

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

April 14, 2022
10:00 a.m.

BOARD MEMBERS:

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

BOBBY WILKINSON by BROOKE BOSTON

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P R O C E E D I N G S

1
2 MR. VASQUEZ: I'd like to call to order the
3 meeting of the governing Board of Texas Department of
4 Housing and Community Affairs. It is 10:01 a.m., on April
5 14, 2022.

6 We will start out with a roll call, but before
7 we actually get to the roll, we, as you can see, have a new
8 member on Board here, Ms. Anna Maria Farias, of San
9 Antonio.

10 And let me give you a little bit of background
11 for those of you who don't know. Ms. Farias works as the
12 Assistant Secretary, Office of Fair Housing and Equal
13 Opportunity, at the U.S. Department of Housing and Urban
14 Development. That is a U.S. Senate confirmed position.

15 She also -- in addition to many other
16 professional and leadership positions in the federal
17 government, she served as the executive director of the
18 Crystal City Housing Authority here in Texas from 1993 to
19 2000.

20 Long before that, she actually resided in the
21 Crystal City Housing Projects, growing up, and she was one
22 of the first executive directors of the organization to
23 actually reside in an affordable housing community during
24 the tenure of her leadership, so she's very well familiar
25 with what we do here.

1 Ms. Farias previously served as a gubernatorial
2 appointee to the Texas Woman's University Board of Regents,
3 where she served as chair in 2017. And she was inducted to
4 the Texas Women's Hall of Fame in 2000.

5 Ms. Farias received her bachelor's degree with
6 honors from Boston University and a JD degree from Temple
7 University in Philadelphia. So we welcome Ms. Farias to
8 the Board.

9 Let me officially ask you, it is my
10 understanding that you have been provided TDHCA's
11 statutorily required training program and that you have
12 completed it prior to today. Is that correct?

13 MS. FARIAS: Yes, I have, yes.

14 MR. VASQUEZ: Very good. She has answered in
15 the affirmative, and I will continue with the roll to
16 verify that we have a quorum. So with that, Mr. Batch?

17 MR. BATCH: Here.

18 MR. VASQUEZ: MR. Braden?

19 MR. BRADEN: Here.

20 MR. VASQUEZ: Ms. Farias?

21 MS. FARIAS: Here.

22 MR. VASQUEZ: Mr. Marchant?

23 Mr. MARCHANT: I'm here.

24 MR. VASQUEZ: And Mr. Thomas is -- has requested
25 an absence for today, so will go on an excused absence.

1 I'm here. And we do have a quorum.

2 Also another face on the dais here that you all
3 might not usually see. She's usually over there and you
4 see the back of her head. So we are -- Mr. Wilkinson had
5 some personal obligations that he just had to attend to
6 today.

7 So one of our deputy executive directors, Brooke
8 Boston, is going to join us. And she's eventually going to
9 give her ED report, but we are going to start out with her
10 leading us in the pledges. So if you all will join us.

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

13 MR. VASQUEZ: All right. Before we get into the
14 meat of the meeting, we have two different resolutions that
15 we'll read into the record. Mr. Lyttle will have one
16 recognizing May as Community Action Month, and the second
17 recognizing May as National Mobility Awareness Month.

18 Mr. Lyttle?

19 MR. LYTTLE: Thank you, Mr. Chairman. The first
20 resolution being for Community Action reads as follows:

21 "Whereas, community action agencies are
22 nonprofit and unit of local government organizations
23 designated under the Economic Opportunity Act of 1964 to
24 serve to ameliorate the effects of poverty and help persons
25 experiencing poverty to transition to self-sufficiency;

1 "Whereas, community action builds and promotes
2 economic stability and enhances stronger communities and
3 the opportunity to live in dignity;

4 "Whereas, nationally community action has
5 enhanced the lives of millions by providing essential,
6 life-changing services and opportunities;

7 "Whereas, community action serves 99 percent of
8 America's counties in rural, suburban, and urban
9 communities and works toward the goal of ending poverty in
10 our lifetime;

11 "Whereas, Texas has a strong and vibrant network
12 of community action agencies to deliver community action to
13 Texans in need, and this year has mobilized to provide
14 needed assistance for families experiencing the impacts of
15 the COVID-19 pandemic;

16 "Whereas, community action will continue to
17 implement innovative and cost-effective programs to improve
18 the lives and living conditions of the impoverished;
19 continue to provide support and opportunities for all
20 eligible households in need of assistance; and continue to
21 develop and carry out effective welfare system reforms; and

22 "Whereas, the Texas Department of Housing and
23 Community Affairs and the State of Texas support the
24 Community Action network in Texas in working to improve
25 communities and make Texas a better place to live not only

1 during Community Action Month in May, but throughout the
2 entire year;

3 "Now, therefore, it is hereby resolved that the
4 governing board of the Texas Department of Housing and
5 Community Affairs, does hereby celebrate May 2022, as
6 Community Action Month in Texas, and encourages all Texas
7 individuals and organizations, public and private, to join
8 and work together in this observance of the hard work and
9 dedication of Texas community action agencies.

10 "Signed this fourteenth day of April 2022."

11 I don't know. Do you need to accept that?

12 MR. VASQUEZ: Thank you. Well, let's take a
13 motion to adopt the resolutions as presented?

14 MR. BRADEN: So moved.

15 MR. VASQUEZ: Motion by Mr. Braden. Is there a
16 second.

17 MR. BATCH: Second.

18 MR. VASQUEZ: Second by --

19 MR. BATCH: Batch.

20 MR. VASQUEZ: -- Brandon, Mr. Batch. All those
21 in favor say aye.

22 (A chorus of ayes.)

23 MR. VASQUEZ: Any opposed?

24 (No response.)

25 MR. VASQUEZ: Hearing none, the resolutions are

1 adopted.

2 MR. LYTTLE: Okay. The second one reads as
3 follows.

4 MR. VASQUEZ: Oh, the resolution, I'm sorry.

5 MR. LYTTLE: Oh, sorry.

6 MR. VASQUEZ: Go ahead, next one.

7 MR. LYTTLE: "Whereas, May 2022 is National
8 Mobility Awareness Month, which is dedicated to showing the
9 community at large how Persons with Disabilities can live
10 active, mobile lifestyles, and to raise awareness of the
11 mobility solutions available in the local community;

12 "Whereas, a goal of the Texas Department of
13 Housing and Community Affairs is to ensure that all Texans
14 have access to safe and decent affordable housing;

15 "Whereas, it is the policy of the Department to
16 support fair housing opportunities in the administration of
17 its Single Family and Multifamily Programs, especially in
18 regards to Persons with Disabilities accessing new home
19 construction, home rehabilitation, housing vouchers, and
20 rental assistance programs and services;

21 "Whereas, the Amy Young Barrier Removal Program
22 provides one-time grants of up to \$22,500 for Persons with
23 Disabilities, both renters and homeowners earning up to
24 eighty percent of the area median family income, who need
25 home modifications to increase accessibility and eliminate

1 hazardous conditions in their homes;

2 "Whereas, in 2020, the Department celebrated 10
3 years of offering the Amy Young Barrier Removal Program,
4 named in honor of the late advocate for Texans with
5 Disabilities, who helped shape the state-funded program to
6 improve the quality of life for persons with disabilities
7 throughout the State of Texas;

8 "Whereas, from 2010, to 2020, the Department,
9 through the Amy Young Barrier Removal Program, completed
10 approximately \$22.8 million worth of accessibility and
11 modifications on approximately 1,167 homes of Texans with
12 Disabilities, such as constructing roll-in showers,
13 installing shower wands and lever faucets, widening
14 doorways, modifying kitchens and laundry rooms with
15 accessible cabinetry and appliances, building ramps, and
16 improving walkways with handrails, paving, and lighting to
17 accommodate program participants' specific needs;

18 "Whereas, in 2021, the Department, through the
19 Amy Young Barrier Removal Program, completed approximately
20 \$1.9 million worth of accessibility modifications on 88
21 homes of Texans with Disabilities;

22 "Whereas, the Department applauds the nonprofit
23 organizations and local governments around the state who
24 have become Amy Young Barrier Removal Program
25 administrators and who advocate for their clients through

1 quality construction, pragmatic solutions, and respectful
2 service; and

3 "Whereas, the Department encourages Texans to
4 explore the numerous TDHCA programs and resources related
5 to increasing and maintaining mobility during National
6 Mobility Awareness Month, and throughout the year;

7 "Now, therefore, it is hereby resolved that in
8 the pursuit of the goal and responsibility of increasing
9 mobility opportunities of Texans with disabilities, the
10 governing Board of the Texas Department of Housing and
11 Community Affairs does hereby celebrate May 2022 as
12 National Mobility Awareness Month and encourages all Texas
13 individuals and organizations, public and private, to join
14 and work together in the observance of National Mobility
15 Awareness Month.

16 "Signed this fourteenth day of April, 2022."

17 MR. VASQUEZ: Thank you. We'll entertain a
18 motion to adopt the resolution on National Mobility
19 Awareness Month.

20 MR. BATCH: So moved.

21 MR. VASQUEZ: Motion made by Mr. Batch. Is
22 there a second.

23 Mr. MARCHANT: Second.

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

1 (A chorus of ayes.)

2 MR. VASQUEZ: Hearing -- any opposed?

3 (No response.)

4 MR. VASQUEZ: Hearing none, the resolution is
5 adopted. We are moving right along to the consent agenda
6 items. Are there any items listed on the consent agenda
7 that members of the Board, or members of the audience want
8 to move to action items?

9 (No response.)

10 MR. VASQUEZ: Seeing none, we will entertain a
11 motion on the consent agenda as posted.

12 Mr. MARCHANT: Mr. Chairman, I make a motion
13 that we accept and approve consent agenda as presented.

14 MR. VASQUEZ: For those of you who couldn't
15 hear --

16 Mr. MARCHANT: I'm sorry.

17 MR. VASQUEZ: -- Mr. Marchant, because he hates
18 to put on his microphone, he made the motion. Do I hear a
19 second from Mr. Batch?

20 MR. BATCH: I second --

21 MR. VASQUEZ: All those in favor of approving
22 the consent agenda say aye.

23 (A chorus of ayes.)

24 MR. VASQUEZ: Any opposed?

25 (No response.)

1 MR. VASQUEZ: Hearing none, motion carries.

2 Moving right along to the executive director
3 report, standing in today we have Ms. Brooke Boston.

4 MS. BOSTON: Hi, Chairman Vasquez, Board
5 members, thank you for having me appear today. I feel like
6 I'm sitting at the grownup table.

7 So first I wanted to fill you in on our
8 Homeowner Assistance Fund; we call that HAF. The program
9 is up and running, as you know. We've just recently -- I
10 have just recently stepped into the position of overseeing
11 that program with Monica's departure, and I'm still getting
12 up to speed, but the rollout has been going smoothly.

13 So far, as of this morning, before I walked
14 over, we had approved 22.3 million in assistance for about
15 2100 households. We're definitely hitting the lower income
16 households, which is great. Even though the program can
17 serve households up to 100 percent of the area median
18 income, approximately 68 percent of those approved are at
19 30 percent AMI or below, and another 22 percent are below
20 80 percent.

21 So we also, as of yesterday, have Google ads up
22 and running, and we have been confirmed that clicks are
23 happening. Relating to our other big Treasury program,
24 Texas Rent Relief, we received the past week another 47.8
25 million in ERA-1 funds.

1 Those are funds that were reallocated from other
2 entities, cities or states that have not spent the funds.
3 Because we still had applicants in our system who had not
4 been able to be assisted, the new funding will be directed
5 to those households after we've confirmed that they still
6 need assistance, of course.

7 In total, with the Texas Rent Relief Program,
8 we've distributed just under two billion. We've done 1.98
9 billion in rent and utility assistance to over 309,000
10 households, and we've prevented 21,000 evictions with our
11 program.

12 In other department news, our weatherization
13 program, which is funded by the Department of Energy, is
14 growing in a really huge way. Typically, we're funded at
15 around eight million a year.

16 And a new allocation that was awarded to us from
17 the Infrastructure Investment in Jobs Act has directed
18 about 173 million to us, for 20 times the amount that we're
19 used to getting.

20 So DOE just released guidance to the states, and
21 our plan has to be in by July 1, so you guys can expect to
22 see that coming before you for approval. We're excited
23 about that level of funds and that the funds are allowed to
24 be used for multifamily.

25 Weatherizing multifamily isn't something we

1 generally have; the funds aren't usually at a scale that
2 lets us do that. So we're excited about that opportunity.

3

4 We also recently -- some of our Office of
5 Colonia Initiative staff traveled to Cameron County last
6 month, and they met with the county judge, other county
7 staff and an organization, cdcb, who many of you guys are
8 aware of, Come Dream Come Build.

9 And we checked out their Mi Casita production
10 facility, talked about how we can make sure they can
11 implement that with our self-help center program. And Mi
12 Casita is a new innovation in affordable single family and
13 modular housing, and basically the housing can kind of grow
14 as the family grows.

15 Another way that we are making an impact across
16 the state, the Department recently entered into a contract
17 with Cornerstone Community Action Agency. They're going to
18 be providing HOME tenant-based rental assistance through
19 the disaster set-aside for the West Texas communities that
20 were recently impacted by the wildfires earlier this year.

21 The organization stated in their request that in
22 one community alone more than 80 homes were lost. So this
23 assistance will be very impactful.

24 Since we saw you last, we have had several QAP
25 roundtables and work group sessions which are discussions

1 for the 2023 QAP already. And we also hosted a compliance
2 roundtable.

3 The input from all of those will feed into our
4 rule development. Participation was lively and robust, and
5 we've garnered a lot of great ideas that we're going to be
6 able to integrate.

7 In the world of legislative activity, earlier
8 this week, Bobby, David Cervantes, and Chris Smith, from
9 our External Affairs Division, met with Senate Finance
10 staff to begin discussions about the agency's budget for
11 the next biennium. The meeting went well and gave us a
12 good foundation upon which to build.

13 In that same vein, External Affairs and
14 Financial Administration continue to work on our strategic
15 plan, which is due to the Legislative Budget Board in June.

16
17 You know, I could probably go on for ages,
18 because I love all the stuff that we do, and everyone's
19 doing really great work. But I'll wrap up with just one
20 more thing.

21 Overall, the agency is doing great. With our
22 new temporary pandemic teams, we seem to constantly be
23 hiring. We've been blessed that we had a really strong
24 cadre of existing managers and folks who are willing to
25 step into these temporary programs and take leadership.

1 We're thrilled that they were able to do that
2 and that we had that skill in-house. We now have 12 empty
3 vacancies in both temporary and permanent positions. And
4 so this is my plug for any of you in the audience who may
5 know of someone you think would be a good asset to TDHCA;
6 encourage them to look at our website. We've got a lot of
7 great opportunities.

8 And I'm happy to answer any questions.

9 MR. VASQUEZ: Thank you, Brooke.

10 Do any Board members have questions for Ms.
11 Boston on her executive director report?

12 So could you remind us, so how many households
13 did we help in the rental assistance program?

14 MS. BOSTON: More than 309,000.

15 MR. VASQUEZ: More than 309,000 households.

16 Wow! How much money did we get distributed in that?

17 MS. BOSTON: 1.98 billion.

18 MR. VASQUEZ: Wow. Okay. The program we
19 understand wasn't perfect, and we're still following up on
20 details, but it's incredible what staff and the whole team
21 on the project did, so I want to congratulate everyone on
22 that.

23 So moving right along to item 4 of the agenda,
24 presentation, discussion and possible action on the
25 Community Development Block Grant, Coronavirus Aid Relief

1 and Economic Security Act, community resiliency programs
2 awards.

3 Mr. Bentancourt?

4 MR. BENTANCOURT: Good morning, Chairman
5 Vasquez, Board members and Brooke. I'm Rudy Bentancourt,
6 and I'm the director of the CDBG CARES program. I'll be
7 covering item 4 in your Board materials.

8 The Department received 141 million in CDBG
9 CARES funding from the U.S. Department of Housing and Urban
10 Development to prevent, prepare for, or respond to COVID-
11 19.

12 The recommendations in this Board item will
13 obligate the remaining of the last funds for the CDBG CARES
14 funds. In June of 2021, the Board approved a third
15 amendment to the one-year action plan which included
16 approximately \$38.1 million, for the Community Resiliency
17 Program.

18 The 38.1 million, along with an additional 5.2
19 million for -- from reprogram funds allows for
20 approximately \$43.3 million to be available to the
21 Community Resiliency Program.

22 The Community Resiliency Program allows low and
23 moderate income areas and rural and small metro communities
24 to address gaps in their ability to prevent, prepare, or
25 respond to COVID-19 or future pandemic.

1 Funds allow communities to create, expand or
2 enhance public facilities that provide medical care, social
3 services, and/or emergency housing, and increase the
4 community's long-term resiliency and ability to mitigate
5 future coronavirus outbreaks.

6 As a HUD requirement, a minimum of \$40 million
7 must be obligated to non-entitlement communities in Texas.

8 A non-entitlement community is a community which does not
9 already receive an annual HUD allocation. The funding
10 from -- the funding of the Community Resiliency Program
11 recommendations are all to non-entitlement communities.

12 On October 1, we released a competitive notice
13 of funding availability to seek applications. The
14 Department received 50 applications in the response to the
15 Community Resiliency Program, requesting a total of \$141.7
16 million. Based on our review and scoring of these
17 applications, my team has identified 15 applicants which
18 are recommended for funding.

19 Examples of applications recommended for funding
20 include senior centers, community resiliency centers,
21 wellness and health centers, a food pantry, an advocacy
22 center for abused and neglected children, a fire station
23 rehabilitation, an EMS facility, and the purchase of
24 approximately five emergency medical services vehicles.

25 Along with the recommendations of the 15

1 applicants, staff is also recommending that the Board
2 approve a waiting list to be comprised of all eligible
3 applications.

4 The waiting list has been scored and ranked
5 along with the 15 recommended applicants. As additional
6 funding may be available from other CDBG CARES activities
7 not using full funding, applications will be awarded from
8 the waiting list to the next highest scored applicant whose
9 funds can be fully funded with the award.

10 Staff recommends the approval of the 15
11 applicants recommended for funding in the amount of
12 \$43,389,567.99 and approval of the waiting list as
13 additional CDBG CARES funds may become available.

14 I'll stand by for any questions.

15 MR. VASQUEZ: Good. Thank you, Rudy.

16 Do any Board members have questions on this
17 agenda item?

18 (No response.)

19 MR. VASQUEZ: And we can see it looks like
20 they're spread out in pretty good range, from the Panhandle
21 to RGV, so that's --

22 MR. BENTANCOURT: Yes.

23 MR. VASQUEZ: -- great. Okay.

24 Hearing no questions, do we have a motion on
25 item 4? Okay. We still have a -- I'll note for the record

1 that Mr. Batch has left the room temporarily but will be
2 back, and we still have an operating quorum.

3 So any -- I'll entertain a motion on item 4 of
4 the agenda.

5 MR. BRADEN: Mr. Chair, I move the Board grant
6 the executive director and his designees the authority to
7 effectuate the 15 awards for CDBG CARES CRP funding as
8 described, subject to the conditions, limitations, and
9 contingent authority as expressed in the Board action
10 request and proposed resolution on this item.

11 MR. VASQUEZ: Motion made by Mr. Braden. Is
12 there a second?

13 MR. MARCHANT: I'll second, Mr. Chairman.

14 MR. VASQUEZ: Seconded by Mr. Marchant.

15 All those in favor say aye.

16 (A chorus of ayes.)

17 MR. VASQUEZ: Any opposed?

18 (No response.)

19 MR. VASQUEZ: Hearing none, motion carries.

20 MR. BENTANCOURT: Thank you.

21 MR. VASQUEZ: Thank you. Moving on to item 5.a,
22 of the agenda. The presentation, discussion, and possible
23 action on resolution number 22-021, authorizing the filing
24 of one or more applications for reservation with the Texas
25 Bond Review Board with respect to qualified mortgage bonds,

1 authorizing state debt application and containing other
2 provisions relating to the subject.

