staff have a recommendation  
8 on adding this at this point?

9 MS. BOSTON: I mean, think it's a great cause.  
10 In the past we've used some CSBG discretionary to fund  
11 homelessness activities. I think with budget cuts it's  
12 really unfortunately that they're experiencing the loss.  
13 I do think the funds could be effectively used. That  
14 being said, I think the use that would be channeled right  
15 now for the network is also an effective use. It's always  
16 hard when you have a limited resource to decide where it  
17 goes, so at least if we put it in there, you could get  
18 comment on whether people think that's the right active  
19 use or not.

20 MS. BINGHAM ESCAREÑO: What kind of timeline do  
21 we have? Does it need to go out for comment?

22 MS. BOSTON: Yes. We'd need to take action  
23 today and then it goes out for comment for about 30 days,  
24 I think, and then we're bringing it back in July.

25 MS. BINGHAM ESCAREÑO: Okay. So if the Board

1 wants to take action, shall we pull it from the consent  
2 agenda and move to action? Okay. Do I need a motion to  
3 pull it from the consent agenda because we moved to  
4 approve it.

5 MR. IRVINE: It was just pulled. You would  
6 have the motion to approve the consent agenda be for  
7 everything but this item.

8 MS. BINGHAM ESCAREÑO: Very good. Did Mr.  
9 Goodwin make the motion?

10 MR. GOODWIN: Yes.

11 MS. BINGHAM ESCAREÑO: Are you okay amending  
12 your motion to pull is it 1(k)?

13 MR. GOODWIN: Yes.

14 MS. BINGHAM ESCAREÑO: And then Mr. Gann?

15 MR. GANN: Yes, that's fine.

16 MS. BINGHAM ESCAREÑO: Thank you. Sorry about  
17 that. Any other comment on the consent agenda?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: All right. So we have a  
20 revised motion to approve the consent agenda with the  
21 exception of 1(k) that we'll move to the agenda, motion  
22 from Mr. Goodwin, second from Mr. Gann. If there's no  
23 further discussion, all those in favor, aye.

24 (A chorus of ayes.)

25 MS. BINGHAM ESCAREÑO: Opposed, same sign.

1 (No response.)

2 MS. BINGHAM ESCAREÑO: Great. Motion carries,  
3 the consent agenda is approved.

4 Do you want to take on item dealing with 1(k)  
5 then?

6 MR. IRVINE: Yes.

7 MS. BINGHAM ESCAREÑO: So we just heard about  
8 item 1(k) from the consent agenda, now moved on to the  
9 action agenda. 1(k) was the presentation, discussion and  
10 possible action on the release of the draft Federal Fiscal  
11 Year 2018-2019 Community Services Block Grant, CSBG, State  
12 Plan for public comment, with a link to be published.

13 We heard public comment and a request to use  
14 some of the discretionary funds to support homelessness  
15 training and technical assistance. We have a staff  
16 recommendation to include that in the draft for public  
17 comment.

18 Brooke, did you have anything else?

19 MS. BOSTON: Sure. So this would be on page 23  
20 of your plan, and on page 22 of your plan it shows that we  
21 would be doing \$1.5 million for other activities, but then  
22 in a paragraph at the top of the subsequent page 23, we  
23 outline what the breakout of that \$1.5- is. I think what  
24 we would do, if we were able to do \$50,000 for his first  
25 request which was the T and TA on homelessness state

1 activities which is the funding that had been cut, and  
2 then if we did, for instance, \$50,000 for the second  
3 request he had, for \$100- total, and I can just  
4 proportionately pull that a little bit out, maybe like 20-  
5 here and there out of each of those categories that were  
6 already identified so no one area takes much of a hit.  
7 And I'll also clarify that it's for both years of the  
8 plan.

9 MS. BINGHAM ESCAREÑO: '18 and '19.

10 MS. BOSTON: Correct.

11 MS. BINGHAM ESCAREÑO: Great. That was pretty  
12 nimble. Good thinking on your feet.

13 Any other comment about that?

14 (No response.)

15 MS. BINGHAM ESCAREÑO: So we'll entertain a  
16 motion for staff's recommendation, I think might be the  
17 easiest way.

18 MR. GOODWIN: So moved.

19 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

20 Second?

21 DR. MUÑOZ: Second.

22 MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds.

23 Any other discussion, questions?

24 (No response.)

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

1 (A chorus of ayes.)

2 MS. BINGHAM ESCAREÑO: Opposed, same sign.

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Motion carries. Great.  
5 Thank you very much.

6 Then we'll move on to action items. The first  
7 item is number 3, a report item. Item (a), Marni, would  
8 you like to report?

9 MS. HOLLOWAY: Good morning, Madam Vice Chair,  
10 members of the Board. I'm Marni Holloway. I'm the  
11 director of the Multifamily Finance Division.

12 Item 3(a) is a report item. Should the Board  
13 wish staff to reconsider anything that we're reporting to  
14 you as a result of public comment, you may direct us to do  
15 that, but this is just a report item. Understood?

16 MR. IRVINE: And the way that we would do that  
17 would to bring it back next month as a possible action  
18 item.

19 MS. HOLLOWAY: Right, as a possible action  
20 item.

21 Okay. So item 3(a), staff will present a  
22 summary of determinations under 10 TAC 11.10 of the 2017  
23 QAP related to third party requests for administrative  
24 deficiency. Today we're discussing the results of RFAD --  
25 we call them RFAD -- RFAD requests for three applications

1 and the determinations that were made as of April 17.  
2 These applications are: 17165 Merrit Headwaters, 17204  
3 Vista Bella, and 17736 Providence at Ted Trout Drive.  
4 Additional RFAD results will be reported to the Board as  
5 they are received and processed.

6 So under the RFAD rule at 10 TAC 11.10, an  
7 unrelated person or entity may bring new material  
8 information about an application to staff's attention.  
9 Third parties may request that staff consider whether an  
10 application should be the subject of an administrative  
11 deficiency. Staff will consider the request and proceed  
12 as it deems appropriate under the applicable rules.  
13 Requesters must provide sufficient credible evidence that  
14 if confirmed would substantiate the request. Where staff  
15 determined that the request substantiated the release of a  
16 notice of administrative deficiency for the application,  
17 the applicant was provided the opportunity to respond to  
18 the submitted request. Staff has reviewed both the  
19 request and response in making its determination.

20 Each request has been posted to the applicable  
21 applications, along with the deficiency notice released,  
22 supporting documentation received from the applicant, and  
23 staff's determination, and that's all posted on the  
24 Department's website. You'll recall that last year and  
25 now again this year, full applications are posted on our

1 website and then they're updated in real time as we're  
2 going through our review process. Every night they're  
3 updated and all of this information is up there on the  
4 website.

5 Of course, the Board has final decision-making  
6 authority on any of these issues, and thus the  
7 determinations are subject to change. However, a  
8 requester may not formally appeal any staff determination  
9 if it's precluded by 10 TAC 10.902(b) related to the  
10 appeal process. So someone who submitted an RFAD or any  
11 other person may not submit an appeal related to someone  
12 else's application.

13 Where staff is recommending that a request  
14 result in a loss of points or other action, the applicants  
15 are notified and given an opportunity to appeal staff's  
16 recommendation. Staff has also provided notice of the  
17 results of the request to the requester.

18 So for a little bit of background information,  
19 you'll recall at the end of 2017 we had a lot of drama  
20 around an application, including RFAD requests that were  
21 really about staff's review process, that other applicants  
22 disagreed with how we had reviewed. As a result of those  
23 conversations, I -- it was me -- inserted language into  
24 the RFAD item rule for 2017 that said the RFAD process may  
25 not be used to question staff's review, that it couldn't



1 be you didn't do this right, your staff didn't do this  
2 right. Because of response from the community, that line  
3 came out. So what that tells staff is that the community  
4 is out there watching us review and waiting for us to do  
5 something that they don't agree with and then they're  
6 going to submit an RFAD and we're going to be standing up  
7 here trying to defend a decision that we made in the  
8 review process. As a result of that, this year we are  
9 following the rule to the letter as much as possibly can,  
10 so if the rule says this must be there, then this must be  
11 there.

12 We understand that in years past, applicants  
13 have been able to potentially supplement applications by  
14 providing other documents. That's actually prohibited by  
15 statute. So probably a lot of what you're going to  
16 hear -- and I know there was a letter that was provided --  
17 is about how staff reviewed these items in the past.  
18 That's not how we're doing it anymore. We are by the  
19 book, by the rule, to the letter just as much as we  
20 possibly can. So just so that you have that background  
21 information.

22 So the first application is 17165 Merrit  
23 Headwaters. The request asked the Department to review  
24 whether the applicant met the requirements of 11.9(e)(3)  
25 of the QAP regarding pre-application participation.

1 Specifically, the requester questioned whether the  
2 applicant failed to properly notify all required  
3 individuals potentially rendering the applicant ineligible  
4 for six points for pre-application. Staff issued a notice  
5 of administrative deficiency to the applicant requesting  
6 evidence that the superintendent of the local school  
7 district had been properly notified. The applicant failed  
8 to respond to the administrative deficiency within the  
9 time frame specified in 10 TAC 11.2 and was terminated for  
10 failure to provide timely response, and that termination  
11 has not been appealed.

12 The second application, Vista Bella, the  
13 request asked the Department to review whether the  
14 applicant met the requirements of 11.9(e)(3) regarding  
15 pre-application participation, particularly whether the  
16 applicant failed to properly notify all required  
17 individuals. This request actually came from a community  
18 member, it did not come from another applicant. An  
19 administrative deficiency was issued to the applicant  
20 requesting evidence that they had properly notified the  
21 appropriate neighborhood organization. The applicant  
22 provided evidence that the development site is not within  
23 the boundaries of the neighborhood organization, thus  
24 notification of that body was not required, and that all  
25 other required notifications had been properly made.

1 Based on this evidence, staff determined that no further  
2 action was required.

3 The third application, number 17736 is  
4 Providence at Ted Trout Drive. The request asked the  
5 Department to review whether the applicant met the  
6 requirements for points under 11.9(c)(6) of the QAP. This  
7 is regarding underserved areas. Particularly, the request  
8 asked us to review whether the application qualifies for  
9 points under that subparagraph as portions of the census  
10 tract lie outside of the incorporated area.

11 This subparagraph states: A census tract  
12 within the boundaries of an incorporated area that has not  
13 received a competitive tax credit allocation or a 4  
14 percent non-competitive tax credit allocation for a  
15 development within the past 15 years and continues to  
16 appear on the Department's inventory, that's a three-point  
17 scoring item.

18 The next subparagraph down: For areas not  
19 scoring points under (c) above -- so under the one I just  
20 read to you -- a census tract that does not have a  
21 development subject to an active tax credit LURA or has  
22 received a tax credit award but has not yet reached the  
23 point where its LURA must be reported is two points. So  
24 there's two different underserved area items.

25 Staff issued a notice of administrative

1 deficiency to the applicant regarding the matter. In  
2 response, the applicant stated: the applicant mistakenly  
3 thought the development qualified for points under both  
4 subparagraphs (c) and (d) because the development is  
5 within the boundaries of an incorporated area and the  
6 census tract has never received a competitive tax credit  
7 allocation or a 4 percent non-competitive tax credit  
8 allocation. The applicant now understands that TDHCA  
9 staff's position is that the entire census tract and not  
10 only the development itself must be contained within the  
11 boundaries of the incorporated area in order to qualify  
12 for points under (c). As such, it appears that the  
13 application only qualifies for points under (d).

14 Staff reviewed the response provided and  
15 determined that the applicant, in fact, was not eligible  
16 for three points under subparagraph (c). Because the  
17 applicant did not request points under (d) and did not  
18 provide information supporting that request, the  
19 application cannot score points under that item. The  
20 applicant will receive a scoring notice indicating the  
21 change in the score and will have the ability to appeal  
22 that determination.

23 Any questions?

24 MS. BINGHAM ESCAREÑO: Just remind me the  
25 requester for that third one.

1 MS. HOLLOWAY: The Providence at Ted Trout  
2 Drive?

3 MS. BINGHAM ESCAREÑO: Yes. Who was the  
4 requester?

5 MS. HOLLOWAY: The requester on that one, BETCO  
6 Consulting, so another applicant.

7 And I believe that most of the folks here are  
8 speaking on that one, and there was a letter that was  
9 provided out on the table also.

10 MS. BINGHAM ESCAREÑO: Before we hear public  
11 comment, are there any questions for Marni, any other  
12 questions?

13 (No response.)

14 MS. BINGHAM ESCAREÑO: I don't think I have any  
15 right now.

16 MS. HOLLOWAY: Okay. Thank you.

17 MS. BINGHAM ESCAREÑO: So let's start with then  
18 is anybody here to speak on Merritt Headwaters?

19 MR. JACKSON: Madam Chair, may I make a general  
20 comment, please? Thank you very much. Board members,  
21 nice to see you. Staff, Bo, Jim, Michael. My name is  
22 Frank Jackson, and I'm proud to be the executive director  
23 of the Texas Affiliation of Affordable Housing Providers,  
24 an organization that we refer to as TAAHP. Thank you for  
25 the opportunity to speak today to represent TAAHP's

1 members.

2           Generally, we enjoy a good working relationship  
3 with the Department. Sometimes we disagree and sometimes  
4 we get confused. This is one of those times. Our concern  
5 is with the new staff policy regarding point awards in the  
6 2017 9 percent tax credit round. It has come to TAAHP's  
7 attention that TDHCA staff appears to have departed from  
8 historical precedent in their approach to scoring  
9 adjustments during the 2017 9 percent credit application  
10 round. TAAHP is concerned about the staff policy  
11 direction.

12           Historically, during staff's review process it  
13 if it is determined that an applicant requested points  
14 that the application did not ultimately qualify for but  
15 where documentation was present in the application to  
16 justify a lesser level of points under the same scoring  
17 item, staff has awarded the lesser level of points. New  
18 in 2017, under the same circumstances, staff is now  
19 deducting all points under a scoring category when  
20 evidence is present to justify some of those points being  
21 awarded.

22           This new policy of deducting all points when  
23 some level of points is justified is contrary to years of  
24 historical precedent, it is not supported by any TDHCA  
25 rule change, statutory change or staff guidance that we

1 are aware of. In the past five years, staff has  
2 consistently awarded the level of points an application  
3 qualifies for across a broad range of scoring items.  
4 Further, the Board has upheld the practice of partial  
5 point awards in a number of appeals during this same  
6 period.

7 We would request the Board direct staff to  
8 conform with the use of award points to the 2017  
9 applications in the same manner as has been standard  
10 practice for years and to award the level of points to  
11 applications that are justified by the documentation  
12 submitted with the application.

13 Thank you for your time.

14 MS. BINGHAM ESCAREÑO: Thank you, Frank.

15 Any questions?

16 (No response.)

17 MS. BINGHAM ESCAREÑO: Just a reminder, this  
18 isn't an action item.

19 Any comments specific to Merritt Headwaters?

20 (No response.)

21 MS. BINGHAM ESCAREÑO: If not, we'll move on to  
22 first speak for Vista Bella 17204. No comment on Vista  
23 Bella? So we're all here for 17736 Providence? Very  
24 good.

25 MS. MARTIN: Good morning, everyone. My name

1 is Audrey Martin. I'm with Purple Martin Real Estate, and  
2 I'm speaking on behalf of the applicant for Providence at  
3 Ted Trout Drive, which is what you've heard a lot about  
4 just now.

5 The reason we're here speaking to you about a  
6 report item really relates a bit to procedure. We're in  
7 an in-between period where there's a staff determination  
8 in this report item but we haven't received a scoring  
9 notice just yet that has triggered our appeal rights, so  
10 we wanted to come in front of you and speak about this  
11 issue because we have a little bit of concern that by  
12 accepting the staff report that maybe, in effect, that's  
13 an acceptance of staff's recommendation and that might  
14 hurt our appeal chances later. So that's why we're all up  
15 here and speaking before it's actually an appeal item.

16 And as Marni mentioned, you all have a handout.  
17 It's a letter that I provided to staff that explains this  
18 issue in more detail than I can cover in three minutes.  
19 But essentially, in the case of Providence at Ted Trout  
20 Drive, as Marni explained, the applicant requested three  
21 points under underserved area and it was ultimately found  
22 that the site didn't qualify for three points, but the  
23 site does qualify for two points. The three and two point  
24 items are nearly identical in that your census tract needs  
25 to be clean in terms of having previous tax credit awards,



1 but for three points your full census tract needs to be in  
2 the incorporated area, for two points there's no such  
3 requirement for the location of your census tract.

4 So we did provide documentation within the  
5 application that showed basically a search for all tax  
6 credit developments in that census tract and that there  
7 were none. And to be clear, there actually is no  
8 documentation required by the application itself or the  
9 procedures manual, but we did provide some.

10 So really we do want to relate back to what  
11 Frank mentioned on behalf of TAAHP which relates to  
12 historical practice and precedent. There has not been a  
13 rule change at all related to adjustments of self score.  
14 The rules have been exactly the same verbatim since 2013,  
15 but there's a new interpretation. And you know, in this  
16 program we, as applicants, do have to rely on historical  
17 practice and what has been done in the past under similar  
18 sets of rules, and that's what we've done here. So we  
19 were a little taken aback by the deduction of all three  
20 points when we clearly qualify for two.

21 And you can see in the letter is submitted  
22 there are a number of examples over the last at least five  
23 years of what I kind of refer to as partial point awards,  
24 and this is a practice that the Board has upheld on a  
25 number of occasions as well. And the examples I was able

1 to find run the gamut of scoring items, so there are some  
2 that are menu-based where points stack on top of each  
3 other. That's not the case for underserved area. But I  
4 found examples of scoring items where there are mutually  
5 exclusive options under a particular scoring item and in  
6 those cases staff awarded those partial points. That is  
7 the case here.

8           So there's a historical practice, there's been  
9 a departure this year. We think it's going to affect  
10 quite a lot of applicants. You all just haven't seen  
11 appeals just yet, those probably are going to start next  
12 month, but we thought it probably affects enough  
13 applicants that having some Board direction on this might  
14 be helpful to everyone really. And so we're simply asking  
15 staff to implement scoring adjustments in the same way  
16 that has been done over the past several years under  
17 exactly the same rules, and for this particular  
18 application we're asking that the two points that the  
19 development's location qualifies for and for which we  
20 submitted documentation should be awarded to this  
21 development.

22           Thank you.

23           MS. BINGHAM ESCAREÑO: Thank you, Ms. Martin.

24           Any questions from the Board?

25           (No response.)

1 MS. BINGHAM ESCAREÑO: Just a reminder, too,  
2 the little bell is a friendly reminder to wrap up and we  
3 appreciate comments staying succinct and address things  
4 that the prior speakers haven't already addressed.

5 Good morning.

6 MR. LARBAU: Good morning, Board and Mr.  
7 Irvine. Thank you for letting us be here this morning.

8 The issue at hand is related to --

9 MR. ECCLES: I'm sorry. Could you state your  
10 name, sir?

11 MR. LARBAU: Yes. Don Larbau, Orange, Texas.  
12 Sorry about that.

13 The issue at hand is related to 11.9(c)(6) of  
14 the 2017 QAP, the underserved area. The scoring item  
15 allows applicants to choose only one point in that section  
16 there, only one block to choose from there in that five  
17 point option, which have different point values. The  
18 applicant for Providence at Ted Trout requested three  
19 points under paragraph (c) being in a census tract which  
20 is an incorporated area and the census tract in a city  
21 should qualify for three points and we didn't see anything  
22 in the guidelines to fill out that there was a  
23 qualification for that census tract but there has become  
24 one.

