

**SUPPLEMENTAL BOARD BOOK  
OF  
FEBRUARY 21, 2019**



**J. B. Goodwin, Chair**

**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Asusena Reséndiz, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
GOVERNING BOARD MEETING

A G E N D A  
8:00 AM  
FEBRUARY 21, 2019

Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E. 11th Street  
Austin, Texas 78701

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

*Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.*

*Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*

Resolution Recognizing February as *Black History Month*

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summary for December 6, 2018

**J. Beau Eccles**  
General Counsel

**LEGAL**

- b) Presentation, discussion, and possible action regarding the adoption of a Final Order of debarment for John R. Dykema Jr. and Dykema Architects, Inc.

**Jeffrey T. Pender**  
Deputy General Counsel

**COMMUNITY AFFAIRS**

- c) Presentation, discussion, and possible action on approval of the draft 2019 Department of Energy Weatherization Assistance Program state plan for public comment

**Michael DeYoung**  
Director of  
Community Affairs

**BOND FINANCE**

- d) Presentation, discussion, and possible action on Inducement Resolution No. 19-027, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Northgate Village Apartments (#19603) in Dallas

**Teresa Morales**  
Manager of  
Multifamily Bonds

- e) Presentation, discussion, and possible action on Inducement Resolution No. 19-028, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Ventura at Hickory Tree (#19604) in Balch Springs

**MULTIFAMILY FINANCE**

- f) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds

18448	RBJ Phase I	Austin
19409/18454	Grim Hotel	Texarkana

**Marni Holloway**  
Director of MF Finance

- g) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer

18445	Wurzbach Manor	San Antonio
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- h) Presentation, discussion, and possible action on the re-issuance of a Determination Notice for Housing Tax Credits with another Issuer (#18424 Flora Lofts, Dallas)

- i) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) related to Undesirable Site Features

19076	Bellfort Park Apartments	Houston
19112	Hebbronville Seniors Apartments	Hebbronville

**Marni Holloway**  
Director of MF Finance

**HOME AND HOMELESSNESS PROGRAMS**

- j) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Development Notice of Funding Availability and publication in the *Texas Register*

**Abigail Versyp**  
Director of Home and Homelessness Programs

**ASSET MANAGEMENT**

- k) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

17204	Vista Bella	Lago Vista
18015	Cambrian East Riverside	Austin

**Rosalio Banuelos**  
Director of Asset Management

- l) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

01069	Northstar Apartments	Raymondville
01162	Town Park Townhomes	Houston

**RULES**

- m) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §5.801, Project Access Initiative; and an order adopting new 10 TAC §5.801, Project Access Initiative, and directing their publication for adoption in the *Texas Register*

**Brooke Boston**  
Director of Programs

- n) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Administration, Subchapter B, Accessibility and Reasonable Accommodations; and an order adopting new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and directing their publication for adoption in the *Texas Register*

- o) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries, and directing publication for adoption in the *Texas Register*

- p) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.411, Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, and directing publication for adoption in the *Texas Register*

- q) Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.405, Bonding Requirements, and directing publication for public comment in the *Texas Register*
- r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, and directing its publication for public comment in the *Texas Register*
- s) Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.15, Integrated Housing Rule, and directing publication for public comment in the *Texas Register*
- t) Presentation, discussion, and possible action on the adoption of the 2019 State of Texas Low Income Housing Plan and Annual Report, and an order adopting the repeal and new 10 TAC §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register*
- u) Presentation, discussion, and possible action regarding adoption of amendments to 10 TAC §23.24, concerning Administrative Deficiency Process, and §23.51 concerning Contract for Deed General Requirements, and directing their publication in the *Texas Register*
- v) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants; and an order adopting new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and directing publication for adoption in the *Texas Register*

**Elizabeth Yevich**  
Director of  
Housing Resource Center

**Abigail Versyp**  
Director of Home and  
Homelessness Programs

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) TDHCA Outreach Activities, (January-February)
- b) Report on the 2020 QAP Plan
- c) Report on the Department’s 1<sup>st</sup> Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)
- d) Report on the Department’s Interim Balance Sheet/Statement of Net Position for the period ended November 30, 2018
- e) Report on the Department’s 1<sup>st</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures

**Michael Lyttle**  
Director of  
External Affairs

**Marni Holloway**  
Director of  
MF Finance

**Ernie Palacios**  
Director of  
Financial Administration

**Monica Galuski**  
Chief Investment  
Officer

**ACTION ITEMS**

**ITEM 3: PROGRAM CONTROLS AND OVERSIGHT**

Presentation, discussion, and possible action on the contract and sale of Alpine Retirement Community in Alpine, Texas

**Tom Gouris**  
Director of HOME and  
Homelessness &  
Special Initiatives

**ITEM 4: HOMEOWNERSHIP PROGRAM**

Quarterly Report on Texas Homeownership Division Activity

**Cathy Gutierrez**  
Director of  
Texas Homeownership

**ITEM 5: COMMUNITY AFFAIRS**

Presentation, discussion, and possible action on the 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award for Galveston County Community Action Council, Inc.

**Michael DeYoung**  
Director of  
Community Affairs

**ITEM 6: MULTIFAMILY FINANCE**

- a) Presentation, discussion, and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability 18503 Eastern Oaks Apartments Austin
- b) Presentation, discussion, and possible action regarding approval for publication in the *Texas Register* of the 2019-2 Multifamily Direct Loan Notice of Funding Availability: Special Purpose NOFA (Predevelopment)
- c) Presentation, discussion and possible action on staff determination regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features and 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for #19146 New Hope Housing Avenue J
- d) Presentation, discussion, and possible action regarding a request for waiver of rules for Residences of Long Branch, Housing Tax Credit Application #17363

**Andrew Sinnott**  
MF Loan Programs  
Administrator

**Marni Holloway**  
Director of  
MF Finance

**PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS**

**EXECUTIVE