3 Ms. Hodnett?

4 MS. HODNETT: Yes, sir. Good morning, Chairman
5 Vasquez, Board members, and Brooke. My name is Heather
6 Hodnett. I'm the manager of single family finance, and I
7 am also acting as the interim director of bond
8 finance since Monica's left.

9 I'm here to talk about items 5.a and 5.b. And
10 with this item, staff is requesting authorization to submit
11 one or more applications for a maximum reservation of
12 205,200,000 of volume cap to be used for the issuance of
13 single family mortgage revenue bonds 2022 Series A, and
14 under this item, we expect that the bond authority that
15 we'll be using has been carried forward.

16 MR. VASQUEZ: Okay. So we're still way
17 oversubscribed on --

18 MS. HODNETT: Yes, and this --

19 MR. VASQUEZ: -- those bonds?

20 MS. HODNETT: -- item is just for the authority
21 to submit the application to the Bond Review Board for bond
22 approval -- or for authority to use the bond allocation.

23 MR. VASQUEZ: Right.

24 MS. HODNETT: And the second item is for the
25 transaction itself.

1 MR. VASQUEZ: Okay. Does anyone have any
2 questions for Ms. Hodnett on this item?

3 (No response.)

4 MR. VASQUEZ: Hearing none, I'll entertain a
5 motion on item 5.a, of the agenda.

6 MR. BRADEN: Mr. Chair, I move the Board approve
7 resolution number 22-021, authorizing the filing of
8 applications for reservation with the Texas Bond Review
9 Board, all as expressed in the Board action request on this
10 item.

11 MR. VASQUEZ: Thank you. Motion made by Mr.
12 Braden. Is there a second?

13 MR. MARCHANT: I'll second, Mr. Chairman.

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

16 (A chorus of ayes.)

17 MR. VASQUEZ: Any opposed?

18 (No response.)

19 MR. VASQUEZ: Hearing none, the motion carries.
20 Moving on to item 5.b, presentation, discussion

21 and possible action on resolution number 22-022, that's
22 correct, or is it 021?

23 MS. HODNETT: Two-three?

24 MR. VASQUEZ: On 5.b, what's the resolution
25 number officially?

1 MS. HODNETT: Two-three.

2 MR. VASQUEZ: No, I've got -22 in all of our
3 notes. So we'll go for 22, resolution number 22-022,
4 authorizing the issuance, sale and delivery of TDHCA single
5 family mortgage revenue bonds, 2022 Series A, approving the
6 form and substance of related documents authorizing the
7 execution of documents and instruments necessary or
8 convenient to carry out the purposes of this resolution,
9 and containing other provisions relating to the subject.

10 Ms. Hodnett?

11 MS. HODNETT: Yes, sir. With this item, staff
12 is requesting approval to issue up to 190 million in tax-
13 exempt single family mortgage revenue bonds to be
14 designated single family revenue bonds 2022 Series A.

15 Proceeds of these bonds will used to originate
16 mortgage loans to low and moderate income homebuyers, and
17 to pay all or a portion of the down payment, closing costs
18 and related expenses associated with the loans, and to pay
19 all or a portion of the costs of issuing. Bond structure
20 is expected to include serial bonds, premium serial bonds,
21 term bonds, and a premium planned amortization class for a
22 bond.

23 Mortgage loans will be pulled into mortgage-
24 backed securities guaranteed by Ginnie Mae, and those MBS
25 will provide the security for the bonds. The mortgage

1 loans will be 30-year fixed-rate mortgage loans guaranteed
2 by FHA, VA or USDA, and pulled into Ginnie Mae mortgage-
3 backed securities.

4 We are considering options to allow the
5 borrowers to have a choice of down payment assistance,
6 given 3, 4, or 5 percent available options which is all
7 subject to response to borrower demand and market
8 conditions.

9 Borrowers will likely have the option to choose
10 how their DPA will be structured, either repayable where
11 the DPA is provided as a zero percent non-amortizing 30-
12 year second-mortgage loan that is due on sale or refinance
13 of the first loan, or a forgivable option with the DPA is
14 provided as a zero percent interest non-amortizing second
15 mortgage loan that's fully repayable for the first three
16 years and then forgiven after three years of closing.

17 The repayable option typically offers a mortgage
18 rate on the first mortgage loan that's about 25 basis
19 points to 37-1/2 basis points lower than the forgivable
20 option.

21 Depending on borrower demand and market
22 conditions, we may consider offering an unassisted mortgage
23 loan as well with a rate that's estimated based on current
24 market conditions.

25 The issuance of up to 190 million for an amount

1 of 2022 bonds will provide for 190 million amount of
2 mortgage loans to be originated. The associated down
3 payment assistance under compensation servicing for the
4 second loans is expected to be no more than \$300 million.

5 The bonds will be rated triple A and double A
6 plus by Moody's and S&P, and are expected to [inaudible] in
7 mid-May -- early May, I'm sorry; closing mid-June.

8 Any questions?

9 MR. VASQUEZ: Thank you, Ms. Hodnett. Do any
10 Board members have questions on this agenda item 5.b?

11 MR. BRADEN: I do have a couple of questions,
12 and more to do with timing than anything else. So the item
13 before this approved BRB application for this bond deal,
14 when are we filing the BRB application?

15 MS. HODNETT: Today.

16 MR. BRADEN: Okay. So then obviously that
17 should give you enough time to get a prior price --

18 MS. HODNETT: Yes. We expect to or hope to
19 receive the Bond Review Board approval next Friday.

20 MR. BRADEN: Okay.

21 MS. HODNETT: But again, pricing is all
22 contingent.

23 MR. BRADEN: Thank you.

24 MR. VASQUEZ: Any other questions on this item?

25 (No response.)

1 MR. VASQUEZ: If not, I'll entertain a motion on
2 item 5.b, as presented.

3 MR. BRADEN: Mr. Chair, I'll move the Board
4 approve resolution number 22-022, authorizing the issuance
5 and delivery of the TDHCA single family mortgage revenue
6 bonds 2022 Series A, as expressed in the Board action
7 request on this item.

8 MR. VASQUEZ: Great. Thank you. Motion made by
9 Mr. Braden. Is there a second?

10 MR. BATCH: Second, Mr. Chairman.

11 MR. VASQUEZ: Seconded by Mr. Batch, and as we
12 take this vote, let the record reflect Mr. Batch is back in
13 the room for participating in the vote.

14 All those in favor say aye.

15 (A chorus of ayes.)

16 MR. VASQUEZ: Any opposed?

17 (No response.)

18 MR. VASQUEZ: Hearing none, motion carries.

19 Thank you, Heather.

20 Moving right along to item 6 on the agenda,
21 presentation, discussion and possible action for approval
22 of the HOME American Rescue Plan allocation plan as
23 modified from the March 10, 2022, Board approval for
24 submission to the U.S. Department of Housing and Urban
25 Development, where Ms. Farias used to have a senior role.

1 MS. CANTU: Good morning.

2 MR. VASQUEZ: And Ms. Cantu, go ahead.

3 MS. CANTU: Yes, good morning, Chairman Vasquez
4 and Board members. I'm Naomi Cantu, director of HOME
5 American Rescue Plan, or what we call HOME ARP. I'm
6 speaking on the item that you've just mentioned, item 6.

7 Thank you for your approval last month of the
8 HOME ARP Allocation Plan, with revisions due to the public
9 comment. As we were preparing to submit the plan to HUD,
10 we determined updates and clarifications were needed, some
11 due to program design issues and some due to recent HUD
12 guidance released.

13 The fastest option to get a workable plan was to
14 make the revisions and present the updates to you for
15 approval. Approximately 132 million in funds are still
16 programmed in rental and non-congregate shelter
17 development, capacity building and nonprofit operating
18 funds, and administration and planning.

19 No changes were made to the rental housing
20 development activities or administration and planning.
21 There were changes made to the non-congregate shelter and
22 capacity building and nonprofit operating activities, as
23 well as clarifications made to the plan to meet regulatory
24 guidance.

25 Shelter construction funds of this scope is

1 rarely available. Allowing flexibility for more expansive
2 projects may allow substantial changes in the provision of
3 shelter.

4 In this light, the maximum eligible amount for
5 non-congregate shelter applications was increased to the
6 amount in the notice of funding availability, up to \$56
7 million.

8 There were also two changes to the capacity
9 building activity. The first is that the capacity building
10 or operating funds could be awarded prior to the
11 application for development instead of at the same time of
12 an award of a shelter or rental housing activity.

13 The second change was to raise the maximum
14 request to the greater of \$50,000 or 50 percent of the
15 general operating budget. This will allow for the
16 opportunity to substantially invest in organizations that
17 may be awarded within 24 months for development.

18 There were also three clarifications being
19 presented to you today. One is an update of the language
20 for preferences, several of which were made to conform to
21 standard language that is HUD -- that HUD is using.

22 All but one original preference remains under
23 another language category. The exception was public
24 housing residence, which had to be removed due to a
25 statutory restriction.

1 We also added a third option for referrals to
2 developments, which was allowed in the HUD notice and
3 included in the plan for full flexibility. The final
4 clarification was a list of organizations that participated
5 in the consultations, which is included in the appendix of
6 the plan.

7 The plan itself is available in attachment A in
8 the Board book. After submission to HUD, they have 45 days
9 for review, and once approved, we plan to release
10 applications and NOFAs this spring and summer. I'm
11 available for any questions.

12 MR. VASQUEZ: Great. Thank you, Ms. Cantu.

13 Do any Board members have questions on this
14 agenda item?

15 (No response.)

16 MR. VASQUEZ: Again this is great. It looks
17 like we're going to really add some flexibility and ability
18 to move quickly in many different directions with this
19 change. So hearing no questions, and seeing no public
20 comment, I'll entertain a motion on item 6, of the agenda?

21 MR. BATCH: Mr. Chairman, I move that the Board
22 grant the executive director and his designees the
23 authority to proceed with the submission to HUD of the plan
24 as expressed in the Board action request on this item?

25 MR. VASQUEZ: Great. Thank you. Motion made by

1 Mr. Batch. Is there a second?

2 MS. FARIAS: I second.

3 MR. VASQUEZ: Seconded by Ms. Farias. Thanks
4 for jumping right in. Okay. All those in favor say aye.

5 (A chorus of ayes.)

6 MR. VASQUEZ: Any opposed?

7 (No response.)

8 MR. VASQUEZ: Hearing none, motion carries.

9 MS. CANTU: Thank you.

10 MR. VASQUEZ: Great. Thank you.

11 Item 7, presentation, discussion and possible
12 action regarding an award from the Multifamily Direct Loan,
13 2021-3 NOFA, as amended.

14 MR. CAMPBELL: Good morning. I'm Cody Campbell,
15 director of multifamily programs for the Department. We
16 have just a couple of items to go over this morning.

17 As Chairman Vasquez just said, the next item on
18 your agenda is presentation, discussion, and possible
19 action regarding an award from the Multifamily Direct Loan,
20 2021-3 Notice of Funding Availability, as amended.

21 And the development in question for this item is
22 Manor Town, phase two, in Manor. Manor Town, phase two, is
23 a 2021 award of \$3 million in National Housing Trust Fund,
24 which proposes the new construction of 20 units that will
25 serve the elderly population of Manor with one- and two-

1 bedroom units.

2 Eighteen of these units will be restricted for
3 households at the 30 percent area median income level, and
4 the remaining two will be HOME match units serving
5 households at 50 percent of area median income.

6 The applicant for this development came back and
7 applied under this NOFA because they've had cost overruns.

8 The applicant has requested increased construction costs
9 for similar reasons as other requests heard during this
10 cycle.

11 Total building costs have increased by \$412,000,
12 and total development costs, which is inclusive of soft
13 costs and hard costs, have increased by \$728,000, from
14 approximately \$3.7 million, to \$4.6 million.

15 The owner, which in this case is the Housing
16 Authority of Travis County, has increased their cash
17 contribution by approximately \$400,000, to help cover out
18 the -- help fill the gap.

19 Staff recommends an award of \$352,213 in
20 National Housing Trust Funds. If approved, this amount
21 will be added to the previous award for a total single loan
22 of \$3,352,213.

23 This loan will have a 40-year term at zero
24 percent interest, and will be structured as deferred
25 forgivable. Staff recommends approval of this award. And

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

2 MR. VASQUEZ: So we're not the only one kicking
3 in more? Travis County is also putting in --

4 MR. CAMPBELL: Yes, sir.

5 MR. VASQUEZ: -- additional funds? Okay.

6 Do any other Board members have questions on
7 item 7.a, for Mr. Campbell?

8 (No response.)

9 MR. VASQUEZ: Hearing none, I'll entertain a
10 motion on item 7.a.

11 MR. BATCH: Mr. Chairman, I move that the Board
12 approve the 2021-3 NOFA application for Manor Town phase
13 two, subject to the limitations and conditions as expressed
14 in the Board action request, and proposed resolutions on
15 this item.

16 MR. VASQUEZ: All right. Thank you. Motion
17 made by Mr. Batch. Is there a second?

18 MR. BRADEN: Second.

19 MR. VASQUEZ: Seconded by Mr. Braden. All those
20 in favor say aye.

21 (A chorus of ayes.)

22 MR. VASQUEZ: Any opposed?

23 (No response.)

24 MR. VASQUEZ: Hearing none, motion carries.

25 Moving on to item 7.b, presentation, discussion

1 and possible action on a request for a return and
2 reallocation of tax credits under 10 TAC Section 11.6(5)
3 related to Credit Returns Resulting from Force Majeure
4 Events for The Commons at St. Anthony's in Amarillo.

5 MR. CAMPBELL: Thank you, Mr. Vasquez. So
6 first, some background on the force majeure rule for the
7 benefit of our new member.

8 Internal Revenue Code Section 42(h)(1)(E),
9 establishes that tax credit developments must be placed in
10 service no later than the end of the second calendar year
11 following the year of the award.

12 Placing in service means that the building is
13 ready for its intended use and is generally evidenced by a
14 Certificate of Occupancy. So for example, developments
15 awarded funding this year, in July of 2022, will have until
16 December 31, 2024, to complete construction and receive
17 their Certificates of Occupancy. Because this is a federal
18 requirement, the Department has no authority to waive or
19 extend this deadline.

20 The IRS does occasionally allow for states to
21 extend the deadline in response to specific situations;
22 however, no such relief is currently available for any of
23 the developments on the agenda today.

24 And I'd like to really emphasize the importance
25 of the placed-in-service deadline. Failing to meet your

1 placed-in-service deadline invalidates your allocation of
2 credit. So it is a make-or-break deadline for these deals.

3 As a means of providing relief, the Department's
4 qualified allocation plan includes a force majeure, or
5 unforeseen circumstances, provision. This section of the
6 rule allows for developments to return their previously
7 awarded credits and be allocated them again in the current
8 year, which effectively resets the clock for the deadline
9 to place in service.

10 Some states call this recycling the credits,
11 which I think is a good term to sort of help cement the
12 concept. Treatment under this provision of the rule
13 requires Board approval, and the Board may choose to impose
14 a shorter deadline to place in service.

15 The QAP defines force majeure events as the
16 following sudden and unforeseen circumstances outside the
17 control of the development owner: acts of God, such as
18 fire, tornado, flooding, significant and unusual rainfall
19 or subfreezing temperatures, loss of access to necessary
20 water or utilities as a direct result of significant
21 weather events, explosion, vandalism, orders or acts of
22 military authority, unrelated party litigation, changes in
23 law, rules or regulations; national emergency or
24 insurrection, riot, acts of terrorism -- and the last few
25 are very important for this round -- supplier failures or

1 material or labor shortages.

2 The Commons at St. Anthony's is a 2020 housing
3 tax credit award located in Amarillo, which originally had
4 a deadline to place in service of December 31, 2022.

5 In 2021, the applicant requested and was granted
6 force majeure treatment which updated the deadline to
7 December 31 of 2023. There are two other developments on
8 the agenda today for which force majeure treatment is being
9 requested for a second time.

10 While this is certainly unusual, the rule does
11 not prohibit this or otherwise limit the number of times
12 that this treatment may be requested. The circumstances of
13 this request are similar to other requests seen during the
14 last year, and the applicant cites rising material costs,
15 supply chain disruptions and labor shortages as significant
16 contributing factors.

17 From summer 2021 to January 2022 the development
18 experienced a 27 percent increase in construction pricing.

19 To fill the funding gaps, the applicant has applied for
20 and been awarded \$2 million in National Housing Trust Fund
21 from the Department.

22 The applicant has also recently successfully
23 obtained approximately 1.5 million in American Rescue Plan
24 funds and property tax relief from both the City of
25 Amarillo and Potter County.

1 Securing these funds did add to the construction
2 timeline in accordance with the applicant's request. The
3 development is projected to begin construction in the
4 summer of 2022, with a 24-month construction timeline,
5 leaving the estimated time frame to place in service as
6 summer of 2024.

7 If the Board approves this request, staff will
8 execute a 2022 carryover allocation agreement, which will
9 set a place-in-service deadline of December 31, 2024,
10 unless a shorter deadline is imposed.

11 If the Board denies this request, the deadline
12 will remain December 31, 2023. Because the development
13 owner does not anticipate meeting this deadline, the
14 credits are expected to be returned.

15 If the development owner returns the credits,
16 the credits would first be made available to the subregion
17 from which they were originally awarded, pursuant to 10 TAC
18 11.62, related to returned credits.

19 If there are pending applications on the
20 applicable waiting list from the relevant subregion, the
21 next application would be awarded, assuming there are
22 enough credits to make the award. If there are not enough
23 credits in a subregion to make the award, the credits will
24 go to the statewide collapse and contribute to the next
25 award.

1 Staff has reviewed this request and believes
2 that it does meet the requirements of the force majeure
3 and, based on that, does recommend approval of this item.
4 I am happy to answer any questions that you may have.

5 MR. VASQUEZ: I don't know if Mr. Wilkinson
6 warned you about my thoughts on this.

7 MR. CAMPBELL: I have heard some murmuring.

8 MR. VASQUEZ: Okay. When -- and I understand
9 there are two more items on the agenda that are the same
10 situation --

11 MR. CAMPBELL: Yes, sir.

12 MR. VASQUEZ: -- 2020 awards?

13 MR. CAMPBELL: Requesting for a second time,
14 yes, sir.

15 MR. VASQUEZ: We already extended it to 2023.

16 MR. CAMPBELL: Yes, sir.

17 MR. VASQUEZ: And now they're asking to extend
18 to 2024?

19 MR. CAMPBELL: Yes, sir.

20 MR. VASQUEZ: Are these dates -- and then I
21 think you just said this particular one will start -- if
22 all this gets approved, they'll start this summer and have
23 a 24-month build?

24 MR. CAMPBELL: Yes, sir. That is what they
25 represented to us.

1 MR. VASQUEZ: So mid-2023 -- '24?

2 MR. CAMPBELL: Yes, sir.

3 MR. VASQUEZ: Mid-2024. While being somewhat
4 sympathetic to all this force majeure and increased pricing
5 and costs and shortages of labor and materials and such --

6 MR. CAMPBELL: Certainly.

7 MR. VASQUEZ: -- how come we have, say, at least
8 a third of the 2020 awards that are 75 percent complete to
9 100 percent complete --

10 MR. CAMPBELL: Yes, sir.

11 MR. VASQUEZ: -- and so they're clearly meeting
12 their original dates. And then there's another half of
13 that that has a 50 percent or more complete, current.

14 MR. CAMPBELL: Yes, sir.

15 MR. VASQUEZ: All those groups are able to meet
16 their deadlines. How come this and these next two are
17 having to wait till 2024?

18 MR. CAMPBELL: Sure. So staff's evaluation of
19 these requests was sort of limited to does this meet the
20 intention of the rule, and so we didn't dive into should
21 they be given the treatment.

22 So our recommendation is based simply on the
23 fact that we believe that the circumstances do meet the
24 requirements of the force majeure rule.

25 I have asked the applicant to be here today, and

1 I believe that they're sitting right behind me, so, you
2 know, they might want to give you some additional maybe
3 kind of subjective information about why it's taking them
4 so long?