25 So getting to where we are there, I think that

1 even though we did not qualify for three points, we did  
2 qualify for two points and had sent in the documentation  
3 to earn the two points. So we would just like to ask you  
4 to take a good long hard look at this because it's really  
5 changing precedent probably for about a 15-16 year period  
6 here that's been like it is now and then all of a sudden  
7 we get this that we're not going to be allowed any points  
8 for this section. We'd just like to appeal to you to look  
9 at this and I think you'll decide that we're right and I  
10 hope that you'll help us out on this. Thank you very  
11 much.

12 MS. BINGHAM ESCAREÑO: Thank you.

13 MR. AKBARI: Madam Chair, Tim, and Board  
14 members. I'm Chris Akbari. I'm the president of the ITEX  
15 Group.

16 First of all, I'd like to say thanks to staff.  
17 They're doing a great job in a very tough time. As we  
18 all know, there's a very limited amount of time to get  
19 these applications scored.

20 I think the key point that I'd like to bring to  
21 the Board today is that our applications have two types of  
22 scoring items: you have menu items where you can select  
23 multiple things, or you have items where you can select a  
24 single item. We believed that we could score three points  
25 because we were in an incorporated city in a census tract

1 that never had had a previous development. Unfortunately,  
2 it was brought to our attention after we submitted the app  
3 that there was an FAQ where staff had determined that they  
4 felt like it was necessary for the whole census tract to  
5 be inside of the city. For us, we believe that in the  
6 spirit of this line item or this point item that we should  
7 get three points but we determined that it was correct  
8 based upon the FAQ that was out there.

9 The problem is you have a limited number of  
10 selections. You can only choose five, three, two, one.  
11 We selected three. We put documentation in there that  
12 clearly showed that we met what we thought was a three  
13 point item but it's very clear that the documentation in  
14 there is that we met the two point item also. For us, we  
15 are seeing the direction that it's going is that if you do  
16 not select the right single check box, then you lose all  
17 your points, and for us that is a major difference from  
18 what we've seen over the past few years, the past eleven  
19 years that I've been involved with TDHCA.

20 So for us we're here to request two things.  
21 We're here to request that the Board evaluate this and  
22 possibly bring up a future action item to enforce that the  
23 staff will recommend application points based upon what  
24 they qualify for and what documentation that they put into  
25 the application.

1                   So thank you very much. I appreciate your  
2 time.

3                   MS. BINGHAM ESCAREÑO: Thank you.

4                   MR. BUMP: Good morning, Madam Chair, Board  
5 members, staff. Casey Bump with Bonner Carrington.

6                   In the Ted Trout application they requested  
7 three points and are going to receive zero even though  
8 they qualify, arguably, for two. We had exactly the  
9 opposite situation in two applications that we filed with  
10 the underserved area. Our interpretation was the same as  
11 Ted Trout's applicant. Based on our reasonable  
12 interpretation of the language, we thought we did not  
13 qualify for three points because the city had received an  
14 allocation, so we selected two.

15                   We relied upon the workshop materials which  
16 stated in part 2 on page 58 regarding the requirements for  
17 tab 9, "So if your census tract is within a city whose  
18 last tax credit development was 15 or more years ago and  
19 that one is still in the inventory, you can set three  
20 points." Our city was not devoid of tax credits although  
21 our census tract was. Using the workshop explanation as  
22 our guide, we thought we did not qualify for three and  
23 selected two. Staff ultimately interpreted the language  
24 differently, and under staff's interpretation we would  
25 qualify for three points. We feel we should get three

1 points even though they were not requested.

2 The lack of clarity in the underserved area  
3 scoring requirements has created a number of difficulties  
4 this year. We think that under the circumstances the only  
5 fair way to resolve these issues is for each applicant to  
6 receive the highest number of points that they qualify for  
7 or adjust accordingly. There is a precedent for awarding  
8 maximum points for which the application qualifies where  
9 applicants were misled into claiming fewer points due to  
10 lack of clarity in the QAP.

11 Under the 2013 QAP, points were awarded for  
12 disaster declarations as long as they were not preemptive.

13 Changing staff guidance concerning what constituted a  
14 preemptive declaration meant that applicants scored their  
15 projects differently even though all counties had declared  
16 disasters. Ultimately, the confusion caused staff to  
17 suggest and the Board to direct staff that all applicants  
18 that qualified for seven points, with the exception of  
19 Dallas, Tarrant and Kaufman, which would receive eight  
20 points regardless of the number of points claimed. This  
21 is a solution that would be appropriate for scoring the  
22 underserved area points. Staff awards the points that the  
23 application qualifies for regardless of the points  
24 requested.

25 This year in the QAP there were a number of

1 changes and with interpretation there does come some  
2 unintended consequences. Staff is doing a great job and  
3 doing what they think is right, and while the change in  
4 points may not completely benefit us, we think that  
5 setting the precedent of situations like this that are  
6 specifically tied to a census tract that can be proven  
7 would be best for all applicants, and we ask that you  
8 direct staff to award the points up or down based on what  
9 the applicant actually qualified for.

10 Thank you for your time.

11 MS. BINGHAM ESCAREÑO: Thank you, Casey.

12 MS. DULA: Good morning. Tamea Dula with Coats  
13 Rose.

14 Last month in the public comment session I  
15 talked to you about problems that we were seeing in the  
16 language in some of the QAP and rule items, and in  
17 particular I talked about the underserved area language  
18 where I did a little grammar brush-up with regard to what  
19 the item (c) meant, whether the project had to be in a  
20 municipality that had no previous awards for the last 15  
21 years or whether it had to be in a census tract that had  
22 no such awards. And subsequently, I wrote a letter to the  
23 executive director discussing the two possible  
24 interpretations and proposing a course of action that I  
25 felt would be equitable which was to ignore which box was



1 checked because of the confusion and just simply determine  
2 the number of points based upon the documentation in the  
3 application.

4           Additionally, staff's new vigorous approach to  
5 situations where too many points are claimed in the  
6 application but the application does qualify for some  
7 fewer points is complicating matters too. Staff's current  
8 position that they should score zero points because you  
9 didn't check the box for the fewer points is a real  
10 problem here because in many of those instances you were  
11 directed that points could only be claimed under one of  
12 the following items, which to me at least suggests that  
13 you could only check one, like check three points if you  
14 think you get it, or check only two points if you  
15 interpreted it a different way.

16           We are now seeing many instances where the  
17 directions in the application caused these difficulties  
18 and the language is subject to multiple interpretations.  
19 So we are suggesting that you in some instances direct  
20 staff that under the 2017 round the highest score that can  
21 be substantiated within the application itself should be  
22 what is awarded, regardless of what number of points were  
23 selected by the applicant.

24           There is precedent for this with regard to the  
25 preemptive disaster declarations that Casey was talking

1 about. The language was new, it said that you can get a  
2 score of seven points if you're in a statewide disaster  
3 declaration or eight if you were in a localized one, but  
4 preemptive disaster declarations didn't count and  
5 preemptive disaster declarations, the definition of it  
6 changed as we went through the pre-application period. As  
7 a result, staff came to the Board and said, We're seeing a  
8 problem here, we suggest that you give us direction to  
9 score everybody appropriately. You did and they did, and  
10 that's what we think needs to be done here.

11 Any questions?

12 MS. BINGHAM ESCAREÑO: I have a question, and  
13 it probably goes to most of the folks so far, maybe with  
14 the exception of the folks in this specific development.  
15 When you're asking for Board direction to award the  
16 highest point, are you referencing specifically this  
17 scoring item? Because obviously part of I think what  
18 Casey is bringing up, or some of the other speakers, is  
19 some of these are exclusionary, kind of pick one, and then  
20 some of them are layered and can be any combination of  
21 several. Are you referencing specially this scoring item  
22 section 11.9(c)(6)?

23 MS. DULA: Yes. I am referencing this in  
24 particular, but I also know that this is going to be a  
25 problem with the cost per square foot points where you're

1 required to indicate how many points you are asking for,  
2 the maximum being twelve, I think, and if you don't  
3 qualify for the twelve because of interpretive issues --  
4 and those interpretive issues have to do with amenities  
5 and high opportunity area and whether or not you qualify  
6 for those amenities -- that's going to be a problem too,  
7 so I would include that also.

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

10 MS. BINGHAM ESCAREÑO: Thank you.

11 MS. DULA: Thank you.

12 MS. VACHETTI: Good morning. I'm Lisa Vachetti  
13 with BETCH. So we represent the developer whose  
14 application is in direct competition with Providence at  
15 Ted Trout Drive.

16 As you've heard, the applicant for Providence  
17 has come to the conclusion that they do not qualify for  
18 the three points requested in their submitted application.

19 They're now asking to change their application to request  
20 a lower two points. We do not believe that they should be  
21 allowed to change their application and also that they  
22 explicitly declined the two points.

23 I want to point out there are several speaking  
24 up here because there are other sites in this application  
25 round that were chosen specifically by developers due to

1 similar characteristics to the one for Providence. These  
2 sites that were chosen by these developers are also within  
3 boundaries of both an incorporated area and a census tract  
4 with no TDHCA development within their first 15 years of  
5 affordability. We chose these sites because we thought  
6 that characteristic would qualify us for the maximum three  
7 points, but as explained by staff, the census tracts also  
8 had to be entirely within the boundaries of an  
9 incorporated area.

10 With this further clarification from TDHCA  
11 through the FAQ process, we realized that our sites do not  
12 qualify for the higher three points. As a result, we went  
13 ahead and lowered our point request for the more  
14 appropriate two points. Like the rest of us, the site for  
15 Providence at Ted Trout Drive does not qualify for the  
16 three points, but unlike the rest of us, they happened to  
17 decline the lower two points and continued to request the  
18 higher points despite the clarification provided in the  
19 FAQs.

20 There's been some argument about being able to  
21 select only one item underneath that category in the  
22 application and that the instructions were a little bit  
23 unclear as to what you should be able to do. This one is  
24 a little bit unique from some of the past examples, I  
25 think -- and maybe staff can clarify or correct me if I'm

1 wrong -- but it's different in that the way that you could  
2 select your point items you could put yes or no as far as  
3 whether you qualify for those points, not necessarily that  
4 you're requesting those points. So the way that the  
5 workbook works is that you could have left it blank, you  
6 could have put or you could have put yes.

7 In this case, this applicant chose no for every  
8 other category and yes for the three point item. I'm sure  
9 it was an honest mistake but I do feel like with all of  
10 the information that was out there that was provided by  
11 staff that it's not a mistake that should be correctable  
12 because there is information out there clarifying what  
13 actually qualifies for the three points.

14 Thank you.

15 MS. ANDRÉ: Good morning. I'm Sarah André. I  
16 am a consultant in the tax credit field. I have no  
17 relation to this application, anything that's being  
18 discussed or any of these applicants. I have nothing to  
19 gain from my comments, and for all I know, I might have  
20 something to lose, I haven't done an analysis of what  
21 would happen.

22 I think that it is very important for you to  
23 hear that if an applicant qualifies for points and they  
24 provide documentation to that effect, they should receive  
25 those points. I do not agree with Casey that TDHCA should

1 award points that you don't ask for. It's been very clear  
2 that the burden is on the applicant to ask for points and  
3 it's also been very clear that if you don't ask for  
4 something, you can't get it. And that's stated at the  
5 various training sessions and that would just be onerous  
6 on staff. You know, why not submit a blank application  
7 and have them tell me what I score for?

8 But in this case the applicant did qualify for  
9 two points, there is a historical precedent of TDHCA  
10 looking at various factors and saying you don't get eleven  
11 here but you get ten, you didn't quite make it to that  
12 level but you do qualify for the lesser points, and I  
13 agree with Tamea that if we change that, it's just going  
14 to be sort of a world of hurt on these types of hearings.

15 So I do think that if you provide the documentation and  
16 you qualify, you should get the points.

17 And I thank you very much for your time  
18 listening to this issue.

19 MS. BINGHAM ESCAREÑO: Any questions for Sarah?

20 (No response.)

21 MS. ANDERSON: My name is Sarah Anderson and  
22 I'm also a consultant, and I would like to echo everything  
23 that Sarah André said in that I have no connection to any  
24 of these deals, I'm not in this region, and I don't even  
25 want to speak on their issue. It appears to be a little

1 bit of a tangential issues, and our concerns are a little  
2 bit on the review as we're going through.

3 And I was a little surprised when I saw the  
4 write-up for this, but again, I don't want to speak  
5 specifically on it, but my concern is what we're seeing in  
6 the reviewing which is an all or nothing review and look.

7 The administrative deficiency process works specifically  
8 that if we submit something and if the Department wants  
9 more information, they have the ability to ask for more  
10 information. So I'm a little concerned when I hear staff  
11 talking about if it's not there, we're not asking for  
12 anything more.

13 The rules this year there were a lot of changes  
14 and a lot of new information being requested, and  
15 unfortunately, the first year you do that, the definitions  
16 and what staff wants isn't as clear as we would like it to  
17 be, and we go through a process and staff goes through a  
18 process of learning what it is. When they say that we're  
19 next to something and the manual doesn't reflect exactly  
20 what we're supposed to submit, we submit something, we  
21 haven't read someone's mind correctly, and all of a sudden  
22 what we submitted doesn't meet what we're supposed to do  
23 but we haven't been told what to submit and we find  
24 ourselves in this weird nether region of we don't want any  
25 more information even though we didn't tell you what we

1 wanted exactly.

2           So I think you're going to see a lot of that as  
3 we're struggling with staff meeting a lot of new -- this  
4 high opportunity, almost everything on high opportunity  
5 was new as far as proof that needed to be submitted. So I  
6 just wanted to lay that out that I think you're going to  
7 see that, and it's similar and tangentially that if  
8 someone submits something, if staff has a question, if  
9 they want clarification, they can ask for it and they  
10 should ask for it rather than just say this doesn't meet  
11 what we want and we're done. Just a personal opinion, and  
12 that is all.

13           Thank you.

14           MR. PALMER: Barry Palmer with Coats Rose.

15           I think this is more than just one deal here  
16 that we're talking about, this issue of all or nothing on  
17 the points. We're going to see this on a number of deals  
18 and if we follow this change in policy, it's going to  
19 reflect in the outcome of the number of deals that get  
20 awarded.

21           And it seems to me that to change from  
22 longstanding practice of how the staff reviews and scores  
23 applications is something that needs to be put out for  
24 public comment and discussed and considered by all the  
25 stakeholders and by the Board before that gets



1 implemented. It shouldn't be something that staff just  
2 decides. This is the first time I've heard that this is  
3 how we came to this is Marni deciding that because we  
4 didn't get a change in the QAP that she wanted that we  
5 were going to totally change the way that we score  
6 applications. That's something that you all should have  
7 been presented with comments on both sides as to whether  
8 that's even good policy rather than just implement it.

9 MR. COMBS: Good morning. My name is Ryan  
10 Combs. I'm with Palladium, and I don't compete against  
11 this application but we do compete in the process.

12 And as I look at these, I don't see this as a  
13 change. I want to support staff because I don't see this  
14 as a change in policy. What I've understood for years is  
15 that when you submit an application -- I think the rules  
16 support this -- you submit an application, you don't  
17 change your application. And we have months, if something  
18 is unclear, we have months to go to staff. I do it all  
19 the time, shoot an email and say: What do you mean,  
20 what's the intent? And they addressed this issue about  
21 underserved at the work sessions in multiple cities, in  
22 the FAQ which that's what the FAQ is for, they did their  
23 best to make this clear. If it was still unclear, you  
24 could reach out to staff.

25 In the past -- and I disagree with Barry's

1 comment -- I don't believe this is change in policy, in  
2 the past what we have always been asked to do is through  
3 the administrative deficiency process is if you choose  
4 points for something, prove to us why you think you get  
5 those points. And that's the opportunity that everybody  
6 has and that's my understanding that everybody has right  
7 now is we have the opportunity to prove why we believe we  
8 get those points.

9 Now, in the past, a few years ago when they  
10 introduced the community revitalization plan, you could  
11 qualify potentially for both, revitalization plan or high  
12 opportunity, and so there were applications that would  
13 request community revitalization, but then if it was  
14 determined by staff that, well, your revitalization plan  
15 didn't really meet, well, then you could go back and go:  
16 Okay, but everything in our application also would qualify  
17 for this, so just give us those.

18 And I think it's a very dangerous precedent to  
19 say, okay, well, then let's just figure out what you might  
20 could qualify for. This is a competitive process and when  
21 we submit our applications, we go in -- we're not  
22 guessing, we know what we're doing when we submit these  
23 applications because we're competing with so many people.

24 And so my argument would be for exactly what staff is  
25 doing, the process needs to be very fair, it needs to be

1 very consistent, it is what it is, and if there's any  
2 misunderstanding, we all have the same opportunity to go  
3 figure out that understanding.

4 You know, there may be applications that  
5 misunderstood this, there were a lot of applications that  
6 didn't. You know, we figured it out because we reached  
7 out and if there was a question, we found out.

8 MS. BINGHAM ESCAREÑO: Thank you.

9 Claire, are you the last?

10 MS. PALMER: I think I am. Claire Palmer.

11 I do have a dog in this hunt on this  
12 application, but more importantly, I have a bunch of other  
13 people who have been through the review process and the  
14 all-or-nothing rules have applied to all of them and I've  
15 had applications that have lost points and have been  
16 terminated back in the earlier part of the review process.

17 If this changes now, it's going to be real unfair to the  
18 people who have already played by the rules and didn't  
19 appeal and accepted their points deductions or their  
20 terminations.

21 MS. BINGHAM ESCAREÑO: Thank you, Claire.

22 Any questions from the Board members?

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Any other comments from  
25 staff?

1 MS. HOLLOWAY: I have no further comment.

2 MR. IRVINE: And I just would like to offer one  
3 comment. I do think it is appropriate when the Board  
4 accepts the report to either refrain from accepting on  
5 this particular report or make it clear that in accepting  
6 the report you're not prejudicing any appeal of the  
7 scoring notice. I do not think that it's posted for  
8 action, and even if it were posted for action, I do not  
9 think it's a good idea to fashion policy structures on the  
10 fly, that's the rulemaking process. I think when as  
11 scoring notices are issued and appeals occur that you will  
12 take into account all of the facts and circumstances that  
13 are presented on each appeal and hopefully make good and  
14 consistent decisions.

15 MS. BINGHAM ESCAREÑO: So let's do this just  
16 quickly just since this isn't an action item, does the  
17 Board have any instruction regarding the report on the  
18 first item which was 17165 Merritt Headwaters, Dripping  
19 Springs? Does the Board have any instruction to staff  
20 regarding that report?

21 (No response.)