5 MR. VASQUEZ: We might call on them in just a
6 second. Okay.

7 Do any other members have questions for Mr.
8 Campbell, at this point?

9 MR. BRADEN: So I have -- just clarifying, to
10 restate what I think you said. These are recycled credits?

11 MR. CAMPBELL: Yes, sir.

12 MR. BRADEN: It's not detracting from the
13 current round. It's using the credits from the prior
14 rounds?

15 MR. CAMPBELL: That's exactly correct, yes, sir.

16 MR. VASQUEZ: Follow on to that, so if they --
17 if we didn't reextend and they had to turn back in their
18 credits, does that mean there's more credits for this
19 round, or do those just --

20 MR. CAMPBELL: It would depend on --

21 MR. VASQUEZ: -- poof, and they're gone?

22 MR. CAMPBELL: -- when the credits came back,
23 but we would not lose the credits in either sense. So if
24 they return them immediately, they would go towards this
25 round. If they tried to get it done by next year and failed

1 at that point, then it would go to that round.

2 MR. VASQUEZ: Okay. All right. Any other
3 questions --

4 MR. MARCHANT: I think my --

5 MR. VASQUEZ: -- Mr. Marchant?

6 MR. MARCHANT: -- questions might be answered by
7 the applicant.

8 MR. VASQUEZ: Okay.

9 MR. BRADEN: Actually I have one question.

10 MR. VASQUEZ: Go ahead.

11 MR. BRADEN: So you talked about a National
12 Housing Trust Fund loan award that was given?

13 MR. CAMPBELL: Yes, sir.

14 MR. BRADEN: But then the last line of our item
15 says no federal, state deadline associated with the
16 National Housing Trust Fund award are extended by this
17 action?

18 MR. CAMPBELL: Correct.

19 MR. BRADEN: So what's the deadline with respect
20 to that award?

21 MR. CAMPBELL: Sure. So there are two important
22 deadlines with the Housing Trust Fund. There is our
23 commitment deadline, which by committing these funds, we've
24 met for this development. And then there is the
25 expenditure deadline for those funds, which is, I believe,

1 five years from the date that we execute the agreement with
2 HUD for the allocation of those funds.

3 As of right now, we don't really feel that there
4 is a risk. It could get to that point, but based on their
5 estimated construction completion deadline, we don't really
6 anticipate any problems meeting the expenditure deadline.

7 But we included that in the bar, just to make
8 very clear that, you know, TDHCA doesn't have the authority
9 to extend that deadline. Only HUD could extend that
10 deadline and that this motion or this action would not
11 extend that five-year deadline.

12 MR. BRADEN: And so that's five years, so
13 sometime in 2025?

14 MR. CAMPBELL: Yes, sir, I believe so. It
15 should be about mid-2025.

16 MR. BRADEN: Okay.

17 MR. MARCHANT: Mr. Chairman, can I ask a
18 question, please?

19 MR. VASQUEZ: Sure. Go to --

20 MR. MARCHANT: Yes.

21 MR. VASQUEZ: Go ahead, yeah.

22 MR. MARCHANT: Do we have a definition under the
23 force majeure -- do we have an internal definition of what
24 force majeure means, or do we use a legal definition?

25 MR. CAMPBELL: Yes, sir. So it was the -- let

1 me hop back to that page. So I read the circumstances
2 under the rule that are considered to be force majeure, and
3 that is acts of God such as fire, tornado, flooding,
4 significant and unusual rainfall or subfreezing
5 temperatures, loss of access to necessary water or
6 utilities as a direct result of significant weather events,
7 explosion, vandalism, orders or acts of military authority,
8 unrelated party litigation, changes in law or rules or
9 regulations, national emergency or insurrection, riot, acts
10 of terrorism, supplier failures or materials or labor
11 shortages.

12 MR. MARCHANT: Okay. So it's somewhat
13 subjective?

14 MR. CAMPBELL: Yes, sir.

15 MR. MARCHANT: Totally subjective, basically
16 this covers almost every piece of property in Texas --

17 MR. CAMPBELL: It is --

18 MR. MARCHANT: -- from time to time.

19 MR. CAMPBELL: -- a broad definition, yes, sir.

20 MR. MARCHANT: Yeah. Okay. Could -- does the
21 Board have the ability to put some more clarified
22 definitions in there, or is that statutory?

23 MR. CAMPBELL: This is not statutory. This is
24 in the QAP, and at the Board's direction, we're actually
25 working on the 2023 QAP right now. We could certainly

1 revisit that definition and firm it --

2 MR. MARCHANT: So I was just looking for some
3 kind of a definition, 10 percent overruns. I mean the
4 definition of -- if a supplier couldn't get to the job,
5 they could come in and say basically our contractor
6 couldn't get to it in time, or his mother died, or -- you
7 know, it's so subjective --

8 MR. CAMPBELL: Yes, sir.

9 MR. MARCHANT: -- I wonder if your department
10 would be interested in having some kind of a tighter
11 definition, especially on cost overruns, that you could --
12 10 percent, 20 percent. I mean, you know, I just see us in
13 a perpetual place in this here where, I don't know what a
14 cost overrun is.

15 MR. CAMPBELL: Sure.

16 MR. MARCHANT: Do we have other -- do we have
17 like colleges, universities, do we have any kind of
18 guideline out there, what other government institutions use
19 as force majeure --

20 MR. CAMPBELL: I don't know that --

21 MR. MARCHANT: -- in their contracts?

22 MR. CAMPBELL: -- off the top of my head, but we
23 could certainly look into that when developing the '23 QAP.

24 MR. MARCHANT: Because frankly, I don't think --
25 I mean the university systems -- I mean we have not heard

1 of this across government, that you know, UT builds a new
2 building, are they having 30 and 40 percent cost overruns,
3 or how are they handling them?

4 I mean how are other aspects of government
5 handling these specific situations? And that's just a
6 question I have, Mr. Chairman, and there is no defined
7 answer.

8 But if we are beginning to define some of these
9 things, it would be interesting if you would give the Board
10 input on things that might help you define it.

11 MR. CAMPBELL: Certainly.

12 MR. VASQUEZ: And that's why I brought up a
13 little bit earlier the number of 2020 projects that have
14 been completed or are near completion --

15 MR. CAMPBELL: Sure.

16 MR. VASQUEZ: -- that theoretically had to deal
17 with the same issues as these three applicants. It would
18 be, I believe, a good idea to hear from representatives of
19 the applicant.

20 MR. ECCLES: Mr. Chair --

21 MR. VASQUEZ: We'd entertain --

22 MR. ECCLES: -- before --

23 MR. VASQUEZ: Let's go to your motion.

24 MR. ECCLES: I understand. I believe that
25 federal compliance counsel may have a bit of a

1 clarification on the NHTF issue raised -- deadline issue
2 raised by Member Braden?

3 MS. SYLVESTER: Megan Sylvester, federal
4 compliance counsel. While this contract has been drafted
5 for this owner, they have not, to my knowledge, signed it.
6 And they were actually awarded a contract saying that they
7 would sign it by our 2020 obligation deadline, which would
8 put the deadline for expending and having a project
9 completion for all of the NHTF funds in August -- or I'm
10 sorry -- July of 2024.

11 So it is a little bit -- that doesn't
12 necessarily mean -- so once we have awarded all of the 2020
13 NHTF funding, sometimes they get a 2021 number because
14 somebody is ready before another applicant hits.

15 But the NOFA says that they will have a project
16 completion deadline by July -- August -- July of 2024. So
17 I apologize.

18 MR. VASQUEZ: So is that the end of July? Is it
19 July 31?

20 MS. SYLVESTER: I don't know. I would have to
21 look. I think it's actually early July. It's unlike the
22 rest of our CPD funds, as Cody said. This one is -- this
23 deadline is timed to when HUD sends us the grant agreement,
24 and that has differed from years from April to August. So
25 without having it in front of me, I don't know, but it is

1 July.

2 MR. VASQUEZ: Okay.

3 MR. BRADEN: Can I also ask a question. So if
4 we were to take action on this item to extend the credits,
5 and they are extended till December of 2024, they really
6 have a deadline of July of 2024, because of this.

7 MS. SYLVESTER: The placed-in-service definition
8 and the project-completion definition are not quite the
9 same. They -- but yes, but they're pretty close, so likely
10 if we ended up having to award them -- because you have to
11 award all of your 2020 funds before you can commit your
12 2021 funds.

13 So if we ended up having to award them the 2020
14 funds, then yes, they would have an HF project completion
15 which was -- which would be earlier.

16 MR. VASQUEZ: The chair would like to entertain
17 a motion to accept public comment. Is there such a motion?

18 MR. BRADEN: So moved.

19 MR. BATCH: Second.

20 MR. VASQUEZ: Motion to accept public comment by
21 Mr. Braden, seconded by Mr. Batch, approved by Mr. Eccles.

22 All in favor say aye?

23 (A chorus of ayes.)

24 MR. VASQUEZ: Any opposed?

25 (No response.)

1 MR. VASQUEZ: Hearing none.

2 Mr. Hance, would you care to enlighten us a
3 little bit?

4 MR. HANCE: Chairman --

5 MR. VASQUEZ: Don't forget to sign in. And for
6 everyone, if you are going to speak on any of the agenda
7 items upcoming, we ask you to kind of move up here into the
8 front two rows, and we will typically set it up at three
9 minutes a person, so for future reference.

10 And, Mr. Hance, note that you're probably
11 speaking on behalf of the next two applicants as well.

12 MR. HANCE: Well, I'll be more than happy to
13 help them out. I started to make the motion a while ago
14 when you asked. I was afraid somebody was going to be
15 hesitant to make it, so I was on standby which wouldn't
16 have been proper.

17 But this is a long story, and I hope I can sum
18 it up in three minutes. I've been doing these projects
19 since '96. I've never had a problem before.

20 The first hospital I was ever in in my life was
21 St. Anthony's Hospital in Amarillo, Texas. And I was asked
22 by the mayor and some people to help them convert St.
23 Anthony's into a low-income housing tax credit project. My
24 partner in development is Commonwealth, and they're here
25 with Danny DiFrancesco. Wave at them.

1 And they are developers. Me and my family, KRS,
2 we would be the owners, and we're in development with them.

3

4 The project, we got started and everybody was
5 excited. The mayor, the country judge, the city council,
6 everybody was excited that something was going to happen.
7 St. Anthony's had been abandoned in 1991. And then they
8 moved to the Texas Tech Medical School campus, out on the
9 west side of Amarillo. It's been there ever since.

10 They've never had a buyer till I came along, and
11 Commonwealth. And we made a bid to try to be good
12 neighbors and everything. We offered \$300,000 for a
13 project for an abandoned building.

14 And that was accepted. And then as we got
15 nearer and we had to close, the price had to be adjusted to
16 about 350. And so that was not a pleasant situation. We
17 finally got it taken care of with the help of the mayor and
18 the county judge.

19 Then we came back, and on our budget, we were \$4
20 million short. And we'd had a lot of vandalism. We'd had
21 two fires. We just had a lot of problems.

22 And it came back -- and so we started looking
23 for additional money. But keep in mind, we had the regular
24 tax credits with the National Historic and the State
25 Historic, and we were still going to be \$4 million short.

1 So the National Housing Trust Fund, we got some additional
2 money there.

3 And then the ARPA funds -- the City and the
4 County, for the money they had, they had a lot of
5 requests -- a lot of requests. And they went to bat for us
6 because that is an area that has not been developed. They
7 hadn't any new buildings built in that area in over 30
8 years.

9 So we had unusual circumstances. Amazon is
10 building a building, massive building. And so getting help
11 and getting contractors in Amarillo, it's -- I mean it
12 wasn't like Houston, or Dallas. You have a shorter supply.
13

14 So we had problems in that regard. I am telling
15 you that this is a high priority for Amarillo. The mayor,
16 the city council, all of them would have been here but
17 they -- and I could have them here for the next meeting,
18 but there's -- they're all going to tell you the same story
19 I'll tell you.

20 This is an opportunity for them to have
21 something that's been an eyesore, in a neighborhood that's
22 had no investment in over 50 years. And so we're here
23 apologizing, but tell you that there are unusual
24 circumstances in this. It was kind of a perfect storm.

25 And so -- you know, I was listening to all the

1 numbers that they had, vandalism and you know, and I was
2 waiting for the end of where they'd say, all of the above.

3 But we were almost all of the above. And I know this is
4 unusual.

5 I'm just telling you that in 25 years, I've
6 never had a problem like this. And this is huge to
7 Amarillo and that area.

8 And so I respectfully request that you allow us
9 to have the extension, and that no one wants to complete
10 that faster than I do, because every day that goes by is,
11 you know, money that we're losing. And you know, I know
12 your thoughts and this can't go on forever. We understand
13 that.

14 But I respectfully ask for approval of this.
15 I'd be more than happy to answer any questions.

16 MR. VASQUEZ: Thank you for that, Mr. Hance. I
17 mean we clearly understand the need for fixing this
18 eyesore, you know, finally getting some investment there.
19 But just the internal debate that I think we grapple with
20 here on the Board -- as you well know, in 2020, when we
21 made these awards, we awarded it to this project over other
22 projects. And the deal was it would be in place at the end
23 of this year, 2022.

24 We already -- we recognized all the issues that
25 lots of the industry had to deal with, and extended it once

1 to the end of 2023. And now we're here, you know, coming
2 back for yet another, 2024.

3 Can you give us a better target date as to when
4 you all think it's going to be completed?

5 MR. HANCE: This is Jen Hicks who is our
6 consultant.

7 MS. HICKS: Jennifer Hicks with True Casa
8 Consulting. I just wanted to address, Chair Vasquez, some
9 of your questions about timing and why this project might
10 be different than others.

11 Can I just go -- back up a little bit and talk
12 about the steps in the process? This project, a 2020 tax
13 credit award, we got hit with the construction cost
14 increase. We weren't the only ones.

15 There was also the debate on whether the Board
16 and staff were going to allocate supplemental credits. So
17 that whole discussion and debate was going on, and it was
18 decided that the National Housing Trust Fund was going to
19 be made available to these deals experiencing cost
20 increases, and we jumped on that.

21 And so we applied for those funds. It actually
22 worked out better for this deal. It provided more money
23 than going after the supplemental credits. So it was the
24 smart, financially feasible decision for this project.

25 This is an adaptive reuse. Adaptive reuses are

1 so much hairier than new construction. And we found that
2 out even more so when trying to marry the National Housing
3 Trust Fund federal regulations with historic tax credits.

4 And so y'all might remember, we had to come back
5 before the Board for a waiver on windows because it didn't
6 meet the QAP. So there were several months that we went
7 through that process, but we were committed to using those
8 National Housing Trust Fund dollars.

9 We thought we were solvent and we were ready to
10 start construction. And then we got the second
11 construction cost increase. At that point, we were past
12 the point of being able to apply for supplemental credits.

13 We didn't have the crystal ball to know that
14 that was going to be under subscribed, and we didn't have
15 the crystal ball to know that folks were going to come in
16 for -- and ask for more money for supplemental credits and
17 get that. And so we were proceeding.

18 Once we informed TDHCA that we had a
19 construction cost increase, they said, fill the gap. And
20 this team went to work, and in two months, I believe, got
21 Potter County and the City of Amarillo to fill the gap.

22 And then we're bringing forward, you know,
23 coming forward -- this is the last time we'll be before the
24 Board. But we cannot help the timeline for this project.
25 It is a longer timeline with historic tax credits.

1 Also with the crystal ball is we asked for the
2 force majeure initially, like some of the others, being
3 proactive. We had no idea Treasury was going to
4 automatically grant the extension to 2023. If we had
5 waited a few months, which we couldn't have afforded at the
6 time, we could have been automatically granted, and this
7 would have been our initial force majeure request to the
8 Board.

9 So it is a situation that it's a lot of things
10 have come all at once. And I feel like this team has been
11 super nimble, proactive and really trying to address all
12 the comments and get this project started under
13 construction. If that helps.

14 MR. HANCE: One thing, Mr. Chairman, I would
15 add, that when she mentioned -- like the National Historic,
16 they required us to have the same windows that were there
17 when the building was built in 1930. And we couldn't find
18 them. Nobody makes them anymore.

19 So we had -- that held us up for four months.
20 And it just seemed like everything that came along that
21 could go wrong, did. And I understand y'all's position.
22 You don't want this to go on forever and we don't either.

23 And -- but I would respectfully ask that you
24 help us out on this.

25 MR. VASQUEZ: So y'all are saying we should look

1 at this on a case-by-case basis, and not just if we approve
2 you all, we shouldn't necessarily approve everyone else?

3 MR. HANCE: Well --

4 MR. VASQUEZ: Because you have special
5 circumstances?

6 MR. HANCE: -- I don't want to make them mad,
7 but on a case-by-case, I'm sure they've got good arguments
8 or they wouldn't be here. And that -- but I would say
9 this.

10 We've developed over 20 tax credits since I did
11 my first one in '96. We've never had to do this before.
12 So I think just, we're trying, but it's just -- it's been
13 tough.

14 MR. DIFRANCESCO: I'll just add a couple -- a
15 few more comments. So I'm Danny DiFrancesco, with
16 Commonwealth, core developer with Mr. Hance, working with
17 Ms. Hicks.

18 And so just to add so more color to that, so
19 this is a 24-month construction schedule. And with this
20 place in service extension we have, the investor and the
21 lenders, we're right there at the finish line.

22 So you may ask, when will this start? We're
23 looking to start June of 2022, for 24 months. So we're
24 ready to hit the ground running on this. So this is really
25 the last piece of the puzzle to get to the finish line.

1 MR. HANCE: We've had problems on closing.
2 We've had different things come up, like the neighborhood
3 association held us up forever. We suddenly realized that
4 it was worth \$50,000 more.

5 MR. VASQUEZ: All right. I understand. Do any
6 other Board -- Mr. Marchant, you had a question?

7 MR. MARCHANT: Do you have firm construction
8 contracts in place?

9 MR. DIFRANCESCO: Correct. So with the general
10 contractor that we're working with, we are prepared, with
11 Mr. Hance, to execute that within the next month.

12 MR. MARCHANT: And are those going to be subject
13 to a 20 or 30 percent increase in the next year, or do you
14 have firm --

15 MR. DIFRANCESCO: So there -- with these deals,
16 there's always a contingency that the investor requires you
17 to close outside the construction contract. So with that
18 outside contingency, you know, we're moving forward.

19 There's no -- it is -- we have that contingency.
20 Contractor's ready to sign their contract, the guaranteed
21 maximum price contract, and --

22 MR. MARCHANT: It's a guaranteed maximum?

23 MR. DIFRANCESCO: I believe it's a guaranteed
24 max. I'd have to confirm that but --

25 MR. MARCHANT: So we wouldn't be back in a year

1 looking for a supplemental -- another supplemental round
2 because the construction costs have escalated beyond 20 or
3 30 percent, which you'd be just as eligible a year from
4 now, just like you were this year.

5 MR. DIFRANCESCO: Sure. Never say never, but I
6 mean, I can't predict the future.

7 MR. HANCE: That's not what we'd want, and --

8 MR. MARCHANT: I understand.

9 MR. HANCE: -- we hope that doesn't happen. I
10 will say this, that the -- as we look at whether this is --
11 will ever go to payout, the developer's fee and everything,
12 we've got a lot on the line on this project. And --

13 MR. MARCHANT: Well, the fact that you've got a
14 fixed construction cost contract should eliminate that.

15 MR. HANCE: And that's what we hope.

16 MR. MARCHANT: Thank you.

17 MR. DIFRANCESCO: And there is language in that
18 construction contract that says the building needs to be
19 completed by said date, you know. So obviously we're not
20 going to get to the end of December, 2024, because as you
21 know with the investor and that hard deadline, as Cody
22 mentioned, you know, we don't want to get to that point.

23 MR. BATCH: Mr. Chairman. So the process in
24 which -- you talk about all the things that have gone wrong
25 with this project that were a little bit out of your

1 control, Cody, what's that communication been like with
2 staff?

3 I mean is this all stuff that's been verified
4 with staff, and staff agrees that these are things that,
5 you know, are maybe a little bit unusual that have kind of
6 put us in this position?

7 MR. CAMPBELL: I would say that most things
8 about the current climate are pretty unusual.

9 MR. BATCH: Sure.

10 MR. CAMPBELL: It's certainly been an odd year
11 to take over as the director of Multifamily. I will say
12 that the applicant has been very forthcoming. They've been
13 very communicative with staff. You know, we weren't
14 totally blind sided when this request came in.

15 To my knowledge, everything that they're saying
16 is true. I mean I'm obviously not on the ground in
17 Amarillo, verifying it, but they have been very
18 communicative. Yes, sir.

19 MR. BATCH: To me, I mean it seems like -- you
20 know, obviously this isn't a position -- I mean this
21 project has taken a while, but we have these sorts of
22 procedures in place for a reason, in the event that we do
23 find ourselves here needing as a Board to, you know, review
24 and approve, or deny something like this. I mean, it is
25 part of the process.

1 And to me, it seems like while it should be
2 evaluated on a case-by-case basis, absolutely, that's why
3 we're here. I mean so -- anyway, thank you. And I'll pass
4 it over to Mr. Braden.

5 MR. BRADEN: To the Chair, so -- and maybe these
6 questions are actually for you, Danny, more than Cody.

7 So we heard that the National Housing Trust Fund
8 award has really a deadline of July of 2024. And you just
9 said you have a 24-month build, that you're going to start
10 in June. So that's pretty tight, if you're saying you're
11 going to complete that within June of 2024.

12 MR. DIFRANCESCO: We've actually spoken with Mr.
13 Hance, that if we get the extension approved today, that
14 Mr. Hance, before closing on the LIHTC transaction, would
15 do something that typically you don't see is self-fund,
16 prior to closing on the LIHTC transaction which would be
17 June.

18 So you could actually -- we're hoping, and again
19 with Mr. Hance, you know, potentially starting end of
20 April, early May, to help with that --

21 MR. BRADEN: So you're committed to this
22 project?

23 MR. DIFRANCESCO: Just shows, yeah, we are.

24 MR. HANCE: We're committed. I'm committed even
25 more. I'm pre-financing myself.

1 And we had -- on closing, we've already closed
2 with the people that owned the property, the neighborhood
3 association. And that was -- well, I've gotten no funds
4 from any of -- I've done that individually, would do this
5 individually to get started. Otherwise we'll just -- we'd
6 be back again. And I don't want to come back in.

7 MR. BRADEN: So you've purchased the property
8 but nothing further has been done, probably other than put
9 a fence around it?

10 MR. HANCE: We put a fence around it, and we've
11 had two fires since. You know, we had some homeless people
12 living there, and we had -- well, one had an iguana
13 that was five feet long.

14 You know, just lot of little things that -- I
15 mean you don't expect to get the phone call that, you know,
16 what do you want us to do. The guy's living here, and he's
17 got a five-foot-long iguana, you know. Bring it to the
18 circus when it comes by.

19 When I said it's a perfect storm, I really meant
20 it.

21 MR. ECCLES: Kent Hance, ladies and gentlemen.

22 MR. BRADEN: I mean I think adaptive reuse has
23 challenges in and of themselves, and it's a positive thing
24 if they can take these type of properties, especially in a
25 place like Amarillo, and make -- reuse it in a more

1 positive build.

2 So I mean, I think it is a fact that
3 circumstance, analysis, and it probably is -- each one
4 we're going to have to look at, but this one definitely
5 seems to have extenuating circumstances in my opinion.

6 MR. VASQUEZ: Would you care to make a motion?

7 MR. BRADEN: I will gladly make a motion. Make
8 sure I'm on the right letter here.

9 I move the Board approve the request for
10 treatment of the Commons at St. Anthony, under the Force
11 Majeure rule, including the return and reissuance of tax
12 credits, subject to the conditions as expressed in the
13 Board action request and proposed resolution on this item.

14 MS. FARIAS: I second.

15 MR. VASQUEZ: Motion made by Mr. Braden,
16 seconded by Ms. Farias.

17 All those in favor of approving the extension or
18 reissuance and recycling of --

19 (A chorus of ayes.)

20 MR. VASQUEZ: Any opposed?

21 (No response.)

22 MR. VASQUEZ: Almost one, but we'll make it
23 unanimous. Approved. Don't come back.

24 MR. HANCE: We won't.

25 MR. VASQUEZ: Okay.

1 Moving on to item C, presentation, discussion
2 and possible action on request for return and reallocation
3 of tax credits under 10 TAC, Section 11.65, related to
4 credit returns resulting from force majeure events for
5 Lockwood South Apartments, project 20077, in Houston.

6 MR. CAMPBELL: Sure.

7 MR. VASQUEZ: Mr. Campbell.

8 MR. CAMPBELL: Thank you. First, I'd like to
9 thank Megan Sylvester for that clarification earlier. They
10 often work behind the scenes, but TDHCA's legal division
11 does a really bang-up job of helping us keep the train on
12 the track. So we always appreciate that.

13 Items 7.c, and 7.d, are substantially similar,
14 but we'll start with item 7.c, which as Mr. Vasquez just
15 mentioned is a request for force majeure treatment for
16 Lockwood South, in Houston. Like the previous development,
17 this is the second time that force majeure treatment has
18 been requested.

19 Lockwood South is a 2020 award of nine percent
20 housing tax credits which initially had a placed-in-service
21 deadline of December 31, 2022. This was subsequently
22 extended to 2023, upon the Board's approval in October of
23 2021. The current construction schedule calls for the
24 development to be completed by January 30, 2024.

25 The request cites complications typical of other

1 requests seen in the last year, specifically cost increases
2 and material shortages, with some materials being on a
3 nine- to 12-month wait. In response to these cost
4 increases, the applicant has sought other sources to fill
5 the funding gap, including a 1.3 million direct loan funds
6 from TDHCA, which was approved at the December, 2021,
7 meeting, and CDBG DR funding from the City of Houston.
8 Sourcing these additional funds has added to the
9 development schedule.

10 Additionally, the request notes that both the
11 equity investor and the lender for this development have
12 asked that the applicant seek force majeure treatment so as
13 to meet their timing requirements. And the equity
14 investor's correspondence indicates that investor approval
15 is unlikely if this request is not approved.

16 And I believe if you check in your Board
17 materials, you should have a letter from the Richmond
18 Group, which is the equity investor for this development
19 that says, and I'm quoting, without this extension -- I'm
20 sorry, "with the extension, it is doubtful we could get
21 investor approval." I believe this is the big impetus for
22 the developer requesting approval of force majeure in this
23 circumstance.

24 Similar to the last item, if the Board approves
25 this request, staff will execute a 2022 carryover

1 allocation agreement which will set a placed-in-service
2 deadline at the default of December 31, 2024. It is worth
3 noting that the applicant has only requested that the
4 deadline be extended to September 30, 2024, and the Board
5 may approve this request with this shorter deadline if it
6 so chooses.

7 If the Board denies this request, then the
8 credits are expected to be returned, and staff will follow
9 the normal procedures with returned credits that I
10 discussed in the last item. And we'll be happy to go over
11 it again if necessary.

12 Staff has reviewed this request and does believe
13 that it meets the requirements of the Force Majeure rule,
14 and therefore, staff recommends approval. I'm happy to
15 take any questions that you may have.

16 MR. VASQUEZ: So in this case, it's just general
17 conditions? There's not a --

18 MR. CAMPBELL: Yes, sir.

19 MR. VASQUEZ: -- a single item that they can --
20 that they're pointing to --

21 MR. CAMPBELL: That is correct. And the
22 investor in the development requires, I believe, a 90-day
23 cushion on the placed-in-service deadline from the expected
24 completion deadline, with the current expected completion
25 of January of 2024.

1 Their investor would require a placed-in-service
2 deadline of at least, I believe, April of 2024. How they
3 got to September, probably just giving a little bit of
4 extra cushion on top of that, but the investor's
5 requirement does seem to be the big impetus here.

6 MR. VASQUEZ: So in this case, it's a short -- I
7 mean their -- that difference from December 31, 2023 --

8 MR. CAMPBELL: To January, 2024, yes, sir.

9 MR. VASQUEZ: They're really expecting it's not
10 going to be much, but they just want --

11 MR. CAMPBELL: The assurance, yes, sir.

12 MR. VASQUEZ: -- the assurance, and they're
13 giving themselves a little bit of a buffer?

14 MR. CAMPBELL: That is correct, yes, sir.

15 MR. BATCH: Can I just ask one quick --

16 MR. VASQUEZ: Any questions? Go ahead.

17 MR. BATCH: So I think this might get back to
18 what Mr. Marchant was getting at, but under the definition
19 as it stands with force majeure, right, we've all kind of
20 established that it's pretty broad and subjective. I think
21 that it would be worth reexamining that to narrow it down a
22 little.

23 Because it sounds like right now, right, staff
24 is taking these applications, looking at that -- and
25 correct me if I'm wrong, but looking at that definition and

1 asking the simple question of does it meet this specific
2 definition -- or are you digging a little bit further down
3 to figure out whether there's some extenuating
4 circumstances that exist that you then provide a little bit
5 more leniency to the applicant? I mean how does that --

6 MR. CAMPBELL: So when making recommendations,
7 staff does try to be as objective as possible in referring
8 just to the rules. We defer the kind of subjective part of
9 the decision, to the extent that we're able, to the Board.

10 MR. BATCH: Yeah. Okay. Thank you.

11 MS. BOSTON: I would just note that this
12 transaction also has CDBG disaster recovery funds in it,
13 from the City.

14 MR. CAMPBELL: Yes, from the City of Houston,
15 that is correct.

16 MR. BRADEN: Okay. So the City supported this
17 project, too.

18 MR. MARCHANT: Mr. Chairman, one question.
19 Does -- from a historical perspective, is this -- I've only
20 been on the Board a year, less than a year. Is this a
21 normal thing that we see every year, two or three of these
22 projects?

23 MR. CAMPBELL: Mr. Vasquez is shaking his head,
24 no.

25 MR. VASQUEZ: No. No.

1 MR. MARCHANT: Okay.

2 MR. CAMPBELL: There has been a dramatic
3 increase in the number of force majeure requests over the
4 last year or so.

5 MR. MARCHANT: Got you.

6 MR. CAMPBELL: Yes, sir.

7 MR. BATCH: Which is maybe why I think it might
8 be worth reexamining this definition, making it a little --
9 not necessarily narrow, but making sure that there are some
10 parameters in place to where every single applicant who has
11 had an issue with the current environment, I mean -- you
12 know, I think we should just make sure that there is
13 something else going on that is far out of the control,
14 outside of -- because as Chairman Vasquez highlighted, I
15 mean, there are a lot of applicants that have also been
16 dealing with the same thing that haven't had these issues.

17 MR. CAMPBELL: Certainly.

18 MR. BATCH: And I feel like --

19 MR. VASQUEZ: Or they've dealt with them --

20 MR. BATCH: Or they've dealt with them.

21 MR. BRADEN: So -- I mean -- but the reason
22 there are a lot more force majeure requests now because
23 there's been a force majeure event. So early on, as Leo
24 knows, we used to deny these, because they would come up
25 and there'd really be no -- you know, we were aware of what

1 was going on in the world, and it didn't really seem to be
2 consistent, and other people didn't have these problems.

3 We're all now aware of what's going on with the
4 world, and a lot of people are having these problems. So I
5 don't mind tinkering with the definition, but just reflect
6 the fact that it's active for a reason.

7 MR. MARCHANT: But in two hurricanes, did the
8 hurricanes trigger these kind of requests?

9 MR. CAMPBELL: So I wasn't with the Multifamily
10 division at the time. I would expect that they probably
11 would have. I believe the Force Majeure provision of the
12 rule was added in -- Brooke, you may remember, 2015, I
13 believe?

14 Somewhere around then. So this has only really
15 been in the rules --

16 MR. MARCHANT: Okay.

17 MR. CAMPBELL: -- for, you know, about --

18 MR. MARCHANT: So we've gone through a couple
19 of -- two or three hurricanes. And so there are things
20 that have happened. I mean entire buildings --

21 MS. BOSTON: Yes.

22 MR. MARCHANT: -- being blown down and projects
23 being flooded.

24 MS. BOSTON: Yes, we've historically done some
25 force majeure after the hurricanes, and after --

1 MR. MARCHANT: Okay. Thank you.

2 MR. VASQUEZ: Do Board members want to see if
3 there's a representative of the applicant we can give a
4 hard time, or do we want to --

5 MR. BRADEN: I mean, I'm ready to make a motion.

6 MR. VASQUEZ: Let's -- I'll entertain a motion
7 on item 7 -- unless, are you wanting to speak on this one,
8 against? For? You want to speak for? Is it necessary?

9 VOICE: No.

10 MR. VASQUEZ: He's about to make -- if you're --
11 don't like this motion, I'll let you speak. What's the
12 motion going to be?

13 MR. BRADEN: I move the Board approve the
14 request for treatment of Lockwood South Apartments, under
15 the Force Majeure rule including the return and the
16 reissuance of tax credits, subject to the conditions as
17 expressed in the Board action request and proposed
18 resolution on this item.

19 MR. BATCH: Second, Mr. Chairman.

20 MR. VASQUEZ: Motion made by Mr. Braden,
21 seconded by Mr. Batch. Is there any further public
22 comment?

23 (No response.)

24 MR. VASQUEZ: I guess not. All those in favor
25 say aye.

1 (A chorus of ayes.)

2 MR. VASQUEZ: Any opposed?

3 (No response.)

4 MR. VASQUEZ: Hearing none, motion carries on
5 item 7.c.

6 Moving right along to 7.d, which is exactly like
7 the same -- the last two, except for Connect South
8 Apartments, project 20082, in Houston.

9 Mr. Campbell.

10 MR. CAMPBELL: Yes, sir. So item 7.d is almost
11 a carbon copy of the last item. That item was for Lockwood
12 South.

13 This is for Connect South. Similar groups of
14 people, similar geographic locations, similar
15 circumstances.

16 Connect South is a 2020 award of nine percent
17 housing tax credits which initially had a place-in-service
18 deadline of 2022. This was extended to 2023 upon the
19 Board's approval in 2021. One difference between this item
20 and the previous one is the previous one had an anticipated
21 construction completion of January of 2024. This one,
22 according to their request is February 28, '24.

23 So this item, or this development is about a
24 month behind the previous one. The request cites the same
25 types of complications and indicates that construction

1 costs have risen 15 percent between July 2021 and March of
2 2022.

3 Similarly, the applicant has gotten \$3 million
4 in direct loan funding from TDHCA, which was approved last
5 month at the March meeting. The applicant has also sought
6 CDBG DR funds from the City of Houston. Both of these have
7 added some time to the construction schedule.

8 Similar to the last item, if the Board approves
9 this request, staff will execute a 2022 carryover
10 allocation agreement, which will set a placed-in-service
11 deadline at the default of December 31, 2024.

12 Once again, the applicant has only requested
13 that it be extended to September 30, 2024, and if the Board
14 instructs us to do so, we will set the deadline and the
15 carryover at September 30, 2024. The Board may also
16 approve a shorter deadline than that, if it so chooses.

17 If the Board denies this request, then the
18 credits are expected to be returned, and staff will follow
19 the normal procedures with returned credits.

20 Staff has reviewed this request and believes
21 that it meets the requirements of the Force Majeure rule,
22 and therefore recommends approval.

23 MR. VASQUEZ: Not to go backwards, but on the
24 last one, did we approve then 9/30/2024 --

25 MR. CAMPBELL: I believe the --

1 MR. VASQUEZ: -- or did we do 12/31?

2 MR. CAMPBELL: -- resolution is written to be
3 12/31.

4 MR. VASQUEZ: Was the intent --

5 MR. BRADEN: Actually that was my intent. I
6 figure if we're extending them, might as well extend all
7 the same.

8 MR. VASQUEZ: Okay. So I just wanted to
9 clarify.

10 And then this one, are we defaulting to 12/31 --

11 MR. CAMPBELL: Yes, sir, we're --

12 MR. VASQUEZ: -- even though they're not going
13 to need -- okay. All right. Just point of clarification.
14 Okay.

15 Any Board members have questions on item 7.d, as
16 presented? I think we seemed to have covered this. We can
17 only beat a dead iguana so long.

18 I'll entertain a motion on item 7.d.

19 MR. BATCH: Mr. Chairman, I move that the Board
20 approve the request for treatment of Connect South
21 Apartments under the Force Majeure rule, including the
22 return and reissuance of tax credits, subject to the
23 conditions as expressed in the Board action request and
24 proposed resolution on this item.

25 MR. VASQUEZ: Thank you. Motion made by Mr.

1 Batch on item 7.d. Is there a second?

2 MR. BRADEN: Second.

3 MR. VASQUEZ: Seconded by Mr. Braden. All those
4 in favor say aye.

5 (A chorus of ayes.)

6 MR. VASQUEZ: Any opposed?

7 (No response.)

8 MR. VASQUEZ: Hearing none, motion carries.

9 And I believe our last Force Majeure item is
10 7.e, same as the prior ones except for Houston 150 Bayou
11 Apartments, project 21038, in Houston. So this is a 2021
12 application?

13 MR. CAMPBELL: That is correct, yes, sir.

14 So item 7.e concerns a request for force majeure
15 treatment for Houston 150 Bayou Apartments in Houston.
16 Unlike the previous items, this is the first time that
17 force majeure treatment has been requested for this
18 development. And the circumstances that they presented in
19 their request are a little bit different than the last two,
20 so I will go over those.

21 As Mr. Vasquez just said, Houston 150 Bayou is a
22 2021 award of nine percent housing tax credits which has a
23 placed-in-service deadline of December 31, 2023. This has
24 not been extended at this point in time.

25 The request cites complications typical of other

1 requests seen in the last year, specifically cost increases
2 and material shortages. Upon award in 2021, the applicant
3 spent several months' value engineering the development and
4 interviewing several different construction companies in an
5 attempt to lower costs.

6 The construction company which was ultimately
7 hired has an estimated construction timeline of 18 months.

8 According to the request, with the time it will take to
9 finalize construction pricing, finish permitting, close the
10 financing and commence construction, adding an 18-month
11 construction schedule means that there is a very good
12 chance that the placement in service will occur in 2024.

13 Similar to the last item, if the Board approves
14 this request, staff will execute a 2022 carryover
15 allocation agreement, which will set a placed-in-service
16 deadline at the default of December 31, 2024.

17 If the Board denies this request, then the
18 credits are expected to be returned, and staff will follow
19 normal procedures with returned credits.

20 Staff has reviewed this request and believes
21 that it meets the requirements of the Force Majeure rule,
22 and therefore recommends approval.

23 MR. VASQUEZ: Any questions from Board members?

24 So these, in 2021, they couldn't have already seen and
25 factored in these delays, is that what we're saying?

1 MR. CAMPBELL: Costs have continued to increase,
2 even in the last six months or so. We've seen dramatic
3 increases in construction costs.

4 So while I think it is probably fair to say that
5 going into the application and going into the award, they
6 knew that the current environment was tumultuous. I think
7 it would have been difficult to predict just how tumultuous
8 it's been, even over the last couple of months.

9 MR. VASQUEZ: What's the target in-service date,
10 the actual -- I mean not the --

11 MR. CAMPBELL: I don't believe they provided us
12 with --

13 MR. VASQUEZ: I think I saw just 18 months, but
14 I didn't see an actual -- I mean, is it --

15 MR. CAMPBELL: My understanding is that they're
16 targeting to place in service in early 2024, so starting
17 construction within the next couple of months. But there
18 is a risk that they'll run past December 31, '23.

19 MR. VASQUEZ: Any questions? I don't have a
20 problem, but -- I don't think its -- well, let's see if I
21 can get a motion on this item.

22 MR. BRADEN: Mr. Chair, I'll make a motion. I
23 move the Board approve the request for treatment of Bayou
24 Apartments under the Force Majeure rule, including the
25 return and reissuance of tax credits subject to the

1 conditions as expressed in the Board action request and
2 proposed resolution on this item.