22 MS. BINGHAM ESCAREÑO: The second one was Vista  
23 Bella in Lago Vista.

24 MR. IRVINE: We cannot take instruction, all  
25 you can do is accept the report or not.

1 MS. BINGHAM ESCAREÑO: Okay.

2 MS. HOLLOWAY: But I believe the Board can  
3 direct staff to bring something back as an agenda item.

4 MR. IRVINE: Yes.

5 MS. BINGHAM ESCAREÑO: So it's not appropriate  
6 for me to say then does the Board have any direction for  
7 staff on the first two report items? Is that still not  
8 appropriate?

9 MR. IRVINE: That's correct.

10 MS. BINGHAM ESCAREÑO: Hearing none. Does the  
11 Board have any direction for staff regarding the third  
12 item, TDHCA 17736 Providence at Ted Trout Drive, Hudson?

13 (No response.)

14 MS. BINGHAM ESCAREÑO: Hearing no instruction,  
15 the Board accepts the reports. Thank you.

16 Let's move on to item 4, our rules section.

17 MS. HOLLOWAY: We actually have 3(b).

18 MS. BINGHAM ESCAREÑO: Oh, pardon me. 3(b),  
19 report on the 2018 QAP project. Thanks, Marni.

20 MS. HOLLOWAY: So on March 22 of 2017, we held  
21 the third 2018 QAP roundtable. The theme of this  
22 discussion was market issues for housing tax credits.  
23 While discussions with the Board have occurred, as you're  
24 aware, at past meetings and last month the Board took  
25 action to provide relief for 2016 9 percent awardees who

1 have to return credits, this roundtable last month was the  
2 first opportunity for affordable housing stakeholders to  
3 discuss market issues together with TDHCA staff in a more  
4 informal environment.

5 We began the discussion by noting that while  
6 there is a great deal of discussion regarding syndication  
7 issues, it has been difficult to gauge the true impact on  
8 the 2016 allocations. TDHCA won't be able to make a  
9 preliminary assessment until the 10 percent test which is  
10 not until July. Until then, the Department is unable to  
11 determine the extent of the issues unless developers speak  
12 openly with us. We pointed out that in order for us to  
13 find solutions, we must have clear signals from the entire  
14 development community and not just a few individuals.

15 Responses to the discussion were mixed. One  
16 developer shared that of two 2016 deals, one was able to  
17 close, another was unable to. For the deal that was able  
18 to close, the credit price had only dropped 4-1/2 cents so  
19 they were able to adjust their deal to make it work.  
20 Another developer shared that the allocation awarded to  
21 them probably would not work. And a third developer  
22 shared that their team was able to close one deal and  
23 another was coming back for a material amendment. So  
24 there's really this mixed bag across all the 2016 deals.

25 One thing that we're hearing generally is that

1 the community is waiting for results of proposals of  
2 comprehensive tax reform. Of course, that's now been  
3 published but we don't know what's going to happen with  
4 that, and that has pushed many recipients just to bide  
5 their time.

6 There was some discussion of changes to the  
7 direct loan requirements but with our current NOFA over-  
8 subscribed by six times for TCAP ARRA funds, there is no  
9 potential to make the requested changes at this point.

10 Participants discussed the allocation of  
11 returned credits to 2016 deals who are having equity  
12 issues but statutory requirements governing reallocation  
13 require that anything that's returned to us goes into the  
14 2017 round.

15 Staff encouraged participants to propose new  
16 rules for 2018, help us develop those tools that would  
17 assist distressed 9 percent deals from 2016.

18 That is our report.

19 MS. BINGHAM ESCAREÑO: Marni, so just remind  
20 the Board why won't we know more until the 10 percent  
21 test.

22 MS. HOLLOWAY: That's the first time that we  
23 have an official deadline, that those 2016 deals have to  
24 come back to us with evidence that that is moving forward.

25 MS. BINGHAM ESCAREÑO: When you do the

1 roundtables, you get a smattering of feedback on where  
2 people think they'll be but the vast majority of the  
3 community either doesn't know or won't say.

4 MS. HOLLOWAY: I was doing a lot more talking  
5 in that roundtable than the other people in the room. I  
6 think there's a great deal of uncertainty out there. The  
7 other part of it is not everyone goes to the roundtables  
8 so it's not necessarily all of the '16 deals.

9 MS. BINGHAM ESCAREÑO: Any questions for Marni?  
10 (No response.)

11 MS. BINGHAM ESCAREÑO: Tim, any other  
12 developments?

13 MR. IRVINE: Yes. I actually have a comment.  
14 You'll, of course, next month get the report on this  
15 month's work group meeting, but I wanted to make this  
16 announcement because this is a way to spread information.

17 In addition to our substantive discussions yesterday, I  
18 put out for consideration that we would develop a 2018 QAP  
19 that only had minimal technical changes to improve the  
20 various issues that we've identified during this round and  
21 that we would not include any significant new policy-based  
22 substance changes. That would form the basis for getting  
23 a QAP done and out more quickly, thereby giving developers  
24 more time to find sites, get them ready to move forward,  
25 and so forth. I'm not saying that we will do that or even



1 that if staff recommends it that the Board will embrace  
2 it, but I wanted to offer that out there as a discussion  
3 and consideration item.

4 If you've got some significant policy concern  
5 that you really think would be new and very important to  
6 include in the 2018 QAP, we'd very much appreciate your  
7 reaching out to us to discuss it. Unless we hear of such  
8 things, we may well go down this course of a streamlined  
9 expedited QAP.

10 MS. HOLLOWAY: We actually will be putting this  
11 proposal up on forum and getting a LISTSERV email out so  
12 that people who weren't at that meeting or at this meeting  
13 know that this is an option that we're considering.

14 MS. BINGHAM ESCAREÑO: Great. Thank you.  
15 Thanks for the report.

16 Now we'll move on to items under item 4, Rules,  
17 and Patricia.

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

20 Agenda item 4(a) proposes changes to the  
21 compliance monitoring rules to address requirements of the  
22 Violence Against Women Act, or VAWA. This federal law  
23 provides protections for applicants and residents at  
24 housing tax credit, HOME and many other affordable housing  
25 properties. Covered housing providers cannot deny

1 occupancy or terminate occupancy because of domestic  
2 violence or because of events and circumstances directly  
3 related to domestic violence.

4 HUD has recently released two forms, a notice  
5 of occupancy rights and a self-certification. These forms  
6 must be provided at the time of application, if the  
7 application is being rejected, if the household is going  
8 to be evicted, or if their lease will not be renewed. So  
9 if an applicant was evicted from a conventional apartment  
10 complex because of a domestic disturbance, that should not  
11 be taken into consideration when evaluating their  
12 qualifications at a TDHCA assisted property. Affordable  
13 housing providers must provide applicants and residents  
14 with notification about their protections under VAWA so  
15 that people are not inappropriately turned away or  
16 displaced from affordable housing properties.

17 All HOME, Neighborhood Stabilization, National  
18 Housing Trust Fund and Multifamily Direct Loans using HOME  
19 match that were funded after December of 2016 have  
20 additional requirements. Those developments must adopt an  
21 emergency transfer plan, so if a resident is experiencing  
22 domestic violence and they want to transfer on site, and  
23 they also must allow households impacted by domestic  
24 violence to break their lease without penalty.

25 HUD's recent regulations also required TDHCA as

1 a participating jurisdiction to adopt an emergency  
2 transfer plan. That item is also attached to your Board  
3 writeup. Since the Department does not control housing  
4 that is subject to VAWA, the Department's plan focuses on  
5 the training of Department employees, procedures for  
6 handling calls from people looking for housing and  
7 services because of domestic violence, and procedures for  
8 tracking and reporting to HUD.

9 Since the rule needed to be amended, there are  
10 a few other nonsubstantive additional amendments that are  
11 proposed within these changes.

12 I recommend approval of the rule as presented  
13 in your Board book for publication in the *Texas Register*,  
14 and I'm available to answer any questions you might have.

15 MS. BINGHAM ESCAREÑO: Thank you, Patricia.

16 Any questions from the Board members on item  
17 4(a) regarding VAWA/HUD?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: We'll entertain a motion  
20 to approve.

21 MR. GOODWIN: So moved.

22 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

23 Second?

24 DR. MUÑOZ: Second.

25 MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds. Any

1 other discussion?

2 (No response.)

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

4 (A chorus of ayes.)

5 MS. BINGHAM ESCAREÑO: Opposed, same sign.

6 (No response.)

7 MS. BINGHAM ESCAREÑO: Motion carries.

8 Okay, Jennifer, item 4(b).

9 MS. MOLINARI: Good morning, Madam Chairman,  
10 Board members. Jennifer Molinari, HOME and Homeless  
11 Programs director, and I have to say from the get-go I've  
12 got a cold so if my voice breaks up just ignore it, and  
13 I'm not alone in this room so we'll just move on and talk  
14 about item 4(b) which is actually related to item 4(a).

15 Item 4(b) is a request to add new sections to  
16 our Chapters 5 and 7 related to the Violence Against Women  
17 Act requirements. This is being presented to you as a  
18 separate item from 4(a) because, as you might have  
19 noticed, ESG was exempted from the programs as discussed  
20 in item 4(a), and that is because the ESG or subrecipients  
21 are also required to develop an emergency transfer for  
22 other federal funding that they might receive from the  
23 Federal Government, so this is a separate rule. And in  
24 addition, we believe that giving the subrecipients the  
25 option to develop an emergency transfer plan helps with

1 their local control of such plans at the local level.

2           So to maintain compliance with federal  
3 requirements for the Department's existing ESG  
4 subrecipients, staff is proposing actions to add new  
5 sections 5.2014 and 7.2007 that will be published  
6 concurrently in the *Texas Register* for public comment, and  
7 also that 5.2014 will be published as an emergency  
8 rulemaking for immediate adoption.

9           The new section in Chapter 5 is being proposed  
10 as an emergency rule to take effect immediately upon  
11 publication in the *Texas Register* in order to be  
12 applicable to our current ESG subrecipients. These  
13 regulations relate to public health and safety of the  
14 clients of ESG subrecipients and need to be adopted on an  
15 emergency basis because the development and adoption of  
16 the emergency transfer plans must also be completed by  
17 June 14, 2017.

18           So the rule for Chapter 5 is simultaneously  
19 being proposed to become effective following final Board  
20 approval and public comment which is anticipated to occur  
21 in July, and what that means is the emergency rule will be  
22 in effect until we have our standard rule in place,  
23 expected to occur in July, and that will cover us through  
24 the end of the year for our current subrecipients.

25           Another item of note, last summer the ESG rules

1 in their entirety were separated from Chapter 5 and put  
2 into Chapter 7, so we also have in the Board book a new  
3 section for Chapter 7, which is similar to what we're  
4 doing for Chapter 5. That rule will take effect at the  
5 same time as the Chapter 5 rule will take effect and will  
6 cover our new 2017 subrecipients and any subrecipients  
7 after the 2017 program year.

8 So this item is being presented to you for  
9 public comment on the emergency rulemaking for Chapter 5  
10 and also for us to go out for public comment on the new  
11 sections in Chapters 5 and 7. So in addition, it should  
12 be noted that the actual form of the preamble for  
13 submission for the new rule in Chapter 5 may be altered or  
14 split into two separate *Texas Register* filings rather than  
15 a single preamble that you might see in your Board book.  
16 That will be done in an effort to make sure that we meet  
17 *Texas Register* requirements, but the substance and  
18 authorization as presented in the Board action, as well as  
19 the rule itself and the language in the draft rule itself  
20 will not be materially different than what is being  
21 presented to you at the meeting.

22 And so with that, I would be happy to answer  
23 any questions you might have.

24 MS. BINGHAM ESCAREÑO: Thank you.

25 Does the Board have any questions for Jennifer?

1 MR. IRVINE: Might I make just one comment to  
2 the public at large? This Board very rarely engages in  
3 emergency rulemaking. The Administrative Procedures Act  
4 has very tight constraints on when emergency rulemaking is  
5 appropriate and please do not assume that the emergency  
6 rule is the be-all and end-all because the Administrative  
7 Procedures Act requires us at the same time to propose the  
8 permanent rule which goes through the usual public comment  
9 and reasoned response process, so please stay engaged on  
10 these issues.

11 MS. BINGHAM ESCAREÑO: And Tim, when we do  
12 emergency rules, there's those considerations, right,  
13 financial impact considerations, on the public?

14 MR. IRVINE: Health and safety.

15 MS. MOLINARI: And an emergency rule may only  
16 be in effect for 120 days and then it must come back  
17 before you.

18 DR. MUÑOZ: It cannot exceed 120 days?

19 MS. MOLINARI: It cannot exceed 120 days as an  
20 emergency rule.

21 MS. BINGHAM ESCAREÑO: If there's no further  
22 questions, we'll entertain a motion to approve item 4(b).

23 MR. GANN: I so move

24 MS. BINGHAM ESCAREÑO: Mr. Gann moves approval.

25 MR. GOODWIN: Second.

1 MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

2 Any further discussion?

3 (No response.)

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

5 (A chorus of ayes.)

6 MS. BINGHAM ESCAREÑO: Opposed, same sign.

7 (No response.)

8 MS. BINGHAM ESCAREÑO: Great. Motion carries.

9 Thank you.

10 Item 4(c), Jeff.

11 MR. PENDER: Good morning. Jeff Pender, deputy  
12 general counsel.

13 I have no other comments other than what  
14 appears in your Board books on this rule and the repeals,  
15 but I'd be more than happy to answer any questions you  
16 might have about it.

17 MR. IRVINE: And this is on the action agenda  
18 basically so that the world at large will know that this  
19 is creating some new requirements that will ripple down  
20 and impact a lot of people, so it has to do with  
21 safeguarding sensitive information.

22 MS. BINGHAM ESCAREÑO: So regarding the item on  
23 protected health information, item 4(c), does the Board  
24 have any other questions? If not, we'll entertain a  
25 motion to approve.



1 MR. GOODWIN: So moved.

2 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves. Is  
3 there a second?

4 MR. GANN: Second.

5 MS. BINGHAM ESCAREÑO: Mr. Gann Seconds.

6 Any further discussion?

7 (No response.)

8 MS. BINGHAM ESCAREÑO: Seeing none, all those  
9 in favor, aye.

10 (A chorus of ayes.)

11 MS. BINGHAM ESCAREÑO: Opposed, same sign.

12 (No response.)

13 MS. BINGHAM ESCAREÑO: Motion carries.

14 We're probably due for a break. It is 10:20 by  
15 the clock in front of me. Why don't we take a break until  
16 10:40, 20-minute quick break, and then we'll resume the  
17 agenda.

18 (Whereupon, at 10:20 a.m., a brief recess was  
19 taken.)

20 MS. BINGHAM ESCAREÑO: We're reconvening the  
21 meeting, ready to review items under item 5, Bond Finance.  
22 Monica.

23 MS. GALUSKI: Good morning. This is a  
24 presentation, discussion and possible action on Resolution  
25 17-017, authorizing the issuance, sale and delivery of

1 Texas Department of Housing and Community Affairs Single  
2 Family Mortgage Revenue Bonds 2017, Series A, Single  
3 Family Mortgage Revenue Refunding Bonds 2017, Series B  
4 (Taxable) and Single Family Mortgage Revenue Bonds 2017,  
5 Series C (Taxable), approving the form and substance of  
6 related documents, authorizing the execution of documents  
7 and instruments necessary or convenient to carry out the  
8 purposes of this resolution, and containing other  
9 provisions relating to the subject.

10 So this is about our upcoming bond issue. The  
11 proposed bond issue consists of three series, all fixed  
12 rate. Series 2017-A would be tax-exempt bonds, proceeds  
13 used to purchase Ginnie Mae mortgage-backed securities,  
14 backed by tax-exempt eligible newly originated mortgage  
15 loans. The tax-exempt eligible mortgage loans are loans  
16 that meet the IRS restrictions, such as borrower income,  
17 purchase price limits and first time homebuyer  
18 requirements. These loans are only eligible for inclusion  
19 in the tax-exempt bond series if they did not receive a  
20 mortgage credit certificate. The maximum par amount of  
21 2017-A is \$100 million but the issue size is expected to  
22 be closer to \$60 million, and it really just depends on  
23 how many loans we still get purchased and ready to pool  
24 prior to pricing the bond issue.

25 2017 Series B will be taxable bonds but will

1 refund the Department's outstanding 2007 Series B which  
2 currently have bond rates of 5.15 to 5.30. Ginnie, Fannie  
3 and Freddie Mac mortgage-backed securities will be  
4 transferred to support the 2017 bonds. Par amount of  
5 2017-B bonds won't exceed \$30,375,000. Debt service  
6 savings are expected to exceed 5 percent of the principal  
7 amount of the Series 2007-B bonds being refunded and  
8 should exceed \$3 million on a present value basis.

9 The 2017 Series C will be taxable bonds  
10 proceeds used to purchase Ginnie Mae and Fannie Mae  
11 mortgage-backed securities which will be backed newly  
12 originated mortgage loans that are ineligible for the tax-  
13 exempt financing -- in other words, loans that either had  
14 MCCs or are conventional mortgage loans related to Fannie  
15 Mae which we don't currently have as eligible for tax-  
16 exempt. The maximum issue size is \$60 million; staff  
17 expects the issue to be closer to \$35 million.

18 Underwriters for this issue are Ramirez,  
19 Jeffries, and RBC, with Ramirez as the senior manager. We  
20 expect to price the bonds in early to mid June and to  
21 close by the end of June. Contribution by the Department  
22 will not exceed \$16 million. That sounds like a big  
23 number but that factors in all of the maximum bond issues  
24 which would equal \$190,375,000, not the expected size.

25 MS. BINGHAM ESCAREÑO: On all three?

1 MS. GALUSKI: \$16 million total, and that would  
2 include down payment and closing cost assistance on the  
3 new originated loans, lender compensation, and a portion  
4 for the cost of issuance on the bonds. Contribution will  
5 funded from amounts on deposit under the single family  
6 indenture and other single family related funds.

7 Staff recommends approval of Resolution 17-017,  
8 and I'm available to answer any questions that you might  
9 have.

10 MS. BINGHAM ESCAREÑO: This action is in the  
11 form of a resolution. If there's no questions, we'll  
12 entertain a motion to approve.

13 MR. GANN: I'd like to move it.

14 MS. BINGHAM ESCAREÑO: Mr. Gann moves for  
15 approval. Second?

16 MR. GOODWIN: Second.

17 MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

18 Any other discussion, any comments from staff,  
19 Board members?

20 MR. IRVINE: Just have a comment that I see a  
21 lot of folks from our team in the audience. I see our  
22 senior managers there, I see our financial advisors, I see  
23 our disclosure counsel, our bond counsel. It takes a lot  
24 of people to put together complex issues like this and it  
25 takes the best of the best to really do it right and

1 thoughtfully and prudently, and a big shout out to that  
2 team.

3 MS. BINGHAM ESCAREÑO: Great. They make it  
4 look and sound really easy.

5 MR. GANN: I take personal pleasure in making  
6 that motion, by the way.

7 MS. BINGHAM ESCAREÑO: Very good.

8 No further discussion, all those in favor, aye.  
9 (A chorus of ayes.)

10 MS. BINGHAM ESCAREÑO: Opposed, same sign.

11 (No response.)