3 MR. BATCH: Second.

4 MR. VASQUEZ: Motion made by Mr. Braden,
5 seconded by Mr. Batch, to approve the extension.

6 MR. BATCH: Just to clarify, is this the
7 deadline for this, where the extension would go up until
8 December --

9 MR. CAMPBELL: December 31st --

10 MR. BATCH: Like the others?

11 MR. CAMPBELL: Yes, sir.

12 MR. BATCH: They're saying that they assume to
13 probably run past that, in which case they would --

14 MR. CAMPBELL: They're anticipating running past
15 2023.

16 MR. BATCH: Ah, okay.

17 MR. VASQUEZ: Yeah, so this is just safety,
18 prudent request.

19 MR. BATCH: Understood, thank you.

20 MR. VASQUEZ: Okay. All those in favor of
21 approving the extension say aye.

22 (A chorus of ayes.)

23 MR. VASQUEZ: Any opposed?

24 (No response.)

25 MR. VASQUEZ: Hearing none, motion carries.

1 MR. CAMPBELL: No more --

2 MR. VASQUEZ: Mr. Campbell, I encourage you to
3 let the industry participants understand that the Board is
4 very reticent to continually approve these -- which again,
5 historically we've just not done.

6 MR. CAMPBELL: Certainly.

7 MR. VASQUEZ: So barring another, you know,
8 Hurricane Ike, or something like that, it's -- we're going
9 to need some really compelling reasons, I think, to do
10 these types of things again.

11 MR. MARCHANT: Mr. Chairman, process question.
12 Does -- do you have the authority to deny them, and then
13 they override -- they would --

14 MR. VASQUEZ: Appeal?

15 MR. MARCHANT: -- appeal to us for an override?

16 MR. CAMPBELL: No, sir. These do have to come
17 to the Board.

18 MR. MARCHANT: Just -- okay.

19 MR. BRADEN: Just to be clear, they do come with
20 a staff recommendation, just like all of these came today.

21 MR. CAMPBELL: Yes, sir. Yes.

22 MR. VASQUEZ: But sometimes they don't really
23 make -- staff says we don't have a recommendation.

24 MR. BRADEN: But there were recommendations on
25 all these?

1 MR. VASQUEZ: Yeah, on these, yes.

2 MR. BRADEN: Which we voted consistent with
3 those recommendations.

4 MR. VASQUEZ: Yes. Okay.

5 Moving along to item 7.f, presentation,
6 discussion and possible action on staff determinations
7 regarding application disclosure under 10 TAC, Section
8 11.101(A)(2), related to undesirable site features for Cole
9 Creek Estates, project 22018, in Houston.

10 Mr. Campbell, you're still up.

11 MR. CAMPBELL: Thank you. Yes, we're out of
12 force majeure territory at this point.

13 A bit of background is required for the next
14 several items. The QAP establishes items which are
15 considered to be undesirable site features. These include
16 things such as being located within 500 feet of heavy
17 industry, within 300 feet of junkyards or within 300 feet
18 of a landfill, among others.

19 Critically, this section of the QAP ends with a
20 broad item, broad -- similar in the sense to the Force
21 Majeure rule. And that item is any other site deemed
22 unacceptable, with would include without limitation, those
23 with exposure to an environmental factor that may adversely
24 affect the health and safety of the residents, or render
25 the site inappropriate for housing use and which cannot be

1 adequately mitigated.

2 Item 7.f through 7.h on the agenda today involve
3 applications in which the applicant has identified site
4 features which may be considered undesirable under this
5 broad provision of the rule. In each instance, the
6 applicant has asked that the site not be found ineligible
7 due to the presence of these features, which we will
8 discuss in more detail shortly. Each has also requested a
9 waiver of the applicable rule in the event that the site is
10 found ineligible.

11 Staff has not made determinations regarding
12 these features, and instead has brought them to the Board
13 for determinations of whether the facts trigger site
14 ineligibility under the rules. In other words, staff is
15 soliciting Board input kind of at the front end of this
16 process rather than at the back, which ordinarily might
17 occur.

18 If the Board denies any of these requests, staff
19 will issue a termination notice regarding site eligibility
20 which the applicant may then appeal. In the appeal, the
21 applicants may raise the issue of any timely filed waivers
22 related to these features. This process is necessary
23 because if both the eligibility issue and the waiver were
24 simultaneously denied for any applicants, then the
25 applications would effectively be terminated today with no

1 ability for the applicants to appeal.

2 The first of these items, item 7.f, concerns a
3 site located in Houston, which is located directly adjacent
4 to the Harris County Household Hazardous Waste Collection
5 facility, and very near to Action Gypsum Supply, which is a
6 building supply store.

7 The building supply store appears to constitute
8 light industrial use, and no materials are produced onsite.

9 Staff has reviewed the environmental site assessment, or
10 ESA, submitted for the application, and does not identify
11 any concerns regarding this facility.

12 The Household Hazardous Waste Collection
13 facility, located adjacent to the development site, is open
14 to the public approximately six days a month for very short
15 hours. I checked the website. It's 9:00 to 2:00, 9:00 to
16 3:00, so it's not a big 24-hour operation or anything like
17 that. The facility does not accept commercial waste.

18 Staff has researched the facility, and it does
19 not appear to have any permits, or to be under any
20 regulation which requires a minimum separation from
21 housing. A letter from the environmental consulting firm
22 which completed the site's environmental assessment,
23 provided to staff on April 8, 2022, indicates the same.

24 In addition to these two facilities, the ESA
25 indicates that a site directly adjoining the property has

1 historically been used as an auto repair facility until the
2 late 2010s. The ESA notes that there are no indications
3 that the subject property has been impacted from the auto
4 service or waste collection activities.

5 I apologize in advance for the double negative
6 in the following sentence. But staff recommends that the
7 Board determine that the site is not ineligible under 10
8 TAC 11.101(A)(2)(1), regarding the undesirable site
9 features, due to the items disclosed by the applicant.

10 MR. VASQUEZ: Okay. So on either side of this
11 facility there's -- or of this proposed development site,
12 there are questionable --

13 MR. CAMPBELL: Yes.

14 MR. VASQUEZ: -- businesses operating.

15 MR. CAMPBELL: There's a lot of stuff going on.

16 So there's the hazardous waste facility. There is the
17 building supply store, and then there is a site that
18 historically has been used as an auto service center.

19 MR. VASQUEZ: Okay. And according to the maps,
20 I mean the building supply store, I mean I don't even see
21 how that -- that doesn't even merit --

22 MR. CAMPBELL: Sure.

23 MR. VASQUEZ: -- getting into this. They're not
24 manufacturing here. That's just --

25 MR. CAMPBELL: Right.

1 MR. VASQUEZ: -- wrapped up finished goods. And
2 the environmental assessment said there's no concerns about
3 the garage having affected --

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

5 MR. VASQUEZ: So the biggest question is the
6 definition of this hazardous -- the Harris County Household
7 Hazardous Waste --

8 MR. CAMPBELL: Yes, sir.

9 MR. VASQUEZ: -- Collection?

10 MR. CAMPBELL: And it is important to note that
11 it is a household hazardous waste, and not commercial
12 hazardous waste facility. Because if it was commercial,
13 there would be licenses involved.

14 MR. VASQUEZ: And as they -- in the documents, I
15 guess this is what, Exhibit C? The types of what they take
16 in are household cleaners, paint-related products --

17 MR. CAMPBELL: Yes, sir.

18 MR. VASQUEZ: -- pool products, batteries,
19 aerosols.

20 MR. CAMPBELL: You can't take your fireworks
21 there, so if you've got a stash of those, you've got to
22 leave those at home. They won't take them.

23 MR. VASQUEZ: So when we say hazardous waste, I
24 mean, it's not like big barrels of chemicals that are
25 coming from a --

1 MR. CAMPBELL: No, sir. It's household waste.

2 MR. VASQUEZ: Okay. All right. Just wanted
3 those clarifications.

4 Any Board members have questions?

5 MR. MARCHANT: Is that site owned by City or
6 County?

7 MR. CAMPBELL: The hazardous waste collection
8 facility, it is the Harris County Hazardous Waste facility.
9 I didn't look into who owns it. Presumably it would be
10 Harris County, but I can't say that --

11 MR. MARCHANT: Okay. Do they have -- are they
12 restricted to that use, or could they next month change the
13 use of that facility -- broaden the use of that facility, I
14 guess?

15 MR. CAMPBELL: So for example, if they wanted to
16 convert to commercial hazardous waste collection, they
17 would need to get a license from TCEQ to do that. I don't
18 know if there's any prohibition on them doing that.

19 MR. MARCHANT: Have they signed -- has the
20 County or the City signed a letter saying they have no
21 objection to there being apartments located across the
22 street?

23 MR. CAMPBELL: Not to my knowledge, no, sir.

24 MR. MARCHANT: I guess my concern on this is
25 that the County or the City has the prerogative of using

1 that site for anything it wants.

2 MR. CAMPBELL: Certainly.

3 MR. MARCHANT: And it could expand the use of it
4 at any time they want. They're not restricted. And I
5 would be concerned that they indicate in some way that
6 they're for it. I mean, is that part of the process, if
7 they write a letter saying that they don't object or they
8 do object, or --

9 MR. CAMPBELL: Harris County? I believe this is
10 located within the City of Houston.

11 MR. MARCHANT: Okay.

12 MR. CAMPBELL: So it's in the ETJ? Okay. There
13 she goes. It is Harris County, and did they seek the
14 resolution.

15 MR. MARCHANT: And I would just say, some
16 indication from them in writing that they don't intend to
17 expand this into a commercial dump. I mean they own it,
18 they can do whatever they want with it.

19 MR. VASQUEZ: I bet you we can get some comment
20 from the applicant to clarify some of this. Mr. Eccles, do
21 we make another --

22 MR. ECCLES: Some motion is required before
23 public comment.

24 MR. VASQUEZ: Does anyone motion for public
25 comment on this?

1 MR. MARCHANT: Motion we receive public comment
2 on this item.

3 MR. VASQUEZ: Motion made by Mr. Marchant.

4 MR. BRADEN: Second.

5 MR. VASQUEZ: Seconded by Mr. Braden. All those
6 in favor say aye.

7 (A chorus of ayes.)

8 MR. VASQUEZ: Okay. Approved.

9 Please introduce yourself, sign in.

10 MS. ANDRÉ: I really do need to start bringing a
11 little footstool to stand on. I am Sarah André. I'm with
12 Structure Development, and I am representing the applicant
13 today.

14 I love your optimism, Mr. Marchant, that the
15 County could decide within one month and make a change.
16 That's a lovely sentiment.

17 The site -- first and foremost, we did have to
18 seek a resolution of support for this. We have that. It
19 is in writing, and it is in the application. And as you
20 know, resolutions once passed are pretty much forever.

21 MR. VASQUEZ: Is that from the County or City?

22 MS. ANDRÉ: It's from the County.

23 MR. VASQUEZ: Okay. Thank you.

24 MS. ANDRÉ: Harris County --

25 MR. MARCHANT: And are they the operators?

1 MS. ANDRÉ: -- Commissioner's Court. Yes, sir,
2 they are the operator. So they're aware of that. But in
3 terms of them converting it, this is a small site.

4 MR. MARCHANT: Okay.

5 MS. ANDRÉ: You know, this is the place where
6 good citizens take their batteries and their spray paint.
7 Most people are just throwing it in the garbage. But then
8 the county packages it up, and their goal is to keep it out
9 of the water table.

10 So that is what's happening here. I think you
11 make a good point, but it is a tiny site. I don't see them
12 bringing in giant truckloads of what have you.

13 And the TCEQ, as Cody pointed out, would have to
14 permit it. They're then going to have the separation
15 distances from residential, things like that, that you
16 cannot get if our residential use is there. You know, it
17 is Houston, and the zoning, so it's not unusual to have a
18 hodgepodge, if you will, of uses around.

19 We do have the developer here. We do have an
20 environmental expert if you want to dig into those kinds of
21 questions, but that's kind of the point of view we're
22 taking here.

23 MR. MARCHANT: I was just looking for some
24 official resolution from the owner of that, or the City
25 acknowledging and basically saying -- that satisfies my --

1 MS. ANDRÉ: Thank you, sir.

2 MR. VASQUEZ: Do any other Board members have
3 questions on this? And to clarify it, this is just saying
4 we're not deeming the site ineligible. Is that -- we're
5 not awarding any -- it's just allowing the application to
6 continue forward?

7 MR. CAMPBELL: That is exactly correct. The
8 Board is determining that the presence of these features
9 does not trigger site ineligibility under that broad
10 provision of the undesirable site features rule.

11 MR. VASQUEZ: Thank you.

12 Anyone care to make a motion on staff's
13 recommendation to not deem the site ineligible?

14 MR. BATCH: Mr. Chairman, I move that the Board
15 grant the requested predetermination of site eligibility
16 regarding the Cole Creek Estates in Houston, under 10 TAC
17 Section 11.101(A)(2), for the Cole Creek Estates.

18 MR. MARCHANT: Second.

19 MR. VASQUEZ: Motion made by Mr. Batch, seconded
20 by Mr. Marchant.

21 All those in favor say aye.

22 (A chorus of ayes.)

23 MR. VASQUEZ: Any opposed?

24 (No response.)

25 MR. VASQUEZ: Hearing none, motion carries.

1 7.g. You're earning your money today, Cody.

2 MR. CAMPBELL: 7.g is very similar, although
3 there is a bit more going on with this site. So I
4 apologize, but the speaking notes for this one are just a
5 little bit longer.

6 Item 7.g concerns a determination regarding
7 undesirable site features for Malcolm's Point Scholar House
8 Apartments in Dallas, which is proposed to be located near
9 Martin Foundry which is a metal casting facility. The
10 proposed site and the foundry are separated by a 50-foot
11 abandoned railroad right of way.

12 Among the undesirable site features established
13 in the QAP is development sites located within 500 feet of
14 heavy industry, i.e. facilities that require extensive use
15 of land and machinery, produce high levels of external
16 noise such as manufacturing plants, or maintain storage --
17 fuel storage facilities, excluding gas stations.

18 The ESA submitted with the application concluded
19 that, based on the duration of the foundation's operations
20 which are 1950s to the present, the types of chemicals
21 typically associated with foundry operations, the black
22 staining observed in aerial photographs around the foundry,
23 a statement from an unidentified person discussing air
24 emissions, black soot and dust settling on the ground
25 surface around the foundry, and the proximity to the

1 subject property, the northwest adjoining foundry facility
2 is considered a recognized environmental condition. And
3 again, this is in the environmental site assessment
4 provided by the applicant.

5 There are other environmental conditions notated
6 in the site's ESA. These include, first, a shopping plaza
7 located 390 feet from the property which is located in the
8 EPA's brownfields database. A brownfield is a property,
9 the expansion, redevelopment or reuse of which may be
10 complicated by the presence or potential presence of a
11 hazardous substance, pollutant or contaminant.

12 A phase one environmental assessment of the site
13 conducted by the City of Dallas identified current and
14 historical dry cleaners on the property, as well as the
15 potential presence of a gasoline underground storage tank.

16 According to the brownfield's listing, chlorinated
17 solvents were identified in the soil and groundwater at the
18 shopping plaza. No other records were available for
19 review.

20 Based on the property's proximity and up
21 gradient position relative to the subject property, they
22 identified chlorinated solvents in the soil and groundwater
23 at the properties may have the potential to migrate to the
24 subject property, and impact soil, soil vapor or
25 groundwater. These properties, the shopping plaza, are a

1 recognized environmental condition. So that's the first of
2 the additional environmental conditions notated in the ESA.

3 Second, the ESA notes several historical uses of
4 dry cleaners and auto repair shops within 400 feet of the
5 proposed site. So that was number two.

6 And finally, a lumber treatment plant identified
7 on the northeast, near the vicinity of the property,
8 operated in the 1950s in association with a lumberyard on
9 the northeast adjoining property. Based on the types of
10 chemicals typically associated with lumber treating plant
11 operations and the proximity to the subject property, the
12 former northeast near vicinity lumber treatment plant
13 facility is considered a recognized environmental
14 condition.

15 The applicant has committed in this request for
16 a determination of site eligibility to comply with any
17 recommendations of a phase two environmental assessment.
18 The applicant's request notates that the City of Dallas has
19 supported the development at the proposed site, and has
20 identified it as one of five properties included in its
21 1,000 Unit Housing Challenge, identified for high density,
22 transit-oriented residential development. The resident --
23 the request also notes other recent single and multifamily
24 development near the proposed site.

25 Staff recognizes the applicant's commitment to

1 adhere to any recommendations of the noise assessment and
2 the ESA, as well as the City of Dallas' support for
3 development of this site. However, the foundry does appear
4 to possibly be considered heavy industry, and is a
5 recognized environmental condition noted in the ESA.

6 Because of this, and the other recognized
7 environmental conditions noted in the ESA, staff's
8 recommendation on this determination is neutral.

9 MR. VASQUEZ: So a phase two has not been
10 conducted yet on this site?

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

12 MR. VASQUEZ: And I assume that if there's all
13 kinds of issues found after phase two and they do their
14 core samples and things like that, there may be all kinds
15 of other reasons why this wouldn't go forward, if that
16 seems -- comes out with problems?

17 MR. CAMPBELL: Yes, sir. And the undesirable
18 site features portion of the rule does identify that if
19 additional information comes later regarding an undesirable
20 site feature, that the original determination of
21 eligibility may not stick.

22 MR. VASQUEZ: Okay. And then I see we have
23 letters in here from the City of Dallas supporting this --

24 MR. CAMPBELL: This particular --

25 MR. VASQUEZ: -- particular project?

1 MR. CAMPBELL: Yes, sir, this particular site.

2 MR. VASQUEZ: This particular site, okay. Do
3 any -- Mr. Marchant, do you have --

4 MR. MARCHANT: I was going to make a motion.

5 MR. VASQUEZ: Well --

6 MR. BATCH: I have a quick question.

7 MR. VASQUEZ: Yes.

8 MR. BATCH: So I guess I'm kind of confused as
9 to why -- and maybe this is standard, I don't know, but why
10 this would be coming before the Board before the phase two
11 study has been done. When is the phase two study supposed
12 to happen that would take place?

13 MR. CAMPBELL: You know what, honestly, I don't
14 know the answer to that. And I don't --

15 MR. BATCH: Well, I guess my question -- I guess
16 the point is if, you know, the phase two study were to be
17 complete and it's determined that there's all sorts of
18 issues, I mean obviously the Board wouldn't even need to, I
19 guess, be in a position that it's in right now. I mean --

20 MR. CAMPBELL: So if we terminated later in the
21 process, they would still have an appeal right. So they
22 would be able to appeal to the executive director, and if
23 that wasn't successful, then they could come back to the
24 Board with that appeal.

25 MR. BRADEN: But will they do a phase two as

1 part of the application process?

2 MR. CAMPBELL: They have committed to doing a
3 phase two, yes, sir.

4 MR. VASQUEZ: Okay. And then just again
5 clarifying, so here, we're just saying it can go forward?
6 Again we're not finding it ineligible?

7 MR. CAMPBELL: That's right. Not finding it
8 ineligible based on what's been disclosed at this point in
9 time, yes, sir.

10 MR. VASQUEZ: And somewhere between now and
11 July --

12 MR. CAMPBELL: Yes, sir.

13 MR. VASQUEZ: -- we're going to have the more
14 complete report?

15 MR. CAMPBELL: Yes, sir.

16 MR. BRADEN: But the phase two is just on the
17 foundry, or is it on the other sites?

18 MR. VASQUEZ: No, on this site. It's on this
19 site.

20 MR. CAMPBELL: So the phase two is on the site.

21 So the phase one looks at aerial photographs, historical
22 records of the, you know, land around the development.
23 Phase two is a lot more involved. They do soil sampling
24 and that type of thing, yes, sir.