12 MS. BINGHAM ESCAREÑO: The motion carries.

13 Are we doing 5(b).

14 MS. GALUSKI: No. Staff is requesting that to  
15 be pulled.

16 MS. BINGHAM ESCAREÑO: Okay. So we're going to  
17 pull 5(b).

18 Thank you, Monica. Thank you, team.

19 We're going to move back into item 6. Marni,  
20 you're going to take care of (a) and (b) and then we'll  
21 see Andrew probably for (c) and (d)?

22 MS. HOLLOWAY: Yes.

23 MS. BINGHAM ESCAREÑO: Very good.

24 MS. HOLLOWAY: All right. Item 6(a) is  
25 presentation, discussion and possible action on timely

1 filed appeals of application terminations under the 2017  
2 Uniform Multifamily Rules. These are three different  
3 applications that we will take in succession.

4 The first one is application number 17069, this  
5 is the Arlinda Gardens supportive housing application. It  
6 was terminated for failure to meet the requirements of  
7 multiple provisions of the 2017 QAP and Uniform  
8 Multifamily Rules. The applicant timely filed an appeal  
9 which the executive director has denied in part and  
10 conditionally granted in part. The executive director  
11 reviewed the information presented by the applicant and  
12 found that the information provided for 811 participation  
13 and the lack of organization of the development narrative  
14 both warranted the opportunity to provide clarification  
15 via administrative deficiency.

16 Multiple material deficiencies remain  
17 unresolved. The applicant did not disclose that the  
18 proposed development site is located within the attendance  
19 zone of a high school that does not have a Met Standard  
20 rating. The applicant incorrectly certified on the  
21 development owner certification that the development is  
22 not located in an area with any of the undesirable  
23 neighborhood characteristics which renders the development  
24 owner certification invalid.

25 The applicant did not provide information

1 regarding the mitigation of undesirable neighborhood  
2 characteristics as required by the rule and application,  
3 nor did they provide the required undesirable neighborhood  
4 characteristics report. The application includes a  
5 materially deficient request for multifamily direct loan  
6 funds. The applicant did not provide letters from utility  
7 providers stating that services are present and available.

8 The applicant did not provide a statement explaining how  
9 the proposed development with promote greater housing  
10 choice.

11 The architectural drawings are incomplete. The  
12 proposed development has four stories but does not include  
13 the required elevator. The 15-year rental pro forma does  
14 not include the debt service for the direct loan funds  
15 requested or the permanent loan described elsewhere in the  
16 application. This omission renders the lender  
17 certification invalid and the application therefore lacks  
18 support for 18 points for financial feasibility. The  
19 architect certification is not included. The site design  
20 and development feasibility report does not include the  
21 required survey or site plan prepared by a civil engineer.

22 As part of their appeal, the applicant  
23 requested an accommodation, specifically that the material  
24 deficiencies be treated as administrative deficiencies.  
25 The result of that request for accommodation may be

1 presented to the Board at the May meeting. Staff  
2 continues to recommend termination of the application and  
3 denial of the appeal.

4           Given the applicant's March 17 request for  
5 accommodations under 10 TAC 1.1, and the Board's ability  
6 to review the applicant's request for accommodation, if  
7 the Board sustains staff's recommendation for termination,  
8 it will become effective only after the Board has the  
9 opportunity to review the request for accommodation if the  
10 applicant chooses to have the Board review it at the May  
11 2017 meeting.

12           Staff recommends denial of the appeal of  
13 termination for application 17069. We need to be very  
14 clear that this action today is only about programs  
15 recommendation of denial of the appeal based on the  
16 material deficiencies in the application. This is the  
17 only item that we're discussing.

18           MR. ECCLES: Just one other point of  
19 clarification on this. Since it was revealed in your  
20 presentation that the executive director conditionally  
21 granted elements of it, the condition was that if the  
22 Board reversed on all of the other bases that the appeal  
23 was granted on -- or not granted but that the application  
24 was terminated for, so he addressed a couple of them. Two  
25 issues were conditionally granted by the executive



1 director but unless he were able to show that the  
2 termination was improper and should be returned to staff,  
3 the application would still be terminated, and in essence,  
4 there's no reason to go back and review for administrative  
5 deficiency purposes two matters when there are a host of  
6 other reasons that would make the application terminated.

7 MS. HOLLOWAY: Correct. We have not issued an  
8 administrative deficiency on these two items pending  
9 outcome of the other issues with the application.

10 I would also need to let you know that this was  
11 not a full in-depth review of this application so there  
12 may be other issues. These are the material deficiencies  
13 that we identified through a limited review.

14 I'd be happy to answer any questions.

15 MS. BINGHAM ESCAREÑO: So the action today is  
16 only whether to deny the appeal of the termination or  
17 uphold staff's recommendation?

18 MS. HOLLOWAY: Yes.

19 MS. BINGHAM ESCAREÑO: Any questions of Marni  
20 before we ask for a motion?

21 (No response.)

22 MS. BINGHAM ESCAREÑO: We'll entertain a motion  
23 then on this first appeal which is 17069, Arlinda Gardens.

24 MR. GOODWIN: I would move we approve staff's  
25 recommendation to deny the appeal.

1 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

2 MR. GANN: I'll second.

3 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

4 Thank you, Marni.

5 We'll take comment.

6 MR. IRVINE: No comment on this item.

7 MS. BINGHAM ESCAREÑO: Very good. Any other  
8 questions from staff?

9 We have a motion and a second to approve  
10 staff's denial of the appeal of termination for Arlinda  
11 Gardens. All those in favor, aye.

12 (A chorus of ayes.)

13 MS. BINGHAM ESCAREÑO: Opposed?

14 (No response.)

15 MS. BINGHAM ESCAREÑO: Motion carries.

16 MS. HOLLOWAY: The second application that  
17 we're discussing today is 17742 Las Villas del Rio Hondo.  
18 The application was terminated for failure to meet the  
19 electronic filing agreement deadline requirements of 10  
20 TAC 11.2, so that's in the QAP.

21 The Department receives some full applications  
22 for which pre-application was not submitted. In order to  
23 set up the file transfer protocol account for application  
24 submission, applicants that did not submit a pre-app must  
25 submit the electronic filing agreement which was due to

1 the Department on February 17. This is a deadline date  
2 that was included in the QAP.

3 On February 23, the applicant submitted an  
4 electronic filing agreement which staff originally  
5 declined to accept. After discussion, staff determined  
6 that the applicant would be allowed to submit the  
7 application in order to preserve any appeal rights that  
8 the applicant might have. So if we had just said no back  
9 then, then they wouldn't have had an application in and we  
10 wanted to make sure that they were afforded every  
11 opportunity for appeal. The applicant was informed at the  
12 time that they received access that the application would  
13 be immediately terminated if and when it was submitted.

14 The applicant's appeal asserts that there were  
15 no intervening or conflicting rules under the QAP and the  
16 statute that alter the March 1, 2017 application  
17 submission deadline under the QAP and statute not related  
18 to the scoring. The deadline for submitting the  
19 electronic filing agreement does not conflict with the  
20 application submission deadline. The deadline is a  
21 prerequisite that allows staff to plan time and resources  
22 needed to ensure a reliable application review process.

23 The appeal indicates that the applicant gained  
24 site control from the land seller on February 17, 2017,  
25 the day the request was due, so the applicant had an

1 opportunity to request access to the electronic filing  
2 system and they did not. Three other applicants timely  
3 requested access such that the subregion is now  
4 oversubscribed without this application. It is notable  
5 that a representative for the applicant stated in an email  
6 at the time: If there are other viable apps in that area  
7 that met the requirements and use the area funds, I don't  
8 think Rise plans to appeal.

9 The applicant timely filed an appeal of the  
10 termination which the executive director has denied.  
11 Staff recommends denial of the appeal of termination for  
12 application 17742 Las Villas del Rio Hondo Apartments.

13 MS. BINGHAM ESCAREÑO: Any questions from the  
14 Board for Marni?

15 MR. GOODWIN: Move staff's recommendation.

16 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves  
17 staff's recommendation on 17742 Las Villas del Rio Hondo.  
18 Is there a second?

19 MR. GANN: I'll second.

20 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

21 MS. ADAME: Good morning. My name is Melissa  
22 Fisher Adame. I'm here on behalf of the applicant for  
23 17742.

24 Marni did a good job of just telling you  
25 basically the timeline of what happened. And we thank

1 staff for working with us and letting us submit because we  
2 did submit what we think is a really strong complete  
3 application by the deadline. We were terminated for not  
4 requesting online access by the 17th. So just cut to the  
5 chase, why didn't we apply. Right? So the 17th we got  
6 site control late in the day. We didn't think we were  
7 going to get it. We had a full application, it was  
8 brought to us by constituents in the area, they really  
9 needed some affordable housing, and at that time there  
10 weren't any pre-apps in the region. So we had it fully  
11 baked but we kind of put it on the shelf because we didn't  
12 think we were going to get site control because the seller  
13 wasn't being 100 percent gung-ho for it. So we did get it  
14 over the weekend, we applied, and they graciously allowed  
15 us to get access.

16 And I get it. So the biggest issue is by  
17 having the February 17 deadline, you're effectively making  
18 the application date for people who did not have a pre-app  
19 the 17th which is two weeks before March 1. We did  
20 request access one week before the deadline for the full  
21 app instead of two weeks, so that's the issue. Now, it  
22 could have been March 1, I wouldn't be here, I wouldn't be  
23 wasting your time because that's obviously a big pain for  
24 the staff. So we're just contending that a week before  
25 the deadline, if it's just a paperwork issue, I think we

1 should be allowed just online access.

2           The other issues is we had three other pre-apps  
3 that we decided not to take to full app, so we actually  
4 did have three other FTP online access sites that we could  
5 have used. That worked for staff in the past when we've  
6 been asked for information request inefficiencies, they've  
7 asked us if we didn't have access to an FTP folder for  
8 that specific deal, they asked us to upload to other deal  
9 folders and they can just grab it from the FTP site. So  
10 we could have done that if they had allowed us to do that  
11 as well.

12           So that's pretty much it. I'm here if you have  
13 any questions for me.

14           DR. MUÑOZ: You're saying that in the past  
15 you've used a different access?

16           MS. ADAME: We have at the request of staff,  
17 and not for an application but for deficiency requests and  
18 information. Because basically the whole issue now is  
19 instead of the binders, right, we're doing it online, and  
20 so it's just an access point to get the information to the  
21 staff so that they can read these voluminous files.

22           DR. MUÑOZ: Thank you.

23           MS. ADAME: Thank you.

24           MS. BINGHAM ESCAREÑO: Thank you.

25           MS. SNEDDEN: Good morning. Michelle Snedden

1 from Shackelford, and I am here to talk on behalf of Rio  
2 Hondo.

3 I want to bring really three points to the  
4 table that we believe warrant reinstatement of this  
5 application. Obviously, as we know, the deadline is 11.2  
6 of the QAP. What's notable is that it's not mentioned  
7 anywhere else in the rules, not in the QAP, not in the  
8 Multifamily Rules, it's not an eligibility requirement.  
9 Section 10.201 of the rules talks about the general rules,  
10 what do applicants have to do at the very beginning when  
11 they submit their application, it says they have to submit  
12 it by March 1. That date, the February 17 date, is not  
13 mentioned as a requirement. Obviously, as Melissa said,  
14 the developer did submit by March 1.

15 And so in the Board book we see that the reason  
16 for this date is to really allow staff to kind of manage  
17 the process, manage the applications, and really have the  
18 electronic submission kind of set up. So we understand  
19 the intent. Obviously, staff has a mammoth job with all  
20 these applications but it seems to me that happens on the  
21 17th or it happens, in this case, five days before the app  
22 is due, or any time before the app is due, so long as it  
23 gives staff enough time -- which I believe doesn't take  
24 too long -- to set up the access, that should not affect  
25 the fact that all apps are due on March 1.

1           So the fact the applicant submitted on March 1,  
2 got access five days before, we feel like that still kind  
3 of follows the intent of the February 17 date, that staff  
4 just needs that time to get things in process and we feel  
5 like doing that five days before March 1, so does that.

6           Most importantly , there's nothing in the rules  
7 that state that by not meeting that February 17 deadline  
8 that renders an application ineligible or that it should  
9 be terminated. So Section 10.202 of the rules does talk  
10 about when is an application ineligible. Obviously it has  
11 a bunch of different things in there, but specific to  
12 ours, it talks about if an application is submitted after  
13 the March 1 deadline, and if it is, the application is  
14 terminated. It references nothing about the February 17  
15 date.

16           So we would ask that the Board consider  
17 allowing this application to move forward because based on  
18 the requirements set forth in the rules and based on what  
19 is and isn't an ineligible application which requires  
20 termination, that date is not included. We understand why  
21 it's there but we feel like the rules don't support  
22 termination of the application.

23           Thank you.

24           MS. BINGHAM ESCAREÑO: Any questions?

25           (No response.)



1 MS. BINGHAM ESCAREÑO: Thank you.

2 MR. PHILLIPS: Hi. My name is Clifton  
3 Phillips, I am with Brownstone Development. We have a  
4 competing application, I'll state that right off the bat.  
5 We feel like if the application is let back in, we still  
6 would be successful in the region.

7 So putting that aside, what I would like to  
8 address is I understand that the Board can take action to  
9 overrule staff at certain times when it creates undue  
10 burdens maybe on a deal, a community, et cetera, but I  
11 just don't think that is the situation that we're seeing  
12 here.

13 And the QAP is pretty clear on the first page  
14 that all the deadlines should be considered firm and  
15 should be held to, and in this situation there's no undue  
16 burden on us as developers. They even admitted that they  
17 submitted pre for three deals that they never took to  
18 application. There's no financial penalty. Obviously no  
19 one wants to overwork staff, so if you have a reasonable  
20 thought that you could have a deal move forward, I mean,  
21 you just submit the form. It's not something that if they  
22 had submitted, as in their other deals, and then the  
23 contract did not materialize, they just wouldn't have  
24 submitted the deal.

25 And also kind of to that same point, their

1 contract was February 17, the day it was due. They can  
2 under the rules ask for an extension, so even at that time  
3 they still had the potential to say give us five more days  
4 to get an extension and they could have filed later, which  
5 they didn't do.

6 So I think, again, bad precedent being tossed  
7 around a lot today, I'm not sure that given that's in the  
8 rules, it's in the critical time chart in the QAP, why you  
9 should overrule staff, and we would agree with staff on  
10 that position.

11 Thank you.

12 MS. BINGHAM ESCAREÑO: Any questions?

13 DR. MUÑOZ: I have a question for Marni.

14 It says here in the background, the final  
15 paragraph --

16 MR. FISHER: Excuse me, Dr. Muñoz. I wanted to  
17 speak on the item.

18 DR. MUÑOZ: I thought most people sit up here.

19 MR. FISHER: I'm sorry. I thought Michelle was  
20 going back, so I apologize.

21 Bill Fisher, Sonoma Housing Advisors. I  
22 apologize, and I'll try and be quick here.

23 DR. MUÑOZ: Take your time.

24 MR. FISHER: The application deadline is March  
25 1. I think one of the things that staff missed in our

1 appeal is three minutes. It took them three minutes to  
2 give us FTP access, so the two-week deadline is  
3 unnecessary. Now, somebody is going to ask should you  
4 have a deadline. No. If you wait until March 1 to ask,  
5 staff has got a warning in there that says computer  
6 glitches or whatever to upload your app and recommend  
7 everything be done as early as possible because it's  
8 really on you. So there is no reason for the February 17  
9 and we don't believe that there's anything that can  
10 prevent the applicant from submitting their app by the  
11 application deadline which is March 1, and that's exactly  
12 what they did.

13 Now, let's assume staff had said we're not  
14 going to give you FTP access. Rise would have simply used  
15 the ones they had that they got months earlier and  
16 uploaded the app there and we'd be in the same place. We  
17 would have had credentials, the applicant would have had  
18 credentials timely, and we would have uploaded. Then  
19 there would have been some other argument, I guess, about  
20 whether or not there was some other rule that would  
21 preclude the applicant from using that access.

22 I think all of us support the electronic filing  
23 mechanism. We think that that's the wave of the future,  
24 we think that's modern, we think that's efficient. The  
25 flip side is we don't believe that the protocol can create

1 a deadline that moots the most important date that you  
2 have in the QAP which is full application, 5:00 p.m.,  
3 March 1.

4 And we respectfully request that the Board  
5 overrule staff in the spirit of competition. The next  
6 applicant down is in Uvalde County, this application is in  
7 Cameron County. We think it's in the state's interest for  
8 more competition and not less competition, and we request  
9 the Board overrule staff and allow the application to  
10 proceed through the review process.

11 Thank you.

12 MS. BINGHAM ESCAREÑO: Any questions for Mr.  
13 Fisher?

14 (No response.)

15 MS. BINGHAM ESCAREÑO: Great. Thank you, Bill.

16 DR. MUÑOZ: I was going to ask, Marni, in the  
17 last paragraph of the background section it talks about  
18 three other applicants did request such access, like right  
19 around what time?

20 MS. HOLLOWAY: I don't know for sure.  
21 Actually, I believe those requests are in the Board book  
22 in the background material and I don't know exactly what  
23 time they did but it was prior to that deadline.

24 MS. BINGHAM ESCAREÑO: Remind me what's the  
25 significance of that. Are we saying three more in that

1 region or three more that did it late and we said no?

2 DR. MUÑOZ: Three more that did it on time and  
3 you said yes.

4 MS. HOLLOWAY: That timely requested within  
5 that subregion.

6 DR. MUÑOZ: meaning the request could have been  
7 proffered and theoretically you would have responded  
8 affirmatively had you asked.

9 MS. BINGHAM ESCAREÑO: Meaning that there's  
10 other applications in that region.

11 MS. HOLLOWAY: Yes.

12 MS. BINGHAM ESCAREÑO: Can you talk to us about  
13 the whole FTP and would the agency have a way to know if  
14 applicants were using other FTP access?

15 MS. HOLLOWAY: So the way that we use the FTP  
16 access is that for each pre-application that we receive,  
17 we set up a file for it and that's the file that the  
18 applicant uses to submit the full application and all  
19 supporting information. So we get the pre-application  
20 from another source, from JotForm, but that includes the  
21 request for FTP access and we use that as the tool to  
22 create that, so everything within that FTP file is all the  
23 same application. So if a full application or other  
24 information is submitted in the wrong file, I don't know  
25 that it's ever happened but I would imagine that we would

1 question the eligibility of that application because it  
2 wouldn't be matching the pre-application that came with  
3 it.

4 MS. BINGHAM ESCAREÑO: So the purpose is to  
5 request one that's unique but then it becomes the  
6 electronic binder that everything goes into for that  
7 application.

8 MS. HOLLOWAY: Exactly. And all the way  
9 through the review process, any deficiencies, any  
10 additional documents that are submitted later, the market  
11 analysis because the market analysis is due a month after  
12 the full application, that also goes into that FTP file.  
13 That's how we collect all of the information in one place.

14 MS. BINGHAM ESCAREÑO: Okay.

15 Melissa, do you mind coming back up? And I'm  
16 not trying to pin you down, it's just a learning  
17 opportunity for us. Are you saying that you have been  
18 able to do that in the past, that you've stuck -- my  
19 computer expertise is about this deep -- you've stuck  
20 stuff in a different electronic binder than the one that  
21 should have been allocated for a specific application and  
22 that that's been okay with staff, that you say, hey,  
23 that's there, you'll find it in my other FTP access?

24 MS. ADAME: Yes, that's exactly right. We've  
25 been directed by staff, because what it is, it's just a

1 vehicle to get the information to them so that they can  
2 work with it and manipulate it. So they have asked us in  
3 the past to just use this log-in for this other deal to  
4 get us this file just so we can have it, it's too big,  
5 it's too large to email, and we will go in there and check  
6 that one file from it and review it and we'll get back to  
7 you. Because it is like a large binder but it is also  
8 just like a big file folder. It's just way to get to the  
9 staff. So yes, we have been instructed.

10 DR. MUÑOZ: So did you ask to do it this time  
11 and were told no?

12 MS. ADAME: We didn't ask because they took a  
13 day to discuss it amongst the staff members and it was the  
14 23rd when we asked, they initially said no, we're not  
15 going to be able to do that, and then on the 24th they  
16 came back at 2:52 and said, We've discussed it, we're  
17 going to allow you the ability to appeal so we're going to  
18 allow that. And at 2:55 we got the email with the FTP  
19 access.

20 Had they not come back, we were prepared to ask  
21 if that would be okay and just let them know we're doing  
22 to use one of our dormant pre-apps that we're not going to  
23 be using for a full app, it will be here if you choose to  
24 review it. And we'll pay the fee, we're sending in all  
25 the other items that you have to mail in hard copies of,

1 so we did pay the full application fee and did it the way  
2 that they requested us to do.

3 Does that answer your question?

4 MS. BINGHAM ESCAREÑO: Yes.

5 MR. GOODWIN: The gentleman here that said you  
6 could have done it on this application. Why didn't you?

7 MS. ADAME: I would have, it was just late in  
8 the day and it was a scramble to get the seller to grant  
9 us site control, and by the end of the day we were so  
10 elated and had been through all the confusion of finally  
11 getting site control, we just didn't look at it again  
12 until Monday. And in my head it's March 1.

13 MR. GOODWIN: I understand that day, but why  
14 wouldn't you have done it a few days before in hopes of  
15 getting that site control? That was my question, it  
16 wasn't what happened on that day.

17 MS. ADAME: Right. We didn't think we were  
18 going to get site control. Like I said, we just kind of  
19 benched it and we didn't want to waste their time, it was  
20 off the table, and we had other deals we were working and  
21 we were putting our effort there. So we were basically  
22 surprised.

23 MS. BINGHAM ESCAREÑO: Thank you.

24 Any other questions for the commenters or  
25 staff?



1 (No response.)

2 MS. BINGHAM ESCAREÑO: Marni, anything else?

3 MS. HOLLOWAY: No. My only comment would be  
4 that this is a deadline that's in the QAP, along with all  
5 of the pre-app deadline, the application deadline, the  
6 market analysis, the third party requests, cure rate, over  
7 10 percent, placed in service. These are all deadlines  
8 that are published in the QAP every year and some of them  
9 change every year. Last year it was a recommendation to  
10 get these requests into us by mid February and that  
11 created a great deal of confusion. What does that mean,  
12 what day in mid February?

13 MS. BINGHAM ESCAREÑO: Picked a day.

14 MS. HOLLOWAY: So we set a deadline.

15 I would also say that there was no comment on  
16 this deadline being included here as we were going through  
17 the QAP drafting process.

18 MS. BINGHAM ESCAREÑO: Regarding the  
19 recommendation by staff to deny the appeal of termination  
20 for Las Villas del Rio Hondo, application 17742, Mr.  
21 Goodwin made a motion to approve staff's recommendation,  
22 Mr. Gann seconded. Is there any further discussion on  
23 this item?

24 (No response.)

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

1 (A chorus of ayes.)

2 MS. BINGHAM ESCAREÑO: Opposed, same sign.

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Motion carries.

5 MS. HOLLOWAY: All right. Our third and final  
6 for today is application 17403 for Lord Road Apartments.  
7 This appeal relates to a 4 percent housing tax credit and  
8 direct loan layered application.

9 The application was terminated for two reasons.

10 First, the application did not include language in the  
11 purchase contract pursuant to the requirements of 10 TAC  
12 13.21 of the Multifamily Direct Loan rule. This is a  
13 threshold item and attempts to resolve the issue through  
14 the administrative deficiency process were unsuccessful.  
15 Second, the applicant is only able to compel title upon  
16 closing the underlying purchase contract which does not  
17 meet the requirements of 10 TAC 10.204(10)(a) which  
18 describes the site control requirements for our  
19 applications.

20 On January 30, February 22, March 9, March 14  
21 and March 28, staff contacted the applicant with either an  
22 administrative deficiency request or an email requesting  
23 additional information. There were phone calls in between  
24 also. Because the Multifamily Direct Loan NOFA was  
25 oversubscribed by more than five times, staff could no

1 longer wait for the applicant to provide the required  
2 information and the application was terminated.

3 In the past, direct loan NOFAs have generally  
4 been under-subscribed, so the termination wasn't likely to  
5 make its way to the Board. Applicants have been able to  
6 resubmit their application without negative impact.  
7 Similarly, terminations of 4 percent applications  
8 generally result in a resubmission, not an appeal. Due to  
9 the over-subscription of the NOFA, they are able to  
10 resubmit, the NOFA is still open, but we're so over-  
11 subscribed, there wouldn't be any funds for them.

12 The appeal to the termination that was dated  
13 April 10 of 2017 included a first amendment to the  
14 purchase and sale agreement which included the required  
15 environmental language for the direct loan. It also  
16 included a second amendment to the purchase and sale  
17 agreement dated April 7 which would presumably correct the  
18 site control issues. These amendments were clearly  
19 executed after the date of the termination, despite prior  
20 efforts by staff, both in writing via email and via phone  
21 conversations to resolve the issues.

22 The administrative deficiency rule states, in  
23 part: Applications with unresolved deficiencies after  
24 5:00 p.m. on the 10th day following the date of the  
25 deficiency notice will be terminated or suspended from

1 further processing so long as the active application does  
2 not impact the processing or underwriting of other  
3 applications. The applicant will be responsible for the  
4 payment of fees accrued pursuant to this paragraph  
5 regardless of any terminations. Department staff may or  
6 may not assess an administrative deficiency notice late  
7 fee for or terminate applications for tax-exempt bond or  
8 direct loan developments during periods when private  
9 activity bond volume cap or direct loan funds are under-  
10 subscribed.

11 The rule allows us to, when we're under-  
12 subscribed, spend that time, do the multiple notices, do  
13 the working back and forth on the direct loans, on the 4  
14 percent side if there isn't that competition going on.  
15 And that is traditionally what we've done. These  
16 applications, some of those 4 percent applications take a  
17 long time to get through the process.

18 When the direct loan application log reflected  
19 that funds in the general set-aside were over-subscribed,  
20 it was evident that staff could not continue to process an  
21 application that had not satisfactorily addressed  
22 threshold issues. While the applicant's appeal asserts  
23 that staff failed to provide notification of the imminent  
24 threat of termination, staff maintains that the initial  
25 administrative deficiency notice required all items to be

1 resolved within a required time frame.

2 In addition, the applicant included  
3 certification that they had read and understood the 2017  
4 Uniform Multifamily Rules, which they gave us a  
5 certification saying they understood this was a potential.

6 Should the Board grant the appeal, it is  
7 important to understand that pursuant to 10 TAC 13.5(c) in  
8 the Multifamily Rules, the received date of the  
9 application will be reestablished based on the date of the  
10 second amendment to the purchase and sale agreement was  
11 submitted which was in conjunction with the appeal to the  
12 termination submitted on April 10. So if you grant the  
13 appeal, we would, under 13.5, reset the received date to  
14 April 10. This is part of the Multifamily Direct Loan  
15 Rule that once everything is received, well, then we'll  
16 reset the date to that last receipt.

17 Staff recommends denial of the appeal of  
18 termination for Lord Road Apartments.

19 MS. BINGHAM ESCAREÑO: Questions from the  
20 Board?

21 (No response.)

22 MS. BINGHAM ESCAREÑO: So oversimplifying, but  
23 historically, if there were problems with the applications  
24 and NOFA was under-subscribed, then they would just  
25 resubmit.

1 MS. HOLLOWAY: Right.

2 MS. BINGHAM ESCAREÑO: In this case the NOVA is  
3 over-subscribed so there is no opportunity to resubmit, it  
4 becomes --

5 MS. HOLLOWAY: Well, the NOFA is still open so  
6 they could resubmit, but we are somewhere between five and  
7 six times over-subscribed for TCAP ARRA funds right now.  
8 The likelihood of an application submitted now being  
9 successful is very slim.

10 MS. BINGHAM ESCAREÑO: Thank you.

11 DR. MUÑOZ: Move staff recommendation.

12 MS. BINGHAM ESCAREÑO: Thank you very much.

13 Dr. Muñoz moves staff's recommendation on denial of the  
14 appeal for termination. Is there a second?

15 MR. GOODWIN: Second.

16 MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

17 MS. GUERRERO: Good morning. My name is Debra  
18 Guerrero and I am with the NRP Group, and thank you very  
19 much for the opportunity to be here to actually ask that  
20 you grant our appeal and maintain our place in line from  
21 the time of when we originally applied for TCAP HOME  
22 funds.

23 We've had almost a 15-year history with TDHCA.

24 We've built over 10,000 units and we've gone through some  
25 pretty complex sort of issues throughout all of our

1 applications and we've worked very, very well with TDHCA  
2 staff and I'm very proud of our relationship together, so  
3 I'm going to tell you I was very surprised when there was  
4 this abrupt termination. And I say that only because --  
5 and not to discount anything that Marni is saying -- I say  
6 that because we had been working through these issues as  
7 we had done in the past.

8 We'd been working with issues dealing with the  
9 direct loan language, and then other site control issues  
10 that Teresa had brought up in March, the beginning of  
11 March. And so as we were working through these issues,  
12 the termination letter indicates that it was given in part  
13 due to the direct loan language, but Teresa did confirm  
14 and you have email documentation that that wasn't what was  
15 holding us up, it was really site control questions that  
16 she had.

17 We continued to respond to those site control  
18 questions and it was only in the termination letter that  
19 was sent after March 28 that the idea of the language was  
20 what was really of concern. And we from the very  
21 beginning, since the original contract, know that we can  
22 compel title and we can do that. And so the amendment  
23 that Marni is referring to is just a confirmation about  
24 compelling title.

25 But at the end of the day I really wanted to

1 focus on one essential thing. March 28 seems to be that  
2 date when the world changed for everybody in terms of the  
3 way that staff and everybody looked at over-subscribed  
4 versus under-subscribed. Well, in that March 28 notice we  
5 were not told this is it, we are now over-subscribed. And  
6 in fact, that notice or email was sent to the consultant's  
7 assistant. That is not who the official notification for  
8 especially something of such urgency and a milestone is  
9 sent to. It is John Kenny, myself, and our consultant,  
10 Sarah André, that are listed as the principal formal  
11 notification, those that are to be notified, the contact  
12 people. None of us were notified or even cc'd, and it was  
13 sent merely as an inquiry: Hey, where are you on these  
14 issues.

15 And then after that, one of the people on our  
16 team -- it's given the perception that somehow we were  
17 unresponsive -- we also have email documentation showing  
18 that one of our principals on the team that was working  
19 with Teresa on the site control questions actually  
20 responded on March 29. So there still continued to be  
21 conversations even after that 3/28 notification.

22 So all of that to say we are asking that the  
23 appeal be granted. We are doing so and we understand that  
24 it has changed in terms of the practice of how TDHCA is  
25 responding and reviewing these applications, but we feel



1 that it is compelling enough that the formal notification  
2 was not provided to the appropriate people.

3 Thank you.

4 MS. ANDRÉ: Well, as you know, my name is Sarah  
5 André, I am a tax credit consultant and working with NRP  
6 on this project. And I wanted to just, first of all, say  
7 thank you again for allowing us the time. I know these  
8 are lengthy issues and I appreciate you listening and  
9 considering what we're here to talk about.

10 It's a complex issue, there are several  
11 different things in here kind of muddying the waters, I  
12 think. You know, staff's presentation was really good and  
13 focused on the rules and we certainly don't deny the  
14 rules, we absolutely understand the rules and believe that  
15 we were following them. I'm going to talk about two of  
16 the items to try to bring a little bit of clarity. First,  
17 I'm going to talk about the direct loan language and then  
18 I'm going to talk about just notification and  
19 communication.

20 The direct loan language that was in question  
21 and a deficiency is not standard contract language. It's  
22 basically a warning, both to the seller and really to the  
23 applicant, that until TDHCA approves some environmental  
24 items related to the site, your transaction may not close.

25 And so it's not something that you would normally put in

1 a contract, it's a little bit ominous, and it's very  
2 commonly added later once you know you're going for direct  
3 loan funds because it's not language that's required for  
4 any other funding, it's generated by the HOME program  
5 rules. And as I said, it is a little bit ominous and so  
6 sometimes it takes a while to negotiate that language with  
7 a seller because it's basically saying TDHCA has to  
8 approve something before the transaction has to take  
9 place, before you can close, and if you're already waiting  
10 a year, year and a half, two years to get your money,  
11 you're a little wary of something that is out of your  
12 control and that you don't provide any input on.

13 So TDHCA in the past has been great, the  
14 Department has been great, staff has been great about  
15 allowing use enough time to get that, and in fact, last  
16 year one of these direct loan language issues went on for  
17 seven months and that deal was still approved and moved  
18 forward. And I'm telling you that only for the context in  
19 which we were operating, not because that's ideal,  
20 certainly not ideal.

21 The second thing I want to talk about is just  
22 the communication. Debra mentioned the application has  
23 space for three names: John Kenny, Debra Guerrero, me,  
24 those are the official people that can be notified. None  
25 of us were notified that a termination was pending, none

1 of us were even contacted officially the week before. The  
2 rules are pretty quiet on notification, and really the  
3 only place you can find anything is in the administrative  
4 deficiency process, but you can infer from this that  
5 there's going to be a process. It says staff will send a  
6 deficiency notice via an email to the applicant and one  
7 other contact party if identified by the applicant in the  
8 application.

9 And that's what did happen in all the  
10 deficiencies, but the final communication that occurred  
11 was a request for a status update to a staff member on my  
12 team, no cc to anybody else, and there was nothing in that  
13 to indicate we're running out of time, we're now over-  
14 subscribed. You know, this application went in on January  
15 6, I believe; it certainly was not over-subscribed on that  
16 date, it became over-subscribed during the review period.

17 And so I do understand that the situation was  
18 changed, staff needs to treat things differently, but it  
19 seems common courtesy to notify us prior to a termination  
20 that you're going to be terminated unless we get this  
21 today.

22 Thank you.

23 MS. BINGHAM ESCAREÑO: Sarah, who is Liz? Is  
24 Liz the person?

25 MS. ANDRÉ: Who sent that final email?

1 MS. BINGHAM ESCAREÑO: Who is the person that  
2 received the final email?

3 MS. ANDRÉ: Rebecca Broadbent.

4 MS. BINGHAM ESCAREÑO: We have a little log  
5 that shows Rebecca on pretty much everything.

6 MS. ANDRÉ: Yes, she was on a number of items.

7 MS. BINGHAM ESCAREÑO: Thank you.

8 Any other questions for Sarah?

9 (No response.)

10 MR. PALMER: Barry Palmer with Coats Rose.

11 And I won't repeat a lot of the facts that have  
12 been gone through by Debra and Sarah, I just want to point  
13 out a couple of things.

14 When the deficiency was sent regarding the  
15 direct loan language, the applicant came back and asked  
16 for an extension because that was going to take some time  
17 to get the land seller to agree to that, and that  
18 extension was granted but there was no deadline put on the  
19 extension, it was just a grant of the extension. And then  
20 after that, the applicant and the Department had numerous  
21 communications, as you see in the log where they're going  
22 back and forth with questions and answers on a number of  
23 different issues.

24 And so the applicant thought that there was no  
25 imminent danger of being terminated because they were

1 working together and there had been no deadline imposed,  
2 no warning letter sent saying if you don't get this  
3 resolved in three days, you're going to get terminated.  
4 And circumstances changed with the direct loan program now  
5 becoming over-subscribed while this was going on, but  
6 there was never any communication to the applicant saying  
7 you have to get this resolved in a specific amount of  
8 time.

9 So the practice that they had gone through on  
10 not just this deal but a number of 4 percent deals in the  
11 past was that you would have some time to work through  
12 issues with the Department and not be under imminent  
13 termination if you didn't meet a certain deadline.

14 So we'd ask that you consider reversing this  
15 termination and allowing the application to remain in  
16 place at the time that it applied. Thank you.

17 MS. BINGHAM ESCAREÑO: Any questions for Barry?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: No other comments on  
20 Lord Road.

21 Marni, would you come back up? The request for  
22 the extension we can see in the log where it talks about  
23 the request for the extension and it looks like it applied  
24 to the first issue with the direct loan language.

25 MS. HOLLOWAY: The direct loan language first

1 appeared in an administrative deficiency, at least  
2 according to these records, on January 30, an extension  
3 was requested and granted, and the conversations continued  
4 regarding that item. As we discussed earlier, in the past  
5 we have been able to go months and months and months  
6 working through these issues. When we're over-subscribed  
7 and there are applications behind this one that need these  
8 funds, we are not able to do that any longer and our rule  
9 clearly states that that's what we should do in those  
10 situations.

11 I learned a hard lesson last year about don't  
12 call people the day before and say we're going to  
13 terminate your application tomorrow. And having that kind  
14 of communication prior to a termination really muddies the  
15 waters.

16 MS. BINGHAM ESCAREÑO: When did we become over-  
17 subscribed, or when did we know, when did we have a level  
18 of confidence?

19 MS. HOLLOWAY: February 3. We first became  
20 over-subscribed early on, and then when the 9 percent  
21 applications all came in is when we hit that somewhere  
22 around five to six times over-subscribed.

23 MS. BINGHAM ESCAREÑO: So the request was  
24 granted actually like February 6. Do we know why, like if  
25 we were already over-subscribed, do we know why we would

1 have approved a request to extend?

2 MS. HOLLOWAY: I believe at that point we  
3 weren't fully aware of exactly how over-subscribed we  
4 were. I think also there's a certain amount of we're  
5 dealing with two fund sources and two sets of requirements  
6 and trying to coordinate those efforts. Teresa said yes,  
7 it could wait, but I don't know that she understood at  
8 that point in time that we were over-subscribed.

9 MS. BINGHAM ESCAREÑO: Okay. I mean, I hate  
10 that but it's just a different situation this year.

11 MS. HOLLOWAY: And too, but then that was early  
12 February and then there were at the end of March and we  
13 still didn't have that information, and the amendments to  
14 the purchase and sale agreement are dated after the  
15 termination. So clearly they were able to get those  
16 amendments earlier would be my guess, but it needed the  
17 termination notice in order to make that happen.

18 MS. BINGHAM ESCAREÑO: The extension becomes  
19 less and less relevant, you know what I mean? I guess my  
20 observation would be if you were still under-subscribed  
21 then maybe that's relevant, but at some point when you're  
22 over-subscribed. I hate that, but --

23 Any questions for Marni?

24 (No response.)