25 MR. BRADEN: And so it'll be just on this site,

1 so if any bleeding over from the foundry, or the dry
2 cleaners, the lumber treatment plant, we'll know --

3 MR. CAMPBELL: Yes, sir.

4 MR. BRADEN: -- on this site.

5 MR. MARCHANT: Parliamentary question.

6 MR. VASQUEZ: Go ahead.

7 MR. MARCHANT: Can we deny without prejudice so
8 that they could --

9 MR. ECCLES: I believe what you're asking for
10 is, can we allow this to go forward, and pending the ESA
11 phase two results?

12 MR. MARCHANT: Well, if I were to make a motion
13 to deny without any kind of further language, their
14 application is terminated, correct?

15 MR. CAMPBELL: So first let me provide just a
16 little bit of clarification that I just got from Homer.
17 The phase two ESA is a condition of the underwriting
18 report. So if the Board would like to see that earlier in
19 the process, the Board would need to instruct us as part of
20 this motion to get that from the applicant earlier.

21 If the Board today finds that the site is
22 ineligible based on the factors mentioned in this item,
23 then I would issue -- or staff would issue a termination
24 notice, letting them know that they have been found
25 ineligible. That would trigger their appeal rights, and

1 they could, if they wanted to come back before the Board
2 next month --

3 MR. MARCHANT: Well, I don't want declare them
4 ineligible. I just don't want to grant them a pre-
5 clearance.

6 MR. VASQUEZ: Well, that's going to be still
7 subject to all these other underwriting criteria that we
8 don't have the information on yet.

9 MR. BRADEN: But I think they're two different
10 issues. This issue today really is, do we have a problem
11 with these things located around a housing project, right?

12 We have rules that say we don't want our housing projects
13 this close to these type of things.

14 The other issue about underwriting is, let's say
15 we say that's all right. Well, then of course, they're
16 going to still do a phase two and determine you're not
17 building this on some land that's environmentally tainted
18 because there all kinds of other problems with that. So
19 it's almost like two different issues.

20 MR. BATCH: And if I may, I almost just feel
21 like it makes more sense to -- for us, as a Board, to see
22 the results of a phase two study before being put in a
23 position to -- and I guess it doesn't matter, right,
24 because if the phase two happens, and it's deemed that, you
25 know, there's a lot of issues there, then the application

1 all of a sudden would have to come back to the Board for --

2 MR. BRADEN: No, they wouldn't. You couldn't
3 move forward.

4 MR. BATCH: You couldn't move forward.

5 MR. CAMPBELL: So if additional information
6 comes up, then the process would be triggered. That is
7 correct, yes, sir.

8 MR. BRADEN: I assume the applicant's asking
9 this because they want to know, without spending more
10 money, whether we're going to have problems with the site.

11 (Simultaneous discussion.)

12 MR. MARCHANT: Does the applicant have the
13 ability to withdraw so that he is not denied?

14 MR. CAMPBELL: Withdraw this item, or withdraw
15 the application?

16 MR. VASQUEZ: This predetermination. So we're
17 kind of proactively --

18 MR. CAMPBELL: Yes, sir.

19 MR. VASQUEZ: We're not just saying --

20 MR. BATCH: They're proactively asking.

21 MR. BRADEN: Yeah, they're asking us to make a
22 predetermination on -- which I'm not willing to do on a lot
23 of unknown --

24 MR. VASQUEZ: Again --

25 MR. BRADEN: -- this to me violates kind of the

1 spirit of what we are trying to say. We just don't want to
2 put this kind of housing in this kind of situation.

3 MR. VASQUEZ: Although I guess -- I appreciate
4 that. I think as Mr. Braden just said, I think these are
5 two different issues.

6 This is not our final approval. If there's
7 problems on the site, we're not going to end up approving
8 it. And I guess theoretical -- all kinds of remediation
9 and expense that I imagine you all probably won't want to
10 do if that happens.

11 I mean so I think we're just, at this point,
12 saying you can go ahead. But that's not stopping us
13 from -- that does not preclude us from stopping this
14 process down the line.

15 MR. CAMPBELL: If more information --

16 MR. VASQUEZ: As they have a whole bunch of
17 other approvals and clearances and hoops to jump through
18 before they -- if we're going to say it's not eligible, the
19 site is not eligible, they don't want to keep going on
20 this.

21 And then my final other thought is that this is
22 clearly a -- I mean I'm not from Dallas. But it seems like
23 the City of Dallas is really, you know, behind this
24 location, and they're backing that. So you know, we're not
25 the only ones that are arbitrarily being the governmental

1 agency approving it, so to speak.

2 MR. BRADEN: So I do have a couple of questions
3 about the City of Dallas part of it. I mean it's been
4 portrayed to the City of Dallas, to this RFP, and it says
5 used as site.

6 MR. CAMPBELL: Yes, sir.

7 MR. BRADEN: But then you said one of five
8 properties?

9 MR. CAMPBELL: Yes, sir. So they, in their
10 thousand housing unit proposal, identified five sites
11 throughout the City of Dallas that they believe are really
12 good for housing development, and this is one of those.

13 MR. BRADEN: Okay. So they didn't say pick one
14 of these five sites and build --

15 MR. VASQUEZ: Total of five.

16 MR. BRADEN: -- they said pick off -- we want
17 housing in each one of these sites?

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

19 MR. BRADEN: And does the City of Dallas own
20 this property now?

21 MR. CAMPBELL: I don't believe so.

22 MR. BRADEN: Now they're saying yes.

23 MR. VASQUEZ: Yes.

24 MR. BRADEN: So the City of Dallas is okay with
25 the use items that are scattered around here. You know,

1 they obviously are, because they're pushing it.

2 MR. MARCHANT: It's like you said, I mean at
3 least it's another government entity that says we're okay
4 with building housing this close to a foundry and this far
5 away from a dry cleaning and everything else.

6 MR. VASQUEZ: And this is not our final -- this
7 is not our final --

8 MR. BRADEN: Well, yeah, but that really kind of
9 goes to the other problems with the building side, as
10 opposed to the location.

11 MS. BOSTON: Well, and if I could clarify. If
12 they meet the conditions that are put in the report, or
13 that you guys place on it today, it won't come back to you
14 guys for this, other than as an award in July, ostensibly.

15 Just to clarify, because I know you guys are talking about
16 maybe seeing it again.

17 So I would also note, though, that their
18 documentation that they submitted says not only that
19 they're going to perform the phase two ESA, but that they
20 will comply with any recommendations. So you know, you
21 don't have to worry that they're not going to do what the
22 phase two says.

23 Some people just commit to saying they're going
24 to perform the phase two. But they've already given you in
25 writing that they're not just going to perform the phase

1 two, but they're actually going to do whatever the phase
2 two says.

3 MR. VASQUEZ: And whatever remediation is
4 required?

5 Ms. BOSTON: Right.

6 MR. VASQUEZ: Mr. Braden, do you make a motion
7 to accept public comment on this?

8 MR. BRADEN: I so move.

9 MR. VASQUEZ: And Mr. Batch seconds. All in
10 favor aye.

11 (A chorus of ayes.)

12 MR. VASQUEZ: Ms. André, would you care to share
13 a couple more thoughts?

14 MS. ANDRÉ: I would, and thank you. Once again,
15 Sarah Andre, with Structure Development, and I'm here
16 representing the developer, although we do have the
17 developer here and an environmental expert if you have
18 technical questions.

19 In my mind, we're here asking for a waiver of
20 the proximity to the foundry. The items that have come up
21 in the ESA are -- we could've done the foundry waiver. And
22 we did, I believe, submit it at preapplication.

23 So sometimes you hear these without even knowing
24 what's in the ESA yet. The ESA would be done regardless.
25 And you know, we have no interest -- I personally have no

1 interest in being affiliated with anything that would harm
2 human beings in the future.

3 I'm not going to speak for the City of Dallas.
4 But my guess is they don't want a lawsuit for, you know,
5 putting people in contaminated groundwater. Nobody wants
6 to be Detroit, right.

7 At any rate, I just want to tell you a little
8 bit more about it. We recognize the environmental
9 challenges in this area. The City of Dallas recognizes
10 those.

11 They have a done a ton of work to remediate the
12 area and make it appropriate for residential use. We have
13 David Noguera here from the City, and he can go into great
14 length about the money they're spent, the time they've
15 spent and the work that they've done in the area.

16 Just very briefly while I have your ear, we have
17 engaged in phase to do that phase two. We would naturally
18 comply if anything comes up that makes it infeasible. I
19 would hope that we would all hit the pause button and
20 figure out how to remediate before trying to continue with
21 something that would not be safe for, you know, humans to
22 be there.

23 This is 80 units of supportive housing. We have
24 a true public/private partnership. We've got the City of
25 Dallas. We have Scholar House, which is a nonprofit, and

1 then Brinshore is the actual developer.

2 This is going to house young families that are
3 working towards getting a degree and trying to become self-
4 sufficient so that they can support their families on their
5 own. These are some of our most vulnerable citizens. We
6 don't need to add, you know, environmental toxicity to
7 their list of issues.

8 Martin Foundry, it is a modern business. It is
9 a compliant business. It has coexisted with housing in
10 this neighborhood for decades. It has an excellent TCEQ
11 record.

12 The things that were brought up in the ESA,
13 you've got to hear this. They are from a historic ESA that
14 was done 15 years ago. We had someone here from Phase
15 Engineering that could have spoken -- or not -- yeah,
16 anyway -- from an environmental ESA company that could have
17 told you how these ESAs work.

18 They look back many, many years to see every
19 possible use that was there. So first and foremost, the
20 dust was, yeah, from 15 years ago, and the staining -- or I
21 may have them crisscrossed -- was from 27 years ago, from
22 an aerial photo 27 years ago.

23 I will cede my time, but hopefully you'll hear
24 from others.

25 MR. NOGUERA: Hi, good afternoon. I'm David

1 Noguera. I currently serve as the Director of Housing and
2 Neighborhood Revitalization for the City of Dallas.

3 This area that we're speaking about is one of
4 our redevelopment areas. And we see housing development as
5 the mechanism by which we can generate the resources needed
6 to clean up the environmental challenges that we have here.

7
8 A few things that I wanted to say about that.
9 It's part of a larger redevelopment effort taking place in
10 the neighborhood. Three years ago, we issued this
11 solicitation, this thousand unit challenge that was
12 mentioned before, to solicit proposals for transit-oriented
13 development on our surplus land.

14 Those five sites are city surplus land that we
15 have. To give you some context, the site is less than a
16 quarter mile from the Dallas Area Rapid Transit station.
17 It's about a half mile from our State Fair Park, and it's
18 roughly 10 minutes from downtown.

19 Brinshore realized the value of the opportunity
20 and stepped up to help us redevelop the site. Efforts were
21 slowed by the pandemic but there's -- but here's what we
22 have accomplished.

23 Our office of community prosecution is taking
24 legal action against nuisance property owners in this
25 neighborhood. Our office of code compliance is cracking

1 down on trash and dumping violations. Our office of
2 homeless solutions is actively working to eliminate
3 homeless encampments in the area.

4 Our office of environmental quality and
5 sustainability is using its brownfield mitigation grant to
6 assist property owners with environmental assessments, for
7 both publicly-owned property and the privately-owned
8 property in the area so that we can attack it all at the
9 same time. And our office of planning is doing an area
10 plan for the site.

11 Across the street from this site, we have an
12 additional 40 lots where we are doing single family, for
13 sale housing. Those secondary environmental reviews, phase
14 twos, have already been submitted to the State for review.

15 And any recommendations that come back will be cleaned up
16 prior to construction taking place.

17 Southfair Community Development Corporation is
18 another major owner of property right across the street
19 from this site. They are carrying out single family
20 housing development, as well, as part of this effort.

21 As you know, we're going through rapid growth in
22 the City of Dallas, and we realize that our opportunity to
23 preserve affordable housing in the area is limited. We
24 need the State as a partner in this effort. We can't
25 redevelop the area alone, so I ask for your support on this

1 project. And I'll put my name down.

2 MR. VASQUEZ: Thank you, Mr. Noguera. Yes?

3 MR. BRADEN: I just have maybe one or two
4 questions. So the City currently owns that site. Will it
5 still have ownership interest once this is built on it?

6 MR. NOGUERA: As part of the tax credit process,
7 what I believe is that Brinshore will partner with our
8 housing finance corporation that will become the general
9 partner on the project, exempting the taxes long term for
10 the site so that it can remain affordable.

11 MR. BRADEN: Okay. This is like off of -- where
12 35 and 45 sort of intersect, close to downtown?

13 MR. NOGUERA: Al Lipscomb Way, Malcolm X
14 Boulevard.

15 MR. BRADEN: Okay.

16 MR. NOGUERA: It's literally minutes from Deep
17 Ellum, the Deep Ellum --

18 MR. BRADEN: Sure.

19 MR. NOGUERA: -- neighborhood.

20 MR. BRADEN: Okay.

21 MR. NOGUERA: Thank you.

22 MR. MARCHANT: The answer on the question is,
23 it's going to be privately owned, and they're going to have
24 a tax abatement that -- for a certain period of time,
25 correct? The City's --

1 MS. ANDRÉ: The org chart shows an entity
2 controlled by the City of Dallas in the org chart, so it
3 will be a long term ground lease.

4 MR. BRADEN: They'll probably be a limited
5 partnership or LLC, where the housing authority of the City
6 of Dallas is GP.

7 MS. ANDRÉ: Yes. It's kind of your standard
8 public/private partnership.

9 MR. VASQUEZ: Is anyone comfortable making a
10 motion at this point, or do you have further questions?

11 MR. BRADEN: Well, I'm probably supportive of
12 going forward because of the support the City's giving to
13 this project. I mean, I do think this one's a little
14 different than the prior one because, you know, it had a
15 few more problems with it. But it does seem like the focus
16 of the issue would be the foundry.

17 I guess that's one question I have. So is
18 the -- you've portrayed that the foundry's a good citizen
19 to the neighborhood, and people are -- you know, it's not
20 like they're trying to get rid of it or remove it. I
21 haven't heard anything in the news about that.

22 MS. ANDRÉ: No. We spent hours researching this
23 when the ESA showed a foundry because we screen every site
24 prior to going forward with an application. And they have
25 an excellent record, and that's not always the case. I

1 have stood before this Board protesting locations because
2 of the poor record of compliance.

3 I do have Natasha Martin. Do you want to speak
4 to that here?

5 MS. MARTIN: Good morning, Board, Natasha
6 Martin, of the law firm of Graves Dougherty Hearon & Moody.

7
8 So Sarah dug me up because before going to law
9 school, I used to issue these air permits to iron
10 foundries, steel foundries, et cetera, at the TCEQ. So I
11 have a background on the process that they go through to do
12 a protectiveness review in order to show that their
13 operations are safe for the community before they get a
14 permit.

15 True, this foundry was operating before the
16 Clean Air Act even came into existence, but they have gone
17 through several different iterations of getting approvals
18 from the TCEQ. 2002, they came in for an amendment. 2006,
19 2008, 2012 -- each time, they have to demonstrate that
20 they're in compliance with their emission limits and
21 operating parameters.

22 Each time they go through a modeling assessment
23 and analysis to confirm that what's coming out of the stack
24 is not going to hurt the residents. And so all of that's
25 been done.

1 They actually have what's called a high
2 compliance rating. It is kind of counterintuitive. That
3 means that they are operating at the best compliance rating
4 issued by the TCEQ.

5 So through all those years, they've been able to
6 consistently demonstrate that they are high performers. I
7 will also add that there is no distance, minimum distance
8 limitation to housing for this type of facility.

9 You might have heard that there are some.
10 They're for lead smelters and also for concrete crushers.
11 And so they don't have one for iron foundries because the
12 TCEQ's already done like kind of a preevaluation to know
13 that there's not one needed as long as they're operating
14 according to their permit.

15 I'm happy to answer any questions.

16 MR. VASQUEZ: Just to clarify, Ms. Martin, you
17 have no relation to Martin Foundry?

18 MS. MARTIN: You know, I thought that was funny.
19 I've no relation to --

20 MR. VASQUEZ: Yes or no?

21 MS. MARTIN: -- Martin Foundry. No, I don't.

22 MR. VASQUEZ: Okay.

23 MS. MARTIN: But I did, Chairman, go back and
24 look to see if I issued that permit, and I did not. But it
25 was amended while I was there at the TCEQ. So thank you.

1 No, sir, no conflict of interest there.

2 MR. MARCHANT: Who is your client?

3 MS. MARTIN: So I was retained by Brinshore.

4 MR. MARCHANT: Okay. So the developer --

5 MS. MARTIN: Yes.

6 MR. MARCHANT: -- you're representing the
7 developer?

8 MS. MARTIN: That's right.

9 MR. MARCHANT: Okay. Thanks.

10 MS. MARTIN: Okay. Good question. Any other
11 questions?

12 MR. ECCLES: I actually have a clarification.
13 This may be for Brinshore, but you may answer it if you
14 know. It was unclear from the letter that was submitted
15 that was requesting this predetermination: is the foundry
16 considered in your mind heavy industry under
17 11.101(A)(2)(f), and that is a facility that requires
18 extensive use of land and machinery, produces high levels
19 of external noise, or maintains fuel storage facilities?

20 MS. MARTIN: So I looked back at TCEQ's
21 investigative reports over the years. I would characterize
22 it as heavy industry. However, the TCEQ also looks at
23 noise abatement, interaction with the community that's not
24 necessarily within their jurisdiction but the investigators
25 do assess that.

1 And they found that every time that Martin
2 Foundry had low noise, and was also, you know, not
3 interfering with, you know, day-to-day life out there. So
4 I would say that all of that would be mitigating to any
5 kind of consideration that this is heavy industry.

6 I'm going to use a double negative because that
7 was, you know, what got the other permit through. You
8 know, it's -- this is not going to make this site
9 ineligible.

10 You know, as Sarah mentioned, she was before the
11 Board arguing compliance. Martin Foundry has one of the
12 highest compliance ratings. And I think that in addition
13 is another mitigating factor.

14 MR. VASQUEZ: Ms. Farias? And please put on
15 your microphone underneath the table there.

16 MS. FARIAS: All right. Good. This is my first
17 meeting and I promised that I was not going to make any
18 motions on my first meeting. But since it is about
19 affordable housing, that is definitely an issue that I know
20 from personal experience.

21 When housing projects began, during the war in
22 the '50s, the cities always gave the best lands because it
23 was going to the sons, daughters and parents of the
24 deceased soldiers. And then as time went by, cities ran
25 out of the best land, and we started talking about

1 brownfields.

2 I do know the area of Dallas very well because
3 I've traveled all over this country. And it's to be
4 praised that the City of Dallas is giving five portions of
5 land.

6 And there's another reason why you give nowadays
7 small portions. No one wants to see huge concentrations of
8 public housing in one area because it creates a lot of
9 problems. And having run a housing authority in a small
10 town, even that created a lot of problems.

11 So the constant issue is, where is the land
12 coming from? And then it came -- the only way they can
13 work together is you have to go to the private sector that
14 is willing to pony up some money and the feds. And so
15 we're always weighing it. And these are dilemmas because
16 sometimes we go -- and then the other one is where do we
17 put them.

18 And if it's young people, they're trying --
19 they've got themselves in trouble. They're trying for a
20 second chance -- we went for that. I was very proud when I
21 read the housing authority got rid of the dancing community
22 center and turned it into the first daycare center so that
23 my client's tenants wouldn't give me the excuse why they
24 couldn't go back to school. So I just built you a daycare
25 center.

1 And then -- but the issue always is, sir,
2 Congressman, that you were asking, if there were problems,
3 who's responsible. Is it the City, is it the private
4 entity? Which one is it? Because when problems arise, the
5 constituents around want to know who's responsible for
6 these darn projects.

7 And once again, it just adds another black eye,
8 and we're all trying to do wonderful things. And I said I
9 promise I wasn't going to make a speech but this, sir, are
10 the most difficult issues. And we're the ones, the buck
11 stops with us.

12 And they are, they're very difficult because
13 there are no easy answers. We're just trying to do the
14 best. So I went back on my promise that I wasn't going to
15 say any comment.