25 MS. BINGHAM ESCAREÑO: So we have a motion by

1 Dr. Muñoz --

2 DR. MUÑOZ: I have one question.

3 MS. BINGHAM ESCAREÑO: Okay.

4 DR. MUÑOZ: Marni, we've heard repeatedly --  
5 and I appreciate the hard lesson that you learned last  
6 year about the day before, but what about a few days  
7 before? You've heard several people say why weren't we  
8 notified. Is it typical, it is anticipated to get  
9 something a few days before, or is that just a courtesy?

10 MS. HOLLOWAY: I mean, it would have been a  
11 courtesy. It's not anything that's required in our rule.

12 Typically, as I stated earlier, if we're terminating  
13 these applications, they're able to just come back and  
14 there's really no impact. When we are issuing a  
15 termination, we generally follow the same process that we  
16 follow for the 9 percent applications, and that is there  
17 is this body of evidence, there is this list of things,  
18 this is the basis for termination, we're going to  
19 terminate it. And actually, the hard lesson I learned was  
20 on the 9 percent side.

21 Perhaps we should have in this unique  
22 circumstance done that, but still the rule is very clear  
23 regarding termination when we're not getting a response on  
24 these deficiencies.

25 MS. BINGHAM ESCAREÑO: And I guess the other



1 observation is from all of the communication that we got,  
2 it looks like a lot of both parties' communication was  
3 coming through surrogates or folks where they're worker  
4 bees and they're working, okay, we found this, let's do  
5 this, there's kind of that going back and forth. Maybe at  
6 a higher level there were folks saying the axe is getting  
7 ready to drop, it's looking worse and worse, but because  
8 the worker bees are in the middle of the actual concrete  
9 detail of exchanging information, the trail looks like  
10 there wasn't a whole lot of -- and I'm not assigning  
11 responsibility to anybody because the applicant is  
12 ultimately responsible, right, for following the rules and  
13 the deadlines.

14 But there looks like there was an absence of  
15 somebody at a high level at the applicant side saying are  
16 we still okay. Because you're used to let's satisfy as  
17 many of these as we can in the event that it becomes  
18 viable and you've got worker bees that are doing that,  
19 that are getting the concrete information.

20 MS. HOLLOWAY: And I would add that I was not  
21 aware that this was going on until that very last week of  
22 March towards the end of the week, and at that point there  
23 was this whole body of evidence, we need to move forward  
24 with the termination.

25 MS. BINGHAM ESCAREÑO: Any other questions?

1 (No response.)

2 MS. BINGHAM ESCAREÑO: There's a motion from  
3 Dr. Muñoz and a second from Mr. Goodwin to approve staff's  
4 recommendation to deny the appeal on the termination of  
5 17403 Lord Road. All those in favor, aye.

6 (A chorus of ayes.)

7 MS. BINGHAM ESCAREÑO: Opposed, same sign.

8 (No response.)

9 MS. BINGHAM ESCAREÑO: Hearing none, the motion  
10 carries. Thank you.

11 Item 6(b).

12 MS. HOLLOWAY: Item 6(b) is presentation,  
13 discussion and possible action regarding a request for  
14 waiver of rules for the Blue Flame development. This is  
15 application number 17330.

16 The application for the Blue Flame development  
17 was submitted under the at-risk set-aside due to the  
18 relocation of rental assistance demonstration program  
19 units, so RAD units. And we're seeing more and more of  
20 these applications this year. Along with the application,  
21 the applicant has requested -- and it was timely filed --  
22 a waiver of the requirement under 10 TAC 11.5(3)(c)(iii)  
23 that in order for a development that includes demolition  
24 of existing units that have received financial benefit  
25 described in Texas Government Code 2306.6702(a)(5) -- so

1 that's the RAD part -- in order for them to relocate, the  
2 site must qualify for points on the opportunity index  
3 under 11.9(c)(4) of the QAP.

4 In their request the applicant asserts that the  
5 requirement that the site to which RAD units are relocated  
6 must be in a location that meets the criteria of the  
7 opportunity index scoring item is an inadvertent remnant  
8 of the 2016 QAP. They also state that there has been  
9 redirection toward urban core historic preservation and  
10 CRP, concerted revitalization, all of which are rarely  
11 found in high opportunity areas, and that the fact that  
12 the relocation of RAD units is still limited to high  
13 opportunity areas is inconsistent with the updated  
14 approach to evaluate inappropriate and preferential  
15 locations for affordable housing.

16 I would let you know that there was no comment  
17 on this item as we were working through the 2017 QAP, and  
18 actually, we are seeing applications this year for 2017  
19 using urban core points and high opportunity, so these  
20 things are not mutually exclusive.

21 Our rule regarding waivers requires that he  
22 request must establish how the waiver is necessary to  
23 address circumstances beyond the applicant's control, and  
24 how, if the waiver is not granted, the Department will not  
25 fulfill some specific requirement of law. The request

1 asserts that the waiver is necessary because the location  
2 of the development site is beyond control of the  
3 applicant. The applicant further asserts that locating  
4 the development at the Blue Flame building will enable the  
5 government to meet goals established under Texas  
6 Government Code, include adaptive reuse of a certified  
7 historic building. So they're saying they had no other  
8 choice because this is where this building is.

9 Staff does not find that the request has  
10 established that the waiver is necessary to address  
11 circumstances beyond the applicant's control because they  
12 could relocate those units to another location. This  
13 isn't a rehabilitation, they're relocating units. And we  
14 do not believe that the Department would fail to fulfill  
15 any requirements by not granting the waiver. Accordingly,  
16 staff recommends that the request for waiver of 10 TAC  
17 11.5(3)(c)(iii) be denied.

18 It is important to note that because the Blue  
19 Flame location is not eligible to participate in the at-  
20 risk set-aside, it fails to meet the requirement that the  
21 pre-application and application are participating in the  
22 same set-aside and therefore is not eligible to receive  
23 six points. So if the waiver is not granted, the  
24 application will lose six points.

25 The staff recommends denial of the request for

1 waiver.

2 MS. BINGHAM ESCAREÑO: Thank you.

3 Any questions for Marni?

4 (No response.)

5 MS. BINGHAM ESCAREÑO: We'll entertain a motion  
6 on the request for waiver, staff's recommendation to deny  
7 for Blue Flame, application 17330. Is there a motion to  
8 approve staff's recommendation or other motion?

9 MR. GOODWIN: So moved.

10 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves to  
11 approve staff's recommendation. Is there a second?

12 MR. GANN: Second.

13 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

14 Michael, do you have some letters to read?

15 MR. LYTTLE: Yes, Madam Chair and Board  
16 members. I've got three letters on this item, one from  
17 Congressman Beto O'Rourke, one from State Senator Jose  
18 Rodriguez, and one from State Representative Bill Moody.

19 First the letter from the congressman:

20 "Dear TDHCA Governing Board,

21 "I understand that the Housing Authority of the  
22 City of El Paso is applying for a waiver related to an  
23 application for low income housing at the Blue Flame  
24 Apartments in my district of El Paso, Texas. The Blue  
25 Flame Apartments project is generally good for my district

1 as it contribute to the renovation of a historic 17-story  
2 high rise building in downtown El Paso. The project is  
3 also part of an ongoing community-wide effort designed to  
4 improve the overall quality of life for all El Pasoans.

5 "Please provide their request full and fair  
6 consideration.

7 "Sincerely, Beto O'Rourke, Member of Congress."

8 The next letter from Senator Rodriguez reads as  
9 follows:

10 "Dear Chairman and Board Members,

11 "I write this letter to respectfully request  
12 that the TDHCA Governing Board grant a waiver of Section  
13 11.5(3)(c)(iii) of the Qualified Allocation Plan which  
14 requires satisfaction of the opportunity index scoring  
15 criteria contained in Section 11.9(c)(4) of the QAP, with  
16 respect to the Blue Flame Apartments, application 17330.

17 "First and foremost, I am of the opinion that  
18 the Blue Flame project is located in a high opportunity  
19 area based on a current assessment of the downtown area of  
20 El Paso where it is located. I understand that the Blue  
21 Flame site may not score as being in a high opportunity  
22 area based on the data with which that determination is  
23 made, however, the sole reason that the Blue Flame's  
24 proposed site does not qualify as within a high  
25 opportunity area is that the 2010 census data used for

1 this determination is not aligned with the influx of new  
2 housing and other investment in the immediate vicinity of  
3 the proposed Blue Flame site.

4 "Specifically, not reflected in the 2010 census  
5 data is the fact that there has been significant  
6 investment in downtown El Paso, both in terms of new  
7 housing and business development. The private and public  
8 investment in housing in downtown El Paso has been  
9 significant and includes construction of the Art Space  
10 Lofts, 51 units, TDHCA 14037, and the Martin Lofts, 42  
11 units with street level retail, as well as the pending  
12 construction of the Ballpark Lofts adjacent to the new  
13 downtown baseball stadium, the Savoy Lofts, 27 units, and  
14 other apartment complexes planned for construction  
15 downtown, including a 14-unit complex by the ballpark  
16 stadium and the conversion of the historic popular  
17 department store building into loft apartments.

18 "The private and public investment in  
19 commercial and civil projects has also been substantial.  
20 Since the 2010 census data collection, the city has  
21 partnered with others to develop Southwest University Park  
22 Baseball Stadium, a \$97 million streetcar project,  
23 completion pending, that will connect downtown and nearby  
24 neighborhoods, the pending construction of a \$180 million  
25 multipurpose arena downtown, and several new or renovated

1 downtown hotels, including a \$70 million renovation of the  
2 Camino Real Hotel, the newly construct 100-room Aloft  
3 Hotel, a new Courtyard Marriott across the street from the  
4 baseball stadium, and the recently completed Indigo Hotel.

5 "Second, I am concerned that if the Blue Flame  
6 project cannot be rehabilitated at this time, it will have  
7 a lasting negative impact on affordable housing in El Paso  
8 and the city's downtown redevelopment. Put simply, there  
9 is a small window of opportunity to develop the historic  
10 Blue Flame high rise building. The requested waiver for  
11 the Blue Flame project will ensure that more affordable  
12 housing is constructed in El Paso in a centralized  
13 downtown location. Without a waiver from the TDHCA  
14 Governing Board for the Blue Flame, this present  
15 opportunity to place affordable and market rate housing in  
16 downtown will be missed before redevelopment of the area  
17 surges, thereby making it too expensive to locate  
18 affordable housing in downtown El Paso in the future.

19 "Furthermore, without the requested waiver, the  
20 Blue Flame building will likely spend years as a vacant,  
21 unused historic building in the heart of downtown El Paso  
22 because there are no other options for its use. Such an  
23 outcome would negatively impact the development of  
24 downtown El Paso.

25 "Thank you in advance for your consideration of



1 my request and for your service to the State of Texas. If  
2 you have any questions or need additional information,  
3 please contact my chief of staff, Sushma Smith."

4 And then finally, the letter from  
5 Representative Moody that's addressed to you all, to the  
6 Board members:

7 "I'm writing in strong support of the request  
8 from the Housing Authority of the City of El Paso and its  
9 co-developer for a waiver related to the application for  
10 low income housing tax credits to construct the Blue Flame  
11 Apartments in El Paso, Texas.

12 "The project, which has widespread local  
13 support, will expand affordable housing in El Paso through  
14 the renovation of an historic high rise in downtown El  
15 Paso. Both El Paso City Council and its Downtown  
16 Management District, made up of leading downtown real  
17 estate and business owners, passed resolutions in favor of  
18 this development opportunity. The project also has  
19 support from HACEP's existing residents who will have the  
20 opportunity to join new residents living in downtown El  
21 Paso.

22 "I ask that you vote to approve a waiver of the  
23 Qualified Allocation Plan to address the provision at  
24 issue, Section 11.5(3)(c)(iii) of the QAP which requires  
25 satisfaction of the opportunity index score and criteria.

1 I'm confident that your favorable consideration will lead  
2 to an increase in the high quality housing options in my  
3 community.

4 "Respectfully, Representative Joe Moody."

5 MR. PALMER: Barry Palmer with Coats Rose.

6 So this is a rare opportunity that the  
7 Department gets to participate in the redevelopment of a  
8 historic building in one of the major cities in the inner  
9 city. Very rarely does that happen. There have been a  
10 few over the 24 years that I've been in this program but  
11 not many. And here we have the Housing Authority of El  
12 Paso who has an innovative program to convert their entire  
13 portfolio under the RAD program. They're doing a number  
14 of properties onsite where they're rehabbing the  
15 properties in different areas of the city, but some of the  
16 properties that they have are so physically obsolete that  
17 it doesn't make sense to rehab, and in those situations  
18 they have to move many times the assistance to another  
19 site, and here they have an opportunity to go downtown.

20 Now, there's this rule which is a site rule  
21 that affects your sites saying you need to be in a high  
22 opportunity area if you're moving RAD. Well, I think  
23 Senator Rodriguez really hit the nail on the head when he  
24 talked about this area. This is a high opportunity area,  
25 it's just the numbers haven't caught up with it yet for it

1 to be qualified as high opportunity area yet, but it will,  
2 but by the time it does, it will be too expensive to go  
3 there. We've seen that happen in Houston, we've seen that  
4 happen in Austin when there's massive redevelopment in the  
5 downtown area and all of a sudden you look around to try  
6 and build some affordable housing and it's too late, it's  
7 too expensive.

8           You've got to go in early, and here's a chance  
9 to go in early where the momentum is clearly there. I  
10 mean, we all know that in two, three, four years this will  
11 qualify as a high opportunity area but by then we won't  
12 have this opportunity.

13           Now, what we're asking for here is a small ask,  
14 it really is. We're asking you to waive something that  
15 affects a location. You've done that a number of times  
16 this year in this program, you do it several times a year.

17           People come in and say: I'm within 500 feet of a  
18 railroad line and so I need a waiver for that site  
19 restriction. You've passed a number of those, so it's not  
20 like you're staking out new ground here where you're doing  
21 something outside the box of what you've normally one.  
22 You've given site waivers where it makes sense.

23           Well, this certainly make sense in this  
24 situation to give this site waiver, all this project to go  
25 into this booming area of downtown El Paso.

1                   And I'd like to get some of the folks we have  
2 here from El Paso who are more on the ground to talk more  
3 specifically about just what's happening in downtown El  
4 Paso. Thank you.

5                   MS. BINGHAM ESCAREÑO: Thank, Barry.

6                   Any questions for Barry?

7                   (No response.)

8                   MS. HERRERA: Good afternoon. My name is  
9 Jessica Herrera and I'm with the City of El Paso Economic  
10 Development. I am the director of the Economic  
11 Development Department there at the city, and I thank you  
12 for the opportunity to come out and speak to your Board  
13 today related to item 6(b) regarding a request of waiver  
14 rules for our Blue Flame project located in the heart of  
15 downtown El Paso.

16                   El Paso is one of the largest international  
17 border metropolitan areas that has a regional population  
18 of more than 2-1/2 million people. It borders the State  
19 of New Mexico and the State of Chihuahua, Mexico, and our  
20 location really allows for that daily commute of  
21 individuals coming into El Paso to work, shop, visit  
22 family, attend school, et cetera. Our downtown has a port  
23 of entry that has on average more than 550,000 pedestrians  
24 and vehicles coming into El Paso on a monthly basis, just  
25 to give you an idea.

1           In 2012 the city overwhelmingly supported the  
2           Quality of Life fund of more than \$475 million of which  
3           \$205 million of that was dedicated to signature projects  
4           located within the downtown. In April of 2014, we also  
5           opened the doors to our Triple A baseball team, home to  
6           the El Paso Chihuahuas, and that's been a huge home run --  
7           no pun intended at all -- in our downtown. Within the  
8           last four years we have seen additional public and private  
9           investment all throughout downtown that's really amounted  
10          to more than \$360 million.

11           But just to give you a snapshot of the private  
12          investment that's currently underway, we have actively  
13          participated in more than 18 economic development  
14          incentive agreements that are now adding more than 300 new  
15          residential units, more than 760 hotel rooms, and more  
16          than 394,000 square feet of office and commercial space.  
17          Some of these projects have already been completed and  
18          several others are under construction.

19           The Blue Flame development is a 62-year-old  
20          building that occupies an important part of our downtown  
21          revitalization that's currently underway, and it's been  
22          vacant for more than a decade, and an opportunity to  
23          breathe new life into this building would be a game  
24          changer for this area. It is located within walking  
25          distance of several of these catalytic projects that are

1 currently underway, and as an example, just right across  
2 the street -- I believe our state senator mentioned -- is  
3 a historic building that's currently under construction  
4 and renovation and is expected to open in the fall of next  
5 year that's going to be an Aloft Hotel adding 100 rooms.  
6 There are also at least three mixed use residential  
7 projects that are all within walking distance of this  
8 project and they've recently opened, adding more than 160  
9 residential units.

10 The project's location provides ample access to  
11 transportation, employment, government, educational and  
12 health care services for future residents, which equates  
13 to expanded growth opportunities. As an example, the  
14 current construction of the streetcar system, that's going  
15 to be operational by 2018, will connect our downtown and  
16 our university, as well as other hospitals within that  
17 area. Our bus rapid public transportation system also  
18 feeds into downtown and allows overall access all  
19 throughout the city which is critical for the continued  
20 redevelopment and access opportunities for all.

21 As you can see, these opportunities and these  
22 improvements have and will undoubtedly continue to enrich  
23 the quality and livability of El Paso's downtown area,  
24 attracting more economically and socially residents to the  
25 area. The Blue Flame development will contribute to this

1 growth by enhancing the area's product demand capacity  
2 through the expansion of downtown's residential sector,  
3 thus supporting a more vibrant, stable and commercial  
4 environment.

5 We are excited at the prospect of affordable  
6 housing units being available in the heart of our city and  
7 believe that it fits in well with the revitalization  
8 efforts currently undertaken. Thank you.

9 MS. BINGHAM ESCAREÑO: Thank you very much.

10 Any questions?

11 (No response.)

12 MR. CAMACHO: Good afternoon, Board, Vice  
13 Chairman Bingham. Thank you so much for the time. My  
14 name is Javier Camacho. I'm the public information and  
15 government relations officer with the Housing Authority of  
16 the City of El Paso, and we are extremely happy to be with  
17 you.

18 Also with one of our residents, Ms. Rosa Lopez,  
19 who has been a resident at our Tays community, located in  
20 south central El Paso, for the past 15 years, and she has  
21 actually not only served our housing authority and her  
22 community very well, she actually is the director of  
23 Modesto Gomez Food Pantry where she works hand in hand  
24 with all of our communities, passing out food to all of  
25 our families at all of our communities, along with the

1 youth and many types of services that they provide. She  
2 has offered her time to come and speak to you and offer  
3 you what this can benefit for the City of El Paso and  
4 truly for the entire community. So we'll have Rosa Lopez.

5 MS. BINGHAM ESCAREÑO: And we have a translator  
6 here too.

7 MS. LOPEZ: (Speaking Spanish).

8 MS. PINEIDO: Good afternoon. My name is Rosa  
9 Lopez. I've been a resident in public housing for 15  
10 years.

11 MS. LOPEZ: (Speaking Spanish).

12 MS. PINEIDO: She thanks you very much for the  
13 opportunity to speak before you. It's emotional for her.

14 MS. LOPEZ: (Speaking Spanish).

15 MS. PINEIDO: I'm very grateful. I'm a  
16 resident of public housing, I've lived there, my children  
17 have graduated from there. I have a daughter who is now  
18 an attorney and a son who is in criminal justice. So she  
19 said earlier the opportunity that public housing gives you  
20 to advance, and a family to advance.

21 MS. LOPEZ: (Speaking Spanish).

22 MS. PINEIDO: So she works with a nonprofit  
23 that works on donation and they go to different public  
24 housing and they have a food pantry and all the things for  
25 people that are on Medicaid and Medicare.



1 MS. LOPEZ: (Speaking Spanish).

2 MS. PINEIDO: To me it's very important to  
3 continue serving the community in public housing.

4 MS. LOPEZ: (Speaking Spanish).

5 MS. PINEIDO: The Blue Flame property in the  
6 downtown area is very important. There isn't very many  
7 opportunities for living in the downtown area and  
8 especially for the elderly. This is going to be an  
9 important location, it will be a comfortable location.

10 MS. LOPEZ: (Speaking Spanish).

11 MS. PINEIDO: It's very important, the  
12 hospitals are close by.

13 MS. LOPEZ: (Speaking Spanish).

14 MS. PINEIDO: Little stores and what-have-you.

15 MS. LOPEZ: (Speaking Spanish).

16 MS. PINEIDO: So you're going to be close to  
17 everything, you're going to be closer to public transit,  
18 it's very convenient.

19 MS. LOPEZ: (Speaking Spanish).

20 MS. PINEIDO: I go and I visit people's homes  
21 and there's great poverty in El Paso and there is a great  
22 need for decent housing for low income persons.

23 MS. LOPEZ: (Speaking Spanish).

24 MS. PINEIDO: So she's in the process of  
25 purchasing a home. She is very, very grateful for the

1 different programs that public housing offers the  
2 residents. She came here from Chihuahua and has lived in  
3 public housing and graduated and she's very grateful for  
4 these opportunities.

5 And I had not translated something she said  
6 earlier, that she would be proud to be able to bring good  
7 news to the people back in El Paso.

8 MS. LOPEZ: (Speaking Spanish).

9 MS. PINEIDO: So it's a beautiful problem for  
10 her to be able to speak before you as a Hispanic and  
11 representing the City of El Paso. There's a great need in  
12 the City of El Paso for the housing in the downtown area.

13 MS. LOPEZ: (Speaking Spanish).

14 MS. PINEIDO: Do you have any questions?

15 MS. BINGHAM ESCAREÑO: Any questions?

16 (No response.)

17 MS. BINGHAM ESCAREÑO: Gracias.

18 MR. CICHON: Good afternoon, everybody. Sorry  
19 I was a little aggressive on the last thing jumping up  
20 here and trying to talk. It's just such an important  
21 thing for the Housing Authority of the City of El Paso.

22 So as you may know --

23 MS. BINGHAM ESCAREÑO: Just for the record.

24 MR. CICHON: Gerald Cichon, CEO for the Housing  
25 Authority of the City of El Paso.

1           The Housing Authority of the City of El Paso is  
2 going through a renaissance with a \$1.5 billion investment  
3 across the entire city. With that comes the moving of  
4 20,000 people, of which one-third are elderly and/or  
5 disabled.

6           As we moved into this, the construction that  
7 HUD has placed us under was supposed to be over by 2018.  
8 Moving 20,000 people, doing the construction, getting the  
9 tax credits, making the closings happen and being  
10 successful within that time frame would have been a  
11 magnificent challenge. So I will say it to you this way:  
12 I went to HUD at the highest levels not more than twelve  
13 months ago and I begged them for the opportunity to have  
14 an extension, and part of that extension that I begged  
15 them for was based upon opportunities like the Blue Flame  
16 building, and I said what we could do is we could get a 4  
17 percent and we could take what we currently have in  
18 neighborhoods that may not be great for our people and we  
19 can make them a little bit better, but if you give us a  
20 little bit of time, we can find opportunities and we can  
21 make something really fantastic for our people and really  
22 change the dynamic of the City of El Paso.

23           And with that came an opportunity. We went to  
24 Paul Foster, the guy who helped build the Texas Tech  
25 Medical School, the guy who brought the baseball park, the

1     guy who singlehandedly built the plaza and is doing so  
2     much for downtown, and we said, Can you help us? This is  
3     an opportunity that you can bring with us to help the  
4     elderly and the poor, to give them opportunity with  
5     something that's happening in El Paso. And he said yes.  
6     He said, I think there's a great opportunity in downtown  
7     El Paso right on the rail line that we're putting in,  
8     right next to the new buildings and the hotels and the  
9     convention centers and the civic centers, that gets you  
10    right to the hospitals and it's close access to the  
11    government buildings and you have the museums all around.

12             I said, How do we do this? He said, You know  
13    what, we're going to help you. This Blue Flame building,  
14    he was like I'm going to give you great incentives to make  
15    this happen. And we can do it right here in this  
16    location. There isn't another location that this happens  
17    at. You don't want to take that population and put them  
18    to the external areas of the city when you don't have  
19    access to transportation, where a lot of our people don't  
20    have cars. You don't put them far away from the hospitals  
21    where it's too difficult to get to. You want to put them  
22    where the city is putting the Quality of Life fund, you  
23    want to put them where the investment from the city is  
24    happening right here.

25             And that's what we did and that's what this

1 application is, so much so that it's got broad support, as  
2 you saw from politicians that aren't even from that  
3 particular area writing you and letting you know that's  
4 this important. The downtown business group that normally  
5 says no, not in my backyard, don't put those people next  
6 to us, voted unanimously in our favor.

7 This is a project that but for happening right  
8 now will never happen again because we do not have time to  
9 do it. By 2020 we are done, our construction schedules  
10 are finite. This only works with the housing authority.  
11 If we don't do this, this building with where it sits it's  
12 going to be an empty hole the way it has been for the last  
13 decade, and the opportunity that we could give the people  
14 who could I've there will be lost.

15 This is something that can't be done anywhere  
16 else. This is a waiver just like any waiver that you've  
17 done in the past. As we stood here and we talked about  
18 railroad tracks and other opportunities, this is that  
19 opportunity, this is something could be great for El Paso  
20 of which all of El Paso wants to have. Honestly, with  
21 these points, this is the highest scoring application in  
22 the state in the at-risk set-aside. If you look at all  
23 the other criteria that the QAP says is important, we've  
24 got it.

25 This is what this is and this is what it means

1 for us. Ms. Lopez flew all the way out here, she's  
2 leaving public housing, she's worked for 15 years to get  
3 self-sufficient and move out, but she's not going to leave  
4 from helping the people in these units because they need  
5 it that much. These are people that make less than \$4,000  
6 a year, they can't even afford a car. The opportunity to  
7 put them in this location at that building with the help  
8 from Mr. Foster can only be done now and it can only be  
9 done because of you.

10 We respectfully ask that you grant this waiver  
11 and let us go forward, let us finish this massive  
12 renaissance that we started in El Paso. Thank you very  
13 much.

14 MS. BINGHAM ESCAREÑO: Any questions for Gerry?

15 (No response.)

16 MR. COWAL: Good afternoon, Board members. My  
17 name is William Cowal. I'm with Triton Mountain  
18 Management which is Paul Foster's company, one of his  
19 companies, and everyone that has come before me has pretty  
20 much said a lot of the things that I was going to say, so  
21 I'm going to keep my comments short, and have also done, I  
22 think, a wonderful job, but I'll add a little bit of  
23 flavor and a little bit of color to that.

24 Mr. Foster, just to give you a little  
25 background, Paul Foster is chairman of the board of

1 Western Refining, he's also the largest shareholder and  
2 he's the founding shareholder. That company is going  
3 through a merger right now with Tesoro out of San Antonio,  
4 so we'll be seeing some changes pretty soon. He's also  
5 chairman of the University of Texas Board of Regents of  
6 the UT System. He is the benefactor, as Gerry mentioned,  
7 of Texas Tech Medical School, made a \$50 million  
8 contribution to that that's made a huge difference in the  
9 City of El Paso. He's the benefactor of the Baylor Paul  
10 L. Foster School of Excellence -- or Success Center, I  
11 believe it's called, to the tune of \$35 million.

12 And he's been instrumental in the redevelopment  
13 of downtown El Paso. He and Mr. Woody Hunt of El Paso  
14 went in as partners to develop the ballpark downtown which  
15 is, as Jessica said, just a magnificent success and it's  
16 been a catalyst and an enzyme for other development that's  
17 happening in El Paso. He also was a pioneer in  
18 redeveloping downtown El Paso. The building that I office  
19 in and he offices in, known as the Mills Plaza Complex,  
20 are two of the finest buildings in downtown El Paso, a  
21 very large investment in the city, and then also on the  
22 first floor has Anson11, now regarding as probably the  
23 city's finest restaurant, fine dining restaurant.

24 And this was a very pioneering effort, it took  
25 a lot of guts really to make that kind of investment. Now

1 downtown is coming along much faster, much better. We're  
2 in the process right now of redeveloping Paul's building  
3 right across from the Mills Plaza Complex, it's the old  
4 Plaza Hotel. And that was not mentioned earlier, this is  
5 in addition to all the other hotel activity that you heard  
6 about, but we're working on redeveloping that hotel. It  
7 will be about a \$70 million project, and it's going to be  
8 a wonderful project, by the way.

9           And then you heard everybody talk about the  
10 Blue Flame building and the amenities that it offers.  
11 It's a quarter of a block away from the new trolley line,  
12 within walking distance of all kinds of jobs that are  
13 beginning to occur in the downtown area. The service  
14 sector will really pick up because the hotels, the office  
15 buildings, the ballpark, all of these businesses need  
16 employees, some of who will be residents of the Blue Flame  
17 building.

18           And when you put all this together, you can see  
19 that Paul Foster is very much about economic opportunity,  
20 and I don't think that he would be doing all the things  
21 that he's doing in downtown El Paso and serving as a  
22 catalyst for many other investors who are now doing a lot  
23 of things in downtown El Paso, if he didn't believe that  
24 there was economic opportunity in downtown El Paso. So I  
25 think I agree completely with the thoughts that are



1 expressed earlier that the statistics have not caught up  
2 with what's actually going on in El Paso.

3 And then I'll just personally share my story  
4 growing up in El Paso. I grew up as a poor kid very near  
5 downtown El Paso, and back then it was a different  
6 downtown, and it provided me with lots of opportunities  
7 because back then you had libraries, you had  
8 transportation, you had good high end retail shopping, you  
9 had jobs, and my first job was working at the Ramada Hotel  
10 in downtown El Paso which is now the Indigo Hotel. And so  
11 we're seeing all of that come back and it's going to  
12 create wonderful opportunities for the next generation of  
13 El Pasoans.

14 So thank you.

15 MS. BINGHAM ESCAREÑO: Any questions?

16 DR. MUÑOZ: Gerry, you said something about  
17 your build-out being completed in 2020. What is that  
18 exactly?

19 MR. CICHON: So RAD has a time frame and it's  
20 five years, and we asked for an extension from HUD, and  
21 from what I can tell, we're the only housing authority to  
22 have received it. We're also the first housing authority  
23 to do a full conversion, so a lot of times we're the first  
24 asking for anything from HUD. HUD only gave us that  
25 because we were able to show them what we could do with

1 historic tax credits in additional opportunity for our  
2 people. So at 2020, December 31, whatever we don't have  
3 done, we don't have done, it's over, and so that's the  
4 time frame that we're dealing with.

5 MS. FINE: Hi. I'm Tracey Fine. I'm with  
6 National Church Residences, and I sit behind this  
7 application, so this is not a request from my perspective.  
8 But I wanted to highlight some of the reasons why I do  
9 not think this waiver should be granted.

10 The development community depends on the QAP  
11 rules to make major business decisions on potential  
12 development projects. It would be really unfair for  
13 competing applications to play by a different set of rules  
14 after submitting applications. Many of us made decisions  
15 not to submit applications because we did not get the  
16 qualifying factors to be in the right set-asides.

17 The requirements to qualify for at-risk are  
18 black and white. The Blue Flame clearly does not qualify  
19 for the at-risk set-aside as a new location does not  
20 qualify for any opportunity points, a requirement to move  
21 residents to a new location. Had the Blue Flame  
22 Apartments competed in the El Paso regional pool and no  
23 the at-risk set-aside, they would have gained an  
24 additional five points for urban core, giving it a score  
25 of 161. Not only would this be the highest scoring

1 application in the El Paso regional pool, but it would  
2 have been the highest scoring application in the entire  
3 2017 round. Had they submitted in the regional pool, this  
4 waiver would not be on the table, we would not be having  
5 this discussion.

6 The conversation of moving at-risk properties  
7 from one location to another has been brought up at nearly  
8 every QAP. I bring it up. For those of us trying to  
9 preserve existing affordable housing stock in the  
10 communities that they currently serve cannot compete  
11 against properties that can pick up and move to higher  
12 scoring sites, yet time and time again TDHCA has insisted  
13 that these properties can move only if they improve access  
14 to better scoring schools and lower poverty rates. The  
15 current residents of Pully [phonetic], which are being  
16 looked at to be moved into Blue Flame, currently enjoy  
17 higher-scoring schools and a lower poverty rate than the  
18 new proposed location.

19 I just want to reiterate that the rules are the  
20 rules and we have to be able to trust that they won't be  
21 bent for certain competing applications. This is not the  
22 same as asking for a site waiver for a railroad, which you  
23 can cure with noise-resistant windows. This is a  
24 qualifying factor for a preservation set-aside, and if it  
25 had been put in the regional pool, they would be a top

1 scoring application, and they have another opportunity to  
2 submit another application next year.

3 MS. BINGHAM ESCAREÑO: Thank you.

4 Any questions?

5 MR. GOODWIN: Gerry, I see you shaking your  
6 head no about these comments, so would you come up and  
7 respond to that?

8 MR. CICHON: Sure. We do not have a chance to  
9 come back on this one. The time frame associated with RAD  
10 with our current construction schedule and the amount of  
11 vacancies that we currently have mandate that as we have  
12 the agreement with HUD, this is our one shot, and so  
13 that's why we're so emphatic with our presentation to you  
14 today. If we thought we had another chance, we'd probably  
15 approach it very differently.

16 MR. GOODWIN: Thank you.

17 MR. PALMER: Just to address the comment that  
18 the rules are the rules, the fact is that you commonly  
19 grant waivers for site issues, and someone could come up  
20 and make the same argument if they were behind somebody  
21 who was within 500 feet of a railroad track saying if you  
22 grant that waiver, I'm not going to get funded. But the  
23 fact is the Board has typically had the discretion and  
24 used it to grant waivers on certain site issues, and we  
25 believe that this is no different than a waiver for

1 railroads or for high crime in the neighborhood or for  
2 blight in the neighborhood that you've granted on a number  
3 of applications.

4 MS. BINGHAM ESCAREÑO: Thank you.

5 MR. ECCLES: If I could ask a question, because  
6 you are asking the Board to waive a rule, if you could  
7 couch all of this, because no one is saying that this is a  
8 bad idea, HACEP is doing amazing work and renovating  
9 historic buildings and putting them downtown, it all  
10 sounds great, but we're dealing with, as Ms. Fine said, a  
11 mechanism, a vehicle, if you will, for tearing down units  
12 in one place and constructing them in another, and to that  
13 end, the rule contemplates making sure that the  
14 opportunities are improving.

15 And all said, what is going on and what may be  
16 coming in that area sounds extraordinary, it really does,  
17 but the issue in the waiver rule is -- and if you could  
18 address this point -- how is this addressing circumstances  
19 beyond the applicant's control? And in that I mean not  
20 that you have no control over where the Blue Flame  
21 building is, it's that you're going to be demolishing  
22 units in one place, where else could they go, and if  
23 there's no other place they could go, that would be what's  
24 out of your control. At least that's how I see it; maybe  
25 you see it differently.

1           MR. PALMER: Clearly there are other places in  
2 the City of El Paso that you could go, but what we say is  
3 outside our control is to the extent that you want to do a  
4 historic renovation and adaptive reuse of a building --  
5 which is one of the statutory priorities of the  
6 department -- that there are no historic buildings outside  
7 of downtown El Paso, or pretty much any city that you go  
8 to, that you have to go to a downtown area to do a  
9 historic renovation or adaptive reuse. And with this  
10 restriction, none of those downtowns in any city are  
11 probably right now a high opportunity area under TDHCA's  
12 definition, so you would be foreclosing the opportunity to  
13 do at-risk deals in historic developments.

14           MS. FINE: May I counter that? The rules that  
15 were adopted in this year's QAP really promoted downtown  
16 historical preservation, you just had to submit your  
17 application in the right regional pool. You can get seven  
18 points for revitalization, you can get seven points for  
19 high opportunity, you can get five points for urban core,  
20 you can't get that in the at-risk set-aside, particularly  
21 because it makes it unfair competition, it separates those  
22 out if they got the points for historic.

23           So the rules did promote this kind of urban  
24 growth.

25           MS. BINGHAM ESCAREÑO: Marni, I know you

1 mentioned it earlier but just for our edification, one of  
2 the letters talked about and you mentioned that there was  
3 some perception that maybe keeping the high opportunity  
4 requirement in the specifications was inadvertent, that  
5 the letter said it was inadvertent, that it was a  
6 leftover.

7 MS. HOLLOWAY: That was an assertion in the  
8 appeal. Throughout our discussions last year and our rule  
9 drafting and everything, I don't recall anyone ever  
10 mentioning we should make this adjustment. It could be  
11 that that's something that we would look at moving  
12 forward. We haven't looked at the CRP plan or the  
13 progress within the City of El Paso -- it sounds very  
14 impressive. But the rule as it sits right now says that  
15 if you are relocating RAD units, it must go into a higher  
16 opportunity area.

17 I need to just make a clarification here. I've  
18 heard a couple of times mentioned that seems to equate  
19 this waiver request to a request for an eligibility  
20 determination because of proximity to a railroad. Those  
21 are two very different things. Undesirable site has a  
22 very clear path to that exemption; undesirable  
23 neighborhood characteristics, talking about crime and  
24 blight has a very clear path to that eligibility  
25 determination. Those are not waivers, which this is.

1 MS. BINGHAM ESCAREÑO: I don't think the Board  
2 is unclear on that.

3 MS. HOLLOWAY: I just wanted to make sure.

4 The other thing I would mention is that there  
5 are two other Housing Authority of the City of El Paso  
6 applications that have been submitted in the at-risk set-  
7 aside. At least one of those, if you grant this waiver  
8 today, will put them over the \$3 million cap and that  
9 application would be ineligible. So they have three  
10 applications with us right now; one of them will put them  
11 over the cap.

12 DR. MUÑOZ: They're making the argument for  
13 this one they understand that consequence, that potential  
14 consequence, I'm sure. Well, they do now.

15 (General laughter.)