16 MR. VASQUEZ: Thank you, Ms. Farias.

17 MR. BRADEN: So not to put you on the spot, Ms.
18 Farias, so will you be supportive of moving forward?

19 MS. FARIAS: Yes.

20 MR. BRADEN: Okay. In light of that, I'll make
21 a motion.

22 MR. VASQUEZ: Please.

23 MS. FARIAS: I second, Mr. Chairman.

24 MR. VASQUEZ: What's your motion? Let's see
25 what his motion is first. Okay.

1 All right. Mr. Braden, would you care to make a
2 motion?

3 MR. BRADEN: I move the Board grant the
4 requested predetermination of site eligibility under 10
5 TAC, Section 11.01(A)(2), for Malcolm's Point Scholar House
6 Apartments.

7 MR. VASQUEZ: Motion made by Mr. Braden,
8 seconded by --

9 MS. FARIAS: I second. Yes, Chairman.

10 MR. VASQUEZ: -- Ms. Farias. Any further
11 discussion? So all in favor of allowing this application
12 to continue forward at this site say aye.

13 (Three ayes.)

14 MR. VASQUEZ: Any opposed?

15 MR. MARCHANT: Opposed.

16 MR. BATCH: I oppose as well.

17 MR. VASQUEZ: So that -- let the record reflect
18 that Mr. Marchant and Mr. Batch said no.

19 Mr. Braden, Ms. Farias and I, as chairman, say
20 yes, so we're continuing forward. Again this is not the
21 final approval.

22 MR. MARCHANT: And Mr. Chairman, if you'd allow
23 me to make an explanation?

24 MR. VASQUEZ: Please --

25 MR. MARCHANT: I completely agree with our new

1 Board member. I've lived in Dallas 71 years. I don't know
2 how I would explain that we committed federal and state
3 resources to a project for young scholars, et cetera, et
4 cetera, that was next to a foundry.

5 And in south Dallas, this is a huge issue. And
6 it's not an ideal site. And that's the reason I oppose it.

7

8 I recognize all of the difficult things, but how
9 many projects will we entertain this year?

10 MR. CAMPBELL: Typically, I believe there's
11 about 75 in any given year that get final approval and
12 award.

13 MR. MARCHANT: But how many people are
14 requesting?

15 MR. CAMPBELL: I believe 127 is the number of
16 full applications that we get.

17 MR. MARCHANT: Okay. So thank you, Mr.
18 Chairman.

19 MR. BATCH: And Mr. Chairman, I would like an
20 opportunity --

21 MR. VASQUEZ: Please.

22 MR. BATCH: -- to explain my position as well.
23 And while I am certainly sympathetic for, you know, the
24 fact that individuals who need this housing should
25 certainly have it, I will not attach my name to something

1 to -- in any position, whether it's allowing an application
2 to go -- simply go forward without having information as it
3 relates to the phase two study.

4 And so while I certainly look forward to the
5 phase two study and the results of that, you know, we have
6 seen situations where things go wrong when nobody thought
7 they would go wrong. All the data might have said that
8 this would not happen, and then it happens.

9 And then we're now put in the position to where,
10 yeah, where does the buck stop? And as someone on the
11 Board said, the buck does stop with us. And so for me,
12 personally, I would much rather have information as it
13 relates to this project before even being put in the
14 position to where I would have to have a vote of any sort
15 on it.

16 And that's my position at this point.

17 MR. VASQUEZ: Well, again, thank you both for
18 that. Again as reassurance, we are going to have a chance
19 to stop the buck when we get that additional information.
20 This isn't a final -- this is not a final approval by any
21 means.

22 MR. ECCLES: Well, and I have to throw in a bit
23 of a legal clarification because this predetermination
24 matter is really discussion of 10 TAC 11.101(A)(2)(1), the
25 catchall. It is not discussing 11.101(A)(2)(f), which is

1 the heavy industry, and it was admitted by applicant's
2 representative that the foundry does constitute heavy
3 industry.

4 They have filed a waiver. They will have an
5 opportunity to argue that waiver, but they will need to
6 argue that waiver. So that issue is still going to come
7 back before this Board.

8 MR. VASQUEZ: Okay. Thank you everyone for your
9 input.

10 Let's move ahead to item 7.h, presentation,
11 discussion and possible action on staff determinations
12 regarding application disclosure under 10 TAC, Section
13 11.101(A)(2), related to undesirable site features for
14 Kingwood Crossing Apartments, number 22023, in Houston.
15 I'm not sure if there's a letter after the 101(A)(2).

16 But Cody, go ahead.

17 MR. CAMPBELL: Thank you so much. This item
18 obviously is no less important, but I do think it is a
19 little bit more straightforward than the previous item.

20 Item 7.h concerns a determination regarding
21 undesirable site features for Kirkwood Crossing Apartments
22 in Houston, which is proposed to be located atop a portion
23 of the former Sugar Hill Golf Course, which operated from
24 2001 to 2005, following the redevelopment of two former
25 landfills. So the site is partially located on top of two

1 former landfills.

2 The ESA for this site notes that although this
3 landfill was permitted for the receipt of construction and
4 demolition waste in 1981, other wastes may have been
5 disposed of within the landfill before 1981. Therefore,
6 the possible presence of regulated substances within the
7 landfill could represent an environmental concern for the
8 subject property, and represents a recognized environmental
9 condition for the subject property. Notwithstanding, soil
10 and groundwater investigations at the subject property have
11 not demonstrated that any release of regulated substances
12 related to a possible landfill waste have occurred to soil
13 or to groundwater.

14 A portion of the former landfill is currently
15 under a TCEQ municipal solid waste permit as a closed
16 landfill in what's called post-closure care. Closure of
17 this permit requires that the landfill gas management
18 system be in compliance with applicable regulations, that
19 ponded surface water be removed from the property, and that
20 the groundwater exceedances have been addressed.
21 Additional gas vents have been installed, and the water
22 ponding has been addressed.

23 A consulting narrative submitted with the
24 applicant's request notes that the site owner has obtained
25 approval from the City of Houston for what's called a

1 municipal setting designation, or MSD, to prohibit the use
2 of groundwater under the subject property. Upon
3 certification of the MSD by TCEQ, no further actions will
4 be required with respect to contaminants at the site, and
5 the potential for environmental hazards associated with the
6 hazardous materials within, or migrating from, the landfill
7 will be eliminated.

8 Based on the information and supporting
9 documentation provided by the applicant in their request,
10 staff recommends that the Board determine that the site for
11 this application is not ineligible under 10 TAC
12 11.101(A)(2)(1).

13 MR. VASQUEZ: To clarify, this had been a golf
14 course for --

15 MR. CAMPBELL: For several years, yes.

16 MR. VASQUEZ: -- many years, right?

17 MR. CAMPBELL: I believe it ceased to be a golf
18 course in 2005, but it was post being a landfill, operated
19 as a golf course.

20 MR. VASQUEZ: Okay. And City of Houston's
21 behind this project as well?

22 MR. CAMPBELL: Sure. And they are currently
23 looking into that municipal setting designation. And you
24 know, by all accounts, the applicant is doing everything
25 that they need to do to close out the former landfill

1 permit.

2 MR. VASQUEZ: And they've agreed not to drill a
3 well for their water?

4 MR. CAMPBELL: I haven't asked them -- well,
5 they can't use the groundwater underneath it if they get
6 this designation from the City.

7 MR. VASQUEZ: Okay. Do any Board members have
8 questions on this project item? Again this one does sound
9 a lot more straightforward than the prior ones.

10 Hearing no questions, is there a motion on item
11 7.h?

12 MR. BRADEN: Mr. Chair, I'll make a motion. I
13 move that the Board grant the requested predetermination of
14 site eligibility under 10 TAC, section 11.01(A)(2), for
15 Kirkwood Crossing Apartments.

16 MS. FARIAS: I second.

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

19 (A chorus of ayes.)

20 MR. VASQUEZ: Any opposed?

21 (No response.)

22 MR. VASQUEZ: Hearing none, motion carries.

23 Moving onto 7.I, presentation, discussion and
24 possible action on staff determinations regarding
25 application disclosure under 10 TAC, Section 11.101(A)(2),

1 relating to undesirable site features for Heritage Estates
2 at Edmonds, number 22218, in Lewisville.

3 MR. CAMPBELL: Thank you. So as you said, item
4 7.I relates to an undesirable site feature for Heritage
5 Estates at Edmonds, in Lewisville. This item is a bit
6 different than the last few items because it is an actual
7 waiver request for matters which clearly violate the rules.

8 So for the previous items, we've been trying to
9 determine how they fit into the rules. This one, very
10 clear cut, does not meet the requirements of the rules.

11 Specifically, the QAP identifies the following
12 as an undesirable site feature: development sites in which
13 any of the buildings or designated recreational areas,
14 including pools, excluding parking areas, are to be located
15 within 100 feet of the nearest line or structural element
16 of any overhead high voltage transmission line, support
17 structures for high voltage transmission lines, or other
18 similar structures.

19 This does not apply to local service electric
20 lines and poles. So in other words, the residential
21 buildings have to be 100 feet from high voltage
22 transmission lines.

23 The proposed site is approximately two acres, so
24 it's very small, and is shaped like a long, narrow
25 triangle. Edmonds Lane runs alongside the site, the median

1 of which contains a high voltage power line.

2 So imagine you've got this long triangle.
3 Edmonds Lane runs across the diagonal site, and there's a
4 high voltage power line that runs right down the middle of
5 it.

6 As proposed, residential buildings will be
7 approximately 80 feet from this power line. The City of
8 Lewisville has requested that the residential buildings be
9 situated as far from the north and east sides of the site
10 as possible, which pushes them up against the side with the
11 power line, to help mitigate the impact on adjacent single
12 family residences.

13 This places the buildings against Edmonds Lane
14 and near the power line. A letter from the City of
15 Lewisville included with the request substantiates this
16 request, that the City of Lewisville is requesting that
17 buildings be located by Edmonds Lane. Additional zoning
18 requirements regarding parking location, the number of
19 parking spaces and required setbacks make it difficult or
20 impossible to comply with both TDHCA's 100-foot
21 requirements and the City's zoning requirements.

22 10 TAC 11.207 establishes requirements for
23 waivers, including that they must establish that the need
24 for the waiver is not within the control of the applicant,
25 or is due to an overwhelming need, and that granting the

1 waiver better serves the policies and purposes articulated
2 for the Department in Texas Government Code Chapter 2306.

3 The waiver request asserts that the conflict
4 between TDHCA and the City of Lewisville requirements is
5 outside of the applicant's control, and that there is an
6 overwhelming need because the proposed development would be
7 the only housing tax credit development in this area of
8 Lewisville.

9 The request also suggests that granting this
10 waiver will better serve the following purposes of the
11 Department. First, providing for the housing needs of
12 individuals and families of low, very low and extremely low
13 income, and families of moderate income; to encourage the
14 development and preservation of appropriate types of rental
15 housing for households that have difficulty finding
16 suitable, affordable rental housing in the private
17 marketplace; and to maximize the number of suitable,
18 affordable residential units added to the State's housing
19 supply.

20 Staff recognizes that the zoning requirements
21 appear to conflict with TDHCA's required 100-foot setback
22 from high voltage power lines. However, the site, as
23 proposed, simply does not meet the requirements of the
24 rule. Because of this, staff's recommendation on this item
25 is neutral.

1 MR. VASQUEZ: Okay. So the City of Lewisville
2 is saying put the parking in the back instead of the
3 front --

4 MR. CAMPBELL: Yes, sir.

5 MR. VASQUEZ: -- causing the building units to
6 be within 100 feet?

7 MR. CAMPBELL: Yes, sir. They're approximately
8 80 feet.

9 MR. VASQUEZ: Okay. (Perusing documents.)
10 We're consulting the pictures in the book.

11 MR. CAMPBELL: The pictures are very helpful,
12 and I do appreciate you all submitting them. They were
13 very helpful.

14 MR. VASQUEZ: And these are as reflected? I
15 mean the high voltage lines, I mean the real tall ones with
16 the --

17 MR. CAMPBELL: That is correct, yes, sir.

18 MR. VASQUEZ: -- big giant supports?

19 MR. CAMPBELL: Yeah, it's not just like your
20 normal small power line. It's the high voltage ones.

21 MR. BRADEN: And it's 80 feet away instead of
22 100?

23 MR. CAMPBELL: Yes, sir.

24 MR. BRADEN: But there's a road -- so it's in
25 the median of a road, and there's a road between the two

1 properties, so hopefully people aren't playing football in
2 the road?

3 MR. VASQUEZ: Yeah, it's two lanes. It's a
4 real --

5 MR. MARCHANT: I have a technical question.

6 MR. VASQUEZ: Please.

7 MR. MARCHANT: How tall are the power lines?

8 MR. CAMPBELL: That's a really good question.
9 We've got a picture of them right here. I would estimate
10 about 50 feet. It looks like it's about 50 feet. So
11 they're substantial.

12 MR. MARCHANT: Yeah, I live about three miles
13 from this site, so my question is if they fall over, are
14 they going to hit any structure?

15 MR. CAMPBELL: That does not to me appear to be
16 80-foot tall. I can't say that with authority but --

17 MR. MARCHANT: But there are 80-foot tall power
18 lines in that area, so is there someone that can
19 specifically answer that question?

20 MR. CAMPBELL: Yeah, it looks like they're --

21 MR. MARCHANT: Okay. So --

22 MR. CAMPBELL: So it looks like what might
23 happen is that they will fall onto the residential lines,
24 which would trampoline them back to the other side, away
25 from the --

1 (Simultaneous discussion.)

2 MR. MARCHANT: I know that HUD and FHA have some
3 pretty tough restrictions about their financing, and it has
4 to do with --

5 MR. VASQUEZ: Sure, yeah.

6 MR. MARCHANT: -- topple into the property or
7 not. And that was -- that's the only objection I have
8 [turns mic off], and the fact that we're just pacifying the
9 City of Lewisville, because we could easily make it not
10 dangerous.

11 MR. VASQUEZ: So do we want to entertain more
12 public comment on this, or are we able to -- staff
13 recommends -- and the staff recommendation is?

14 MR. CAMPBELL: The staff recommendation is
15 neutral on --

16 MR. VASQUEZ: Okay. They're neutral.

17 MR. CAMPBELL: -- the basis that it very clearly
18 doesn't meet the rules.

19 MR. BATCH: I'll make a motion.

20 MR. VASQUEZ: Okay, 7.i.

21 MR. BATCH: Mr. Chairman, I move that the Board
22 grant the requested limited waiver, 10 TAC Section
23 11.101(A)(2)(b), for application number 22218, Heritage
24 Estates at Edmonds, to the extent it will allow for a high
25 voltage power line and support structure to be located

1 within the 100-foot setback required by the rule, all as
2 reflected in the Board action request on this item.

3 MR. MARCHANT: Second.

4 MR. VASQUEZ: Motion made by Mr. Batch, seconded
5 by Mr. Marchant.

6 Do we need any public comment? Okay.

7 All those in favor say aye.

8 (A chorus of ayes.)

9 MR. VASQUEZ: Any opposed?

10 (No response.)

11 MR. VASQUEZ: Hearing none, motion carries.

12 Moving right along, we're almost there. Item
13 7.j, presentation, discussion and possible action regarding
14 a waiver of 10 TAC -- it's a new section -- 11.205(4), for
15 the Warehouse Lofts at 707. It is project number 22295.

16 MR. CAMPBELL: Yes, sir. So this once again is
17 an actual waiver request, and unlike the previous waiver
18 request, this is a staff-initiated waiver.

19 Item 7.j relates to, like I said, a staff-
20 initiated waiver of 10 TAC 11.2054 for the Warehouse Lofts
21 at 707. 10 TAC 11.2054 requires that the following types
22 of applications include an appraisal: all rehabilitation
23 developments, all adaptive reuse developments, any
24 application claiming portion of the building acquisition in
25 eligible basis, and any identity of interest transaction

1 where the same person is on both sides of the transaction.

2 Prior to submitting a full application, the
3 applicant contacted the Department seeking clarification on
4 whether an appraisal was needed. The proposed development
5 site is an adaptive reuse, and therefore, does require an
6 appraisal. However, no portion of the building is claimed
7 in eligible basis, and the application is not an identity
8 of interest transaction.

9 Because of this, staff informed the applicant
10 that no appraisal was needed. Eligible basis is the
11 portion of the development which may be used to support the
12 tax credits claims by the development owner. Items that
13 are excluded from eligible basis are not eligible to be
14 supported by tax credits.

15 When building, acquisition costs are included in
16 eligible basis. An appraisal is needed to substantiate the
17 costs being used to calculate the credit amount. However,
18 because the applicant has elected to exclude the
19 acquisition costs from eligible basis, the Department is
20 unable to identify that any risks are created concerning
21 the development's basis by this application not including
22 an appraisal.

23 10 TAC 11.302, relating to underwriting rules
24 and guidelines, establishes that a gap method will be used
25 to evaluate the amount of funds needed to the fill the gap

1 created by total housing development cost less total non-
2 department source funds or housing tax credits. So in
3 other words, we take the total development costs, subtract
4 what other money that they're getting, and the remainder is
5 what we look at to see how much tax credit that they need.

6 This method is part of the process that ensures
7 the proposed developments are financially feasible, but are
8 not receiving more in tax credit funding than is needed.
9 Applications must have sufficient sources of other funds to
10 support any development costs that are not supported by tax
11 credits. And remember, since the acquisition was excluded
12 from basis, it can't be supported by tax credits.

13 The Department is unable to identify any risks
14 regarding this calculation from the application not
15 including an appraisal. The specifics of this application
16 are unusual as acquisition costs are typically included in
17 eligible basis for rehabilitation and adaptive reuse
18 developments. 10 TAC 11.207 allows for staff to identify
19 and initiate waivers to remedy an error in the QAP, or
20 other multifamily rules, provide necessary relief in
21 response to a natural disaster, or to address facets of an
22 application or development that have not been contemplated.

23 Staff believes that the particular circumstances
24 of this development, where you have an adaptive reuse that
25 is not including acquisition costs in eligible basis, may

1 not have been contemplated in the rule, and accordingly,
2 recommends that the waiver of 10 TAC 11.2054, related to
3 appraisals for the Warehouse Lofts at 707, be granted.

4 I'm happy to take any questions.

5 MR. VASQUEZ: So you're trying to tell us that
6 the QAP doesn't cover every conceivable, possible twist
7 on --

8 MR. CAMPBELL: Believe it or not, you would
9 think it would, with as long as it is, but --

10 MR. VASQUEZ: Let me ask. So if there was an
11 appraisal, would we even use it in all these calculations?
12 It's not applicable, right?

13 MR. CAMPBELL: It's not really going to come up,
14 that is correct.

15 MR. VASQUEZ: I mean even if they had submitted
16 an appraisal, it wouldn't factor into our calculation here
17 because of the excluded value of the land?

18 MR. CAMPBELL: I have thought of this from every
19 angle that I possibly can, and I can't say this
20 definitively, but I'm pretty sure I'm correct on this.
21 Excluding the costs from eligible basis, excluding your
22 acquisition from eligible basis, only could create a
23 liability for you because if, for whatever reason, you
24 overstate your acquisition costs, you've got to find other
25 sources to cover that amount.

1 So staff really struggles to find the risk of
2 not having an appraisal in this case.

3 MR. VASQUEZ: Because it wouldn't be applicable
4 to our calculations.

5 MR. CAMPBELL: Correct.

6 MR. VASQUEZ: Is there any -- does our Counsels
7 have any problem with this? I mean it --

8 MR. ECCLES: No, staff's logic is sound.

9 MR. VASQUEZ: Okay. This time.

10 Any Board members have questions on this item?
11 Hearing none, I'd entertain a motion on item 7.j.

12 MR. BRADEN: Mr. Chair, I move the Board grant
13 the requested limited waiver of 10 TAC, Section 2054, for
14 application number 22295, The Warehouse Lofts at 707, to
15 the extent it will allow for an appraisal to not be
16 submitted with this application, all as reflected in the
17 Board action request on this item.

18 MR. BATCH: Second, Mr. Chairman.

19 MR. VASQUEZ: Motion made by Mr. Braden,
20 seconded by Mr. Batch.

21 All in favor say aye.

22 (A chorus of ayes.)