16 MS. HOLLOWAY: They have signed a certification  
17 that they understand the rules.

18 MR. CICHON: We're going to win. No one behind  
19 this is not going to get funded because we put that many  
20 applications in and our applications are that good. We've  
21 hit our cap every year for the past three years and we're  
22 going to keep doing this until we run out of RAD. That's  
23 just how good this team is. We're saying that this is the  
24 one we want, it's not like the detriment of anybody else  
25 but this is the one we want because it has the most impact



1 for the City of El Paso and for our residents. That's all  
2 this is.

3 DR. MUÑOZ: I think you made it clear, Gerry.  
4 I was just making the point that I'm assuming you're aware  
5 that something could have a consequence for one of your  
6 other applications.

7 MR. CICHON: I am. Thank you very much.

8 MS. BINGHAM ESCAREÑO: Thank you, Gerry.

9 Any other questions, comments from the Board?

10 MS. ANDERSON: I'm sorry, just one very quick  
11 comment.

12 MR. ECCLES: I'm sorry. We've gotten away from  
13 the protocol of announcing who you are.

14 MS. ANDERSON: Sarah Anderson. And just a  
15 quick comment on this, that yes, we are aware that there  
16 are three, this is the number one choice.

17 You know, we spent two hours yesterday having a  
18 discussion about gentrification and how are we ever going  
19 to address a place, find a place that we affordable  
20 housing providers get in before gentrification takes off  
21 and we can no longer get access to downtown areas. We've  
22 missed it in Austin, we've missed it in San Antonio, we've  
23 missed it everywhere. This is it, this is probably one of  
24 the last times we'll ever have that opportunity to beat  
25 the gentrifiers and get affordable housing in a downtown

1 area.

2 So I just wanted to make sure that that was on  
3 the record, and that yes, we are aware that something  
4 drops out, but the hope is that this may be the one time  
5 you get to make a decision that nobody is adversely  
6 impacted, that if there's three rotating around, that we  
7 believe that the impact would be negligible.

8 DR. MUÑOZ: Just a minute, just a minute. Once  
9 we've made our points, let's make our points. This is not  
10 going to be a round-robin where every comment sort of  
11 evokes someone to sort of lift themselves from their  
12 seats.

13 But I do want to say something about having  
14 recently relocated to an urban center. I don't know that  
15 I agree with the categorization that this may be the last  
16 time that the Board ever contemplates this sort of  
17 scenario, but having recently moved, I've been impressed  
18 by how much is coming back into the urban center and how  
19 much investment. I leave where I'm staying and I turn a  
20 corner and there's a place called Burger Theory that's  
21 open until 2:00 a.m. in the morning. You go around and  
22 there's churches, there's parks, there's dog walks,  
23 there's just amazing amenities that are sort of returning.

24 And I can't imagine that that's going to be available  
25 indefinitely for affordable housing.

1           Where I moved, the point was made to me you  
2 want to be as close to the center of the city as possible,  
3 you want to be close, close, close, and it's becoming  
4 increasingly prohibitive for people to be close, close to  
5 those newly re-arriving amenities. So I just want to make  
6 the point that I don't know that this is the last deal in  
7 the whole State of Texas, but I do know that it seems to  
8 me from just recent experience that the availability of  
9 affordable housing for working people close to downtowns  
10 is becoming more prohibitive and less available.

11           MS. BINGHAM ESCAREÑO: Thank you, Dr. Muñoz.

12           So we have a motion from Mr. Goodwin and a  
13 second from Mr. Gann.

14           MR. GOODWIN: I'd like to withdraw my motion.

15           MS. BINGHAM ESCAREÑO: Mr. Goodwin withdraws  
16 his motion. Mr. Gann, do you withdraw your second?

17           MR. GANN: I do.

18           MS. BINGHAM ESCAREÑO: All right. So with a  
19 clean slate, I may need your help again. Counsel, we may  
20 need your help also.

21           So here's the challenge. I mean, obviously,  
22 awesome team, great project, we are blessed with hearing  
23 from awesome teams and great projects every day, we're  
24 blessed with that. We have a challenge here, so it sounds  
25 like there's a withdrawal of the original motion to deny

1 the request for a waiver, which is leading me to believe  
2 that there may be some support for approving or accepting  
3 the request for the waiver. Can you help us? Because you  
4 did remind us also about the points that are kind of in  
5 play. Can you remind us of what our options are, or if  
6 someone were to make a motion to accept their request for  
7 the waiver, to approve the request, what grounds we would  
8 need to support in order to approve the request?

9 MR. IRVINE: The rule just lays out that you  
10 need to find that it's to address circumstance that were  
11 beyond the applicant's control and that the waiver is  
12 necessary to fulfill some purpose or policy of Chapter  
13 2306. I think the purposes and policies are laid out in  
14 the statute and they've already been brought on to the  
15 record, so I think that the real necessity is probably the  
16 more challenging piece to define.

17 MS. BINGHAM ESCAREÑO: The beyond control?

18 MR. IRVINE: Yes.

19 MS. BINGHAM ESCAREÑO: And if we were to word a  
20 motion that we believe the circumstances were beyond the  
21 control in that the area appears to have the components of  
22 a high opportunity area that has not yet been formally  
23 recognized as such?

24 MS. HOLLOWAY: So recognition as a high  
25 opportunity area is something that the applicant builds

1 that case for us. So yes, there's thresholds about  
2 poverty levels, that kind of thing, but that's something  
3 that the applicant would have brought to us as: Here's  
4 all of the amenities, the grocery stores, the parks, the  
5 childcare all of those things.

6 DR. MUÑOZ: All the investments that are being  
7 described, I mean, they're not insignificant. I've been  
8 to a game to see the Chihuahuas. I was there when it was  
9 being built and when it was finished. There's a lot. I  
10 mean, how do you capture that in progress?

11 MS. HOLLOWAY: That would have captured though  
12 the concerted revitalization which, as I mentioned  
13 earlier, we have not reviewed yet; because of this waiver,  
14 we haven't gotten to that point. So all of that progress,  
15 all of that work that's going on would come through that  
16 concerted revitalization plan.

17 And it sounds like a lot of great things. I  
18 would point out that other apartments, other development,  
19 hotels are not on an amenities list for us. Yes, they  
20 indicate that there are good things going on in the area,  
21 but those are necessarily something that we would count as  
22 an amenity.

23 MS. BINGHAM ESCAREÑO: So there's more hurdles.

24 MS. HOLLOWAY: Absolutely.

25 MS. BINGHAM ESCAREÑO: One of the things I have

1 seen, there are definitely hurdles after this one.

2           Because I guess what I'm struggling with -- and  
3 Mr. Palmer, not to use your words against you -- but in  
4 terms of out of control as in we couldn't place it  
5 anywhere else is kind of off the table, so that's not an  
6 out of our control deal.

7           I guess I was just trying to find if the high  
8 opportunity, if the definition of the high opportunity,  
9 the fact that there are those amenities and those  
10 supportive elements in that community would be enough for  
11 us to articulate to move the waiver.

12           DR. MUÑOZ: And easily documented current  
13 active investments that would bring very soon additional  
14 resources that would qualify in our traditional  
15 definitions of amenities.

16           MS. HOLLOWAY: So my assumption is -- and it is  
17 an assumption -- that if the development did qualify as a  
18 high opportunity or qualify under the opportunity index,  
19 that that would have been the application that was  
20 submitted rather than requesting the waiver. If they had  
21 submitted an application that says, look, they qualify  
22 under the opportunity index -- and they didn't even have  
23 to get seven points, they just have to qualify -- that  
24 that would be the application that was submitted to us  
25 rather than the request for a site waiver.

1           And again, the amenities that are being  
2 described sound like there's a lot going on there, but  
3 other apartments or hotels are not amenities under our  
4 opportunity index. It's not something that we would be  
5 viewing as a positive for residents of this building.

6           DR. MUÑOZ: Access to transportation, Marni,  
7 access to medical care, access to retail?

8           MS. HOLLOWAY: Depending on the distances, yes,  
9 absolutely those would be part of an opportunity index,  
10 but without having been submitted as an opportunity index,  
11 that's not something that we would be looking for now. If  
12 it's something that's part of the CRP plan and it's part  
13 of what we're evaluating on a concerted revitalization  
14 plan, then of course we would be looking at those items.

15           MR. PALMER: So could I address the necessity,  
16 the outside of our control issue? So again, to the extent  
17 that you're going to do a historic renovation, the only  
18 place that you're going to be able to do it, while not  
19 necessarily this building, is in a downtown area. The  
20 only way that an adaptive reuse like this works  
21 financially is with the additional funds that come from  
22 historic tax credits. So this project would also get  
23 historic tax credits that helps make it viable, and again,  
24 it's outside our control, we're in the historical building  
25 and in El Paso they're all downtown.

1                   And this project is not in the first or second  
2 quartile is why it doesn't qualify for the opportunity  
3 index points.

4                   MR. GOODWIN: Is there an opportunity of  
5 delaying this allowing to work it out for our next  
6 meeting?

7                   MS. BINGHAM ESCAREÑO: What kind of timeline  
8 are we on?

9                   MR. GOODWIN: Obviously, I think we all want to  
10 vote for it.

11                  MR. GANN: I'd like to see it postponed till  
12 the next meeting so we could have more time to digest and  
13 they can too, if it's possible.

14                  MS. HOLLOWAY: So for staff, for us, our  
15 evaluation of the waiver request and our recommendation is  
16 going to be based on does this meet the rules, and what we  
17 would be looking for is does not granting the waiver keep  
18 the Department from fulfilling its purpose. We are not  
19 seeing that in the information that we have and in the  
20 conversations that we've had. And keep in mind also that  
21 applicants can't supplement their application.

22                  DR. MUÑOZ: Well, they're not supplementing  
23 their application if we'd like additional information  
24 regarding the beyond their control, this particular  
25 building, maybe some additional specifics related to what



1 could be potentially high opportunity amenities that maybe  
2 haven't been clarified. Is that an embellishment of their  
3 application or a response to our questions?

4 MS. HOLLOWAY: That would be a response to your  
5 questions. This is what I would propose. Let us work a  
6 little deeper into the application, let us review the CRP  
7 plan first to see if it would even meet our requirements,  
8 let us take a look at a couple of other things. I was  
9 just reminded that we also have three undesirable  
10 neighborhood characteristics to work through on this site.

11 Staff could work through those issues and bring you back  
12 a more complete picture of the application, if you think  
13 that that would assist you in making a decision.

14 DR. MUÑOZ: Yes. So what, then the motion  
15 would be to table, for you to continue to do your due  
16 diligence and then come back to the Board?

17 MR. ECCLES: I think probably the way that this  
18 is worked out in staff's mind, and certainly would make  
19 sense, is the waiver request came along with the  
20 application, as the rules require.

21 MS. HOLLOWAY: Yes, it did.

22 MR. ECCLES: So that would be the threshold  
23 determination, and the staff hasn't worked this  
24 application as it would in order to determine other  
25 threshold things that would kick it out and other

1 administrative or material deficiencies that might  
2 preclude it going forward because the waiver issue had to  
3 be presented first. So if you would like to table this  
4 for a month for essentially staff to engage the underlying  
5 application and then bring this back, perhaps there would  
6 be other issues that have arisen, but it would also allow  
7 staff the opportunity to engage such things as the CRP and  
8 have a bit more of a full picture.

9           However, there still is the underlying, and  
10 somewhat unresolved, I have to say, issue of really  
11 phrasing this waiver request as the rule requires and  
12 really satisfying that this waiver is necessary, not just  
13 to do a good deal, not just even a smart municipal  
14 planning deal, but in terms of doing it as an at-risk RAD  
15 transaction as opposed to anything else, because that's  
16 what this rule is about. So this may buy a month but this  
17 really needs to be couched in terms of the rules.

18           MS. BINGHAM ESCAREÑO: Understood.

19           Is there a motion to table? I'm assuming at  
20 this point table is probably the best that we can come up  
21 with. Is there a motion to table?

22           MR. GOODWIN: So moved.

23           MS. BINGHAM ESCAREÑO: Mr. Goodwin moves to  
24 table this item until the meeting next month. Is there a  
25 second?

1 DR. MUÑOZ: Second.

2 MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds. All  
3 those in favor of tabling, aye.

4 (A chorus of ayes.)

5 MS. BINGHAM ESCAREÑO: Opposed, same sign.

6 (No response.)

7 MS. BINGHAM ESCAREÑO: The motion carries to  
8 table. Thank you, guys, very much.

9 We're going to roll with our last two. We're  
10 starving, you used up almost all our brain energy on that  
11 one.

12 (General laughter.)

13 MS. BINGHAM ESCAREÑO: Andrew gets us.

14 MR. SINNOTT: Good afternoon. My name is  
15 Andrew Sinnott, Multifamily Loan Programs administrator.  
16 Given that these items are the only things between us and  
17 lunch, I'll try and be succinct.

18 So first up we've got possible action to assist  
19 9 percent layered direct loan awardees and applicants, and  
20 this is regarding both 2016 9 percent layered direct loan  
21 awardees and 2017 9 percent layered direct loan  
22 applicants. So within this action there's something for  
23 each of those transactions.

24 For 2016 9 percent layered direct loan  
25 awardees, this action would allow them to return direct

1 loan funds, if they are also returning their credits,  
2 without being penalized under the Multifamily Direct Loan  
3 Rule at 10 TAC, Chapter 13.11(b), as long as they can  
4 document the loss in equity attributable to a decline in  
5 syndication pricing. Specifically, these awardees would  
6 not be subject to the prohibition laid out in that section  
7 of the rule that prohibits awardees that return direct  
8 loan funds from applying for direct loan funds in any  
9 future application for a two-year period. The Board took  
10 similar action as it relates to waiving the point penalty  
11 in the QAP at last month's Board meeting, but it only  
12 dealt with 2016 9 percent HTC awardees without any  
13 consideration of direct loan funds.

14 As it relates to 2017 9 percent layered direct  
15 loan applicants, staff is recommending that those  
16 applicants be given an opportunity over the next several  
17 months, but not later than commitment notice execution  
18 which is typically early September, to replace the direct  
19 loan funds or other local gap financing that they have  
20 applied for as a result of over-subscription issues that  
21 we are seeing.

22 You can see in the 2017 Multifamily Direct Loan  
23 NOFA application log -- it's actually, I think, attached  
24 as the last page behind item 60, the next item -- that  
25 there is more demand than supply for our TCAP repayment

1 funds under the general set-aside specifically. Over \$52  
2 million has been applied for while we have only about  
3 \$8-1/2 million available. Typically in the past couple of  
4 years we've seen applications requesting about \$5- to  
5 \$6 million in TCAP repayment funds, so this is a severe  
6 over-subscription.

7 Of that amount, \$23 million has been requested  
8 by 4 percent layered and 2016 9 percent layered  
9 applications that were received prior to 2017 9 percent  
10 layered applications, meaning that there is little to no  
11 chance that we will be able to award any of the 2017 9  
12 percent layered direct loan applications that have  
13 development sites in participating jurisdictions where we  
14 would typically award TCAP repayment funds, and that's the  
15 only source for those applications.

16 So that's item 6(c). Do you have any  
17 questions?

18 MS. BINGHAM ESCAREÑO: Do you anticipate that  
19 we would do any other communication about that as we got  
20 closer to commitment dates, or do you think it will be  
21 fairly broadcast?

22 MR. SINNOTT: And I failed to mention that we  
23 actually sent a letter to the 2017 9 percent layered  
24 direct loan applicants who have development sites in  
25 participating jurisdictions notifying them of these over-

1 subscription issues.

2 MS. BINGHAM ESCAREÑO: Okay. Great, awesome.

3 MR. SINNOTT: Like I said, this will allow them  
4 to maybe perhaps defer more fee, add to their first lien  
5 debt to make up the debt, what we won't be able to fund  
6 with TCAP repayment funds.

7 MS. BINGHAM ESCAREÑO: Any other questions for  
8 Andrew? If not, I'll entertain a motion for staff's  
9 recommendation on 6(c).

10 DR. MUÑOZ: So moved.

11 MS. BINGHAM ESCAREÑO: Dr. Muñoz moves.

12 MR. GANN: Second.

13 MS. BINGHAM ESCAREÑO: Doctor -- Mr. Gann  
14 seconds.

15 MR. GANN: I'll take the doctor.

16 DR. MUÑOZ: You can have it.

17 (General laughter.)

18 MS. BINGHAM ESCAREÑO: If there's no further  
19 discussion, all those in favor, aye.

20 (A chorus of ayes.)

21 MS. BINGHAM ESCAREÑO: Opposed, same sign.

22 (No response.)

23 MS. BINGHAM ESCAREÑO: Motion carries.

24 And then (d).

25 MR. SINNOTT: So finally, item 6(d) concerns

1 possible action that may be taken to add TCAP repayment  
2 funds to the 2017-1 Multifamily Direct Loan NOFA.

3 MS. BINGHAM ESCAREÑO: Is it \$52 million?

4 MR. SINNOTT: It's not \$52 million,  
5 fortunately, but as you can see, the over-subscription of  
6 our direct loan fund has been a common theme throughout  
7 this meeting, so this is one small way that we're trying  
8 to address that issue.

9 This amendment would approximately \$2.3 million  
10 in TCAP repayment funds to the 2017-1 NOFA. When the NOFA  
11 was published in December, TCAP repayments received  
12 through November 30, 2016 were allocated for the NOFA. By  
13 adding this \$2.3 million, we are including TCAP repayment  
14 funds received through March 31, 2017, as well as \$1  
15 million in TCAP repayment funds that were returned as a  
16 result of a 2016 application not moving forward. Adding  
17 these funds should allow for one additional 4 percent  
18 layered direct loan application to receive an award, so  
19 net effect is not much but it's something.

20 Staff may look at further amending the NOFA  
21 with additional funds, be it HOME, TCAP repayment funds,  
22 or potentially National Housing Trust Fund, should there  
23 continue to be severe over-subscription issues, with the  
24 caveat that, obviously, whatever additional funds that we  
25 put into this NOFA comes at the expense of 2018 and future

1 NOFAs.

2 MS. BINGHAM ESCAREÑO: Thank you. Any  
3 questions for Andrew on 6(d)?

4 MR. GOODWIN: Motion to approve.

5 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

6 MR. GANN: Second.

7 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

8 No other discussion. All those in favor, aye.

9 (A chorus of ayes.)

10 MS. BINGHAM ESCAREÑO: Opposed, same sign.

11 (No response.)

12 MS. BINGHAM ESCAREÑO: Motion carries. Thank  
13 you.

14 Thank you, Andrew.

15 That concludes the action agenda. Are there  
16 any other comments from the public on any items that  
17 aren't on the agenda but for consideration for future  
18 agendas?

19 (No response.)

20 MS. BINGHAM ESCAREÑO: How about any comments  
21 from staff?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: Any comments from the  
24 Board?

25 (No response.)



1 MS. BINGHAM ESCAREÑO: Good. Then I'll  
2 entertain a motion for adjournment.

3 MR. GOODWIN: So moved.

4 MS. BINGHAM ESCAREÑO: Okay. I'll second it.  
5 Thank you, guys, very much.

6 (Whereupon, at 12:53 p.m., the meeting was  
7 adjourned.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: April 27, 2017

I do hereby certify that the foregoing pages, numbers 1 through 154, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 5/3/2017 (Date)

On the Record Reporting  
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