23 MR. VASQUEZ: Any opposed?

24 (No response.)

25 MR. VASQUEZ: Hearing none, motion carries.

1 7.k, the final item on the agenda, presentation,
2 discussion and possible on a timely submitted appeal
3 related to a requested limited review of Weber Lofts in
4 Corpus Christi, number 22249.

5 Mr. Campbell, you're still up.

6 MR. CAMPBELL: Last one. A preapplication was
7 filed for this development. And I'm sorry, there are a lot
8 of very specific numbers in this presentation, but they are
9 necessary.

10 A preapplication was filed for this development
11 with a proposed funding request of \$1,243,435. So that
12 would have been submitted at the very beginning of the
13 year, and the preapplication was just the applicant
14 notifying us that they intend to file a full application.

15 This preapplication was followed up by a full
16 application which was submitted by the full application
17 delivery date of March 1, 2022. The full application
18 includes a requested HTC amount of \$1,252,405, which is an
19 increase of \$8,970 from the request in their
20 preapplication.

21 Changes in funding requests between
22 preapplication and full application are common, and in
23 fact, last night I did a little napkin math. Of our 127
24 applications, about 85 of them had a different funding
25 request from their preapplication. So more than half

1 change that amount.

2 10 TAC 11.9 of the QAP establishes the scoring
3 criteria used for competitive applications and awards one
4 point for applications which request no more than 100
5 percent of the tax credit funding available in the
6 subregion as determined by the regional allocation formula,
7 on or before December -- I'm sorry, December 1, 2021.

8 If it seems strange that they can request more
9 funding than what available, it's because once we make our
10 initial awards, we go through what's called the collapse.
11 So we get all the amounts of money that are remaining
12 unawarded in the regions. We make one big pool, and that
13 gives us enough money to fund some of these, in excess of
14 what was initially available.

15 Corpus Christi is located in Region 10 Urban,
16 and the amount available in the subregion as of December 1,
17 2021, was \$1,243,435. Therefore, the applicant's final
18 funding request of \$1,252,405 would not qualify for the
19 point allowed under this item. It was about \$8900 over
20 what it would have had to have been.

21 The applicant contacted the Department after the
22 final application due date, and requested to revise the
23 funding amount on the application so as to qualify for this
24 point. Staff denied this request in accordance with Texas
25 Government Code, Section 2306.6708, which prohibits this

1 type of change.

2 In accordance with statute, an applicant may not
3 change or supplement their application in any manner after
4 the filing deadline, except at the request of the
5 Department to provide clarifying information or to correct
6 administrative deficiencies in the application. Statute
7 also allows applications to be amended after tax credits
8 are allocated, but that clearly isn't the situation here.

9 The applicant subsequently appealed this
10 decision to the executive director, and asked that the
11 matter be reviewed under the limited review provision of
12 the QAP. Essentially, this provision allows for applicants
13 to request a limited review of an application if they
14 identify an error which may be the subject of a deficiency.

15 If, and this is a big if, the limited review results in an
16 issue that requires correction or clarification, staff will
17 address such information through a deficiency process
18 outlined in the QAP.

19 So in other words, they request, can you take a
20 look at this part of our application. We think we're going
21 to get an administrative deficiency on it. We look at it.

22
23 If we agree, we issue the administrative
24 deficiency. But at no point is there a process for an
25 application -- or for an applicant to just update their

1 application without going through that process.

2 In accordance with the rule, limited reviews are
3 intended to address two things. First, clarification of
4 issues the Department staff would have difficulty
5 identifying due to the omission of information that the
6 Department may have access to only through applicant
7 disclosure, such as prior removal from a tax credit
8 transaction or participation in a development that is not
9 identified in the previous participation portion of the
10 application, or -- and so this is the second one that
11 limited reviews are intended to identify -- technical
12 correction of non-material information that would cause an
13 application to be deemed non-competitive, and when
14 providing that information, would deem it to be
15 competitive, and therefore, subject to a staff review.

16 For example, failure to mark the nonprofit set-
17 aside in an application that otherwise included complete
18 submission of documentation for participation in the
19 nonprofit set-aside.

20 As the funding amount requested is consistent
21 through the application, and is substantiated by third
22 party documents in it, staff would find no reason to issue
23 a deficiency for this item. Additionally, the applicant's
24 request directly relates to the scoring of the application
25 which is prohibited under the limited review provision of

1 the QAP.

2 For these reasons, the executive director denied
3 the applicant's appeal, and the applicant requested that
4 the matter be brought to the Board.

5 Staff has reviewed this request and finds no
6 basis for the funding request to be reviewed under the
7 limited review provision of the QAP. Accordingly, staff
8 recommends that the appeal be denied.

9 MR. VASQUEZ: Okay. So this is a one point
10 question?

11 MR. CAMPBELL: Yes, sir.

12 MR. VASQUEZ: And if we deny the appeal, the
13 application's still out there. It's not --

14 MR. CAMPBELL: That is correct.

15 MR. VASQUEZ: -- eliminated? And this is in
16 what, Urban 10, or something like that, you said?

17 MR. CAMPBELL: This is in Corpus Christi.

18 MR. VASQUEZ: I think subregion 10, Urban
19 subregion 10.

20 MR. CAMPBELL: Yes, sir. And I believe we have
21 four applications.

22 MR. VASQUEZ: Okay. That was my next question.
23 So how many applications do we have?

24 MR. CAMPBELL: We have four, and I think that
25 based on their self-score, they're in a deadlocked tie.

1 MR. VASQUEZ: So this one point could be pretty
2 critical?

3 MR. CAMPBELL: Yes, sir. And procedurally, if
4 the Board denies this appeal, then the staff will issue a
5 scoring notice for this item which comes with it appeal
6 rights.

7 MR. VASQUEZ: Okay. So it could come back to us
8 again on this?

9 MR. CAMPBELL: That is correct, yes, sir.

10 MR. VASQUEZ: And in this case, they're asking
11 us to reduce the amount that they're requesting by the
12 \$8,900?

13 MR. CAMPBELL: Yes, sir. And that would require
14 updating several exhibits in the application, as well as
15 providing a new letter from their equity investor.

16 MR. VASQUEZ: Did the amount that was available
17 for the region, the what, 1,252,435 -- was that published?
18 How was that made known?

19 MR. CAMPBELL: Yes, sir. We publish that on
20 December 1 of every year. That is the regional allocation
21 formula estimate for the preceding year -- preceding year.

22 MR. VASQUEZ: Right. Okay. So, I mean, that's
23 out there for everyone to see?

24 MR. CAMPBELL: That is correct, yes, sir.

25 MR. VASQUEZ: This is one of those where I

1 personally just hate the bureaucracy and the -- my famous
2 gotchas. This feels like that but at the same time, I see
3 the rules and how this is written out, so I -- I'm torn.

4 MR. MARCHANT: May I ask a question?

5 MR. VASQUEZ: Please, Mr. Marchant.

6 MR. MARCHANT: Could -- under the -- Beau, under
7 the definition of what could have been done to correct
8 this, if the staff had called and said you've applied for
9 this amount, were you not aware that this exceeded the
10 amount -- would that have been a legal communication
11 between staff and the applicant?

12 MR. VASQUEZ: Before the deadline. Before the
13 submission deadline, you're asking?

14 MR. MARCHANT: Well --

15 MR. VASQUEZ: Well, or maybe -- okay, before and
16 after.

17 MR. MARCHANT: Yeah, I thought there was some
18 caveat in there that allowed you guys to seek clarification
19 from them, but they couldn't proactively ask you?

20 MR. CAMPBELL: So in reviewing an application,
21 if we come across something that would constitute an
22 administrative deficiency -- and there are a lot of things
23 that can be administrative deficiencies. You know, if
24 somebody signs something as John Hancock on one page, and
25 John F. Hancock, you know, any of that kind of thing, or if

1 the site plans are unclear and we need a clearer --

2 MR. MARCHANT: But this wouldn't have fallen
3 under --

4 MR. CAMPBELL: This would not fall under that,
5 no, sir.

6 MR. MARCHANT: Okay. All right.

7 MR. BRADEN: You mean Beau gets to avoid
8 answering the question? Golly.

9 MR. MARCHANT: Would that be your answer, Beau?

10 MR. ECCLES: Very close to that. It's simply to
11 say that staff has the ability to seek clarification, but
12 this is not really a clarification point.

13 This is the amount of funding that throughout
14 the full application was requested. And they can do that.

15 It's just that they won't get that point for asking for
16 under that amount.

17 MR. BRADEN: So to the Chair, I guess I'm
18 struggling with how this ended up on our lap, because the
19 law says, except as provided by this other subsection, an
20 applicant may not change or supplement an application in
21 any manner after the filing deadline.

22 That subsection is just what Mr. Marchant
23 referred to, saying, you know, at the request of the
24 Department, clarifying information can be provided and
25 that's okay. And then after the housing tax credits have

1 been allocated, there's some things that could be provided,
2 and that's okay, too.

3 This isn't our rule. This is the law. And so
4 neither one of those things apply, which the executive
5 director correctly pointed out.

6 So now the applicant's appealing that decision
7 by the executive director, and that's how it's ending up in
8 our lap?

9 MR. CAMPBELL: That is correct, yes, sir.

10 MR. VASQUEZ: And that leads to my next question
11 that I was going to ask, just to distinguish -- and for the
12 new Board members, we've had this discussion multiple times
13 in the past on what's in statute and the law versus what's
14 in our rules.

15 And just to clarify, this is in statute, in the
16 rules -- I mean in the law, in the statute. It's not just
17 our rules.

18 MR. ECCLES: To be clear, I believe that what
19 the appellant will say is that this was an administrative
20 deficiency, as opposed to a material deficiency, that they
21 are seeking to clarify their -- the amount that's being
22 requested rather than change it.

23 MR. BRADEN: But did the Department make a
24 request for that clarification?

25 MR. CAMPBELL: No, sir.

1 MR. BRADEN: The request of the Department did
2 not occur.

3 MR. MARCHANT: Had it occurred, would it have
4 been administrative?

5 MR. CAMPBELL: No, sir. It would not have.

6 So I've spoken with the application reviewers
7 about this just to see if there's any circumstance under
8 which something like this would become an administrative
9 deficiency, and they all responded that it would not. And
10 to some extent, I think that we're getting into areas of
11 what would be appropriate for staff to do.

12 And I'm not sure that it's appropriate for staff
13 to work to maintain the competitiveness of an application.

14 So when we identify that, you know, you're claiming this
15 point, but you don't actually qualify for it, I struggle to
16 feel appropriate reaching out to that applicant and saying,
17 hey, I need you to do this for your application so that you
18 stay in the running.

19 As the referees of the competition, you know, I
20 think that borders on an impropriety.

21 MR. VASQUEZ: With all that background, we'll
22 still have some time -- would you care to make a motion to
23 hear public comment on this item?

24 MR. BRADEN: I'll make a motion to deny it.

25 MR. VASQUEZ: No public comment?

1 MR. BRADEN: No, you can have public comment
2 after you make a motion. You just can't have public
3 comment without a motion on the table.

4 MR. VASQUEZ: We do it all the time.

5 MR. BRADEN: Okay, I'll make a motion for public
6 comment.

7 MS. FARIAS: Second, Mr. Chairman.

8 MR. VASQUEZ: Okay. All right. All in favor
9 aye.

10 Okay. Let's have some speakers. Please tell us
11 how you're representing, and who you are.

12 MS. MEYER: Hi. My name is Robbye Meyer, and I
13 represent the applicant. Good morning -- I guess it's
14 afternoon now, Board, Chairman, Ms. Boston.

15 How we got here is Texas probably has one of the
16 best applications for the tax credit program there is. It
17 allows an applicant to enter information in one place and
18 it form fills throughout the application, and that's a good
19 thing because we don't have to enter information numerous
20 times in the application.

21 However, when an applicant makes a mistake, it
22 form fills throughout the application, and that mistake is
23 carried out in several places. That's exactly what
24 happened here.

25 The credit amount was listed on Tab 17, which

1 carried over to Tab 30, which is the development cost
2 schedule. It carries over into sources and uses, Tab 31.
3 That is then sent to our lender and syndicator for
4 signature, and to prepare the letters of intent.

5 So that's why you have several exhibits in the
6 application that confirm the credit amount that was
7 requested. The rule on how -- you have statute that says
8 the applicant can't supplement an application. However,
9 TDHCA several years ago put in a workaround with a limited
10 review process that says after the submission of an
11 application, an applicant identifies an error in the
12 application that could likely be a subject of a deficiency,
13 and the applicant may request a limited review of the
14 specific and limited issues that need clarification or
15 correction.

16 And that -- therefore, that was one of the
17 things that we did. We asked for a limited review to
18 correct that credit amount.

19 An example that is given in the QAP, which Mr.
20 Campbell read out to you, would be to correct the nonprofit
21 set-aside. This assumes that in the preapplication, an
22 applicant marked the nonprofit set-aside box. In order to
23 do that, then the Department would be allowing an applicant
24 to preserve their points, which is no different than what
25 this applicant is doing -- is requesting from you.

1 It's to the preserve the points that they
2 requested at preapplication because they requested the
3 correct credit amount at preapplication. They requested
4 the correct points at preapplication. They requested the
5 correct points at full application, and they made an \$8,900
6 error in their credit amount at full application.

7 They requested through the limited review
8 process to correct that error. That's what they're doing.

9 I can say, almost without a doubt, there's not
10 an applicant or a developer that participates in this
11 program that would give up a point for \$8,900 in credit.
12 The applicant respectfully requests that you allow them to
13 correct an error that they made on their full application
14 to what they intended to do, by what they submitted in
15 their preapplication, and the points that they requested at
16 full application and at preapplication.

17 I thank you for your time.

18 MR. VASQUEZ: Thank you, Ms. Meyer.

19 Mr. Shackelford?

20 MR. SHACKELFORD: Thank you, Mr. Chairman. John
21 Shackelford, I represent the applicant in this matter. And
22 I feel your pain because I understand you sort of feel like
23 you may be caught between a rock and a hard place with what
24 the rules are.

25 I can't disagree with any of what Mr. Campbell

1 said, or Mr. Braden, what you're bringing up. And at the
2 same time, you know, I found this Board to be very
3 judicious when we have these gotcha moments, and I feel
4 like that's one of this gotcha moments.

5 Ms. Meyer is a terrific consultant. She's done
6 this for a long time, used to be with the Department.
7 Nobody, like she just said, would give up one point between
8 the preapp scoring and the application scoring over \$8,900.
9 I mean, it would make absolutely no sense.

10 It was just human error, and you know, it's
11 unfortunate that that's the way system is. And the
12 language that's in the limited review process that's in the
13 QAP, it is a bit ambiguous, because you can take the
14 position that the example that's given, that Mr. Campbell
15 read and Ms. Meyer just referred to, that goes to a scoring
16 item.

17 If somebody didn't mark the box on a, you know,
18 nonprofit set-aside, they could -- might qualify to get a
19 deal if they didn't go in the set-aside that they intended
20 to go into. So it does impact the merits of an application
21 in the example that's given in the limited review language
22 in the QAP. I think it's similar to what our situation is
23 in this particular situation.

24 So I would just respectfully request an
25 accommodation here on behalf of this applicant, that the --

1 Ms. Meyer made a mistake. It auto -- you know, filtered
2 throughout the application. As soon as the mistake was
3 caught, Ms. Meyer contacted the Department. We corrected
4 the letters of intent from the lender and the investor, and
5 that's where we are.

6 Thank you.

7 MR. MARCHANT: Mr. Chairman, if I wanted to be
8 in favor of this, as a Board member and as a Board, do we
9 have statutory authority to grant this?

10 MR. VASQUEZ: Mr. Eccles?

11 MR. ECCLES: It's questionable.

12 MR. MARCHANT: If you had to write a legal
13 opinion on it, it would be no? I mean --

14 MR. VASQUEZ: Again, we --

15 MR. ECCLES: I'd be happy to discuss my legal
16 process after.

17 MR. MARCHANT: Yeah, I'm not trying -- I'm just
18 saying. Do we need some guidance, or do we have --

19 MR. VASQUEZ: And again, we've had this type of
20 discussion in the past, again distinguishing between the
21 statute and the rule. And I think you were on the Board.
22 I mean, maybe it was only your first meeting.

23 MR. MARCHANT: I'm afraid it was my first
24 meeting.

25 MR. VASQUEZ: Was that your first meeting? You

1 asked that question.

2 MR. MARCHANT: It was crystal clear to me.

3 MR. VASQUEZ: Yeah, you asked that question, you
4 know, was it -- you know, if this is the law, we can't
5 change it.

6 MR. MARCHANT: I mean, we can't override the
7 law.

8 MR. VASQUEZ: I mean I -- to me, it seems like,
9 yeah, it's a gotcha. It's a -- I mean it's -- but at the
10 same time, as has been explained to us over the years by
11 our Counsel, who we're supposed to listen to --

12 MR. ECCLES: He said begrudgingly.

13 MR. VASQUEZ: -- it's just, I feel our hands are
14 tied, as much as I hate it.

15 If this was a rule, yeah, I mean, come on. It's
16 a minor adjustment of moving it down. But I just, I don't
17 know if we have that leeway.

18 Ms. Farias, do you have a question?

19 MS. FARIAS: No, sir. As the new kid, I'm
20 willing to make the motion.

21 MR. VASQUEZ: Well, do we have any other
22 discussion or questions or -- okay.

23 And this one, the staff is recommending to deny
24 the appeal?

25 MR. CAMPBELL: Yes, sir.

1 MR. VASQUEZ: Okay. So Ms. Farias, do you care
2 to make a motion?

3 MS. FARIAS: Mr. Chairman, I move the Board deny
4 the request by the applicant to have proposed application
5 amendments made after the application submission deadline
6 be considered under the limited review provision in 10 TAC,
7 Section 11.201, subsection 7.

8 MR. BRADEN: Second.

9 MR. VASQUEZ: There's a motion made by Ms.
10 Farias, seconded by Mr. Braden. Any further discussion?

11 All those in favor of denying the request say
12 aye.

13 (A chorus of ayes.)

14 MR. VASQUEZ: It's unanimous.

15 Thank you, Mr. Campbell, well done today.

16 At this point, we have come to the section of
17 the agenda where public members may comment on items that
18 were not posted as agenda items but which are under the
19 purview of the Department.

20 And seeing no one jumping up to do that, let me
21 just state that I am very pleased -- I should have
22 emphasized this beforehand, welcoming Ms. Farias to the
23 Board.

24 (Applause.)

25 MR. VASQUEZ: We have -- although one was absent

1 today, so I feel badly that you're off alone there.

2 But Mr. Thomas will be back here. So we have a
3 full house now, and it just -- I think it's really great
4 that the governor is appointing people like Secretary
5 Farias and Congressman Marchant with just tremendous
6 experience in these -- under -- in this area. And just
7 showing how, you know, this is an important board and what
8 industry is doing, what staff is doing. I mean it's --
9 this is great for Texas. So welcome aboard.

10 MS. FARIAS: Thank you.

11 MR. VASQUEZ: The next meeting is -- I don't
12 know.

13 MR. ECCLES: May 12.

14 MR. VASQUEZ: May 12th, here? Next meeting is
15 scheduled for May 12th. We will meet here, but the start
16 time on the meeting is pending.

17 Ms. Farias, you'll get to -- I think we're --
18 are we going to start on the request for administrative
19 deficiencies? You're going to love that part of just being
20 on this Board.

21 So it is 12:59, and the meeting is adjourned.

22 (Whereupon, at 12:59 p.m., the meeting was
23 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: April 14, 2022

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 152153, inclusive, are the true,
8 accurate, and complete transcript prepared from the verbal
9 recording made by electronic recording by Elizabeth
10 Stoddard before the Texas Department of Housing and
11 Community Affairs.

12 DATE: April 21, 2022
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19 _____
(Transcriber)

20
21 On the Record Reporting
22 7703 N. Lamar Blvd., #515
23 Austin, Texas 78752
24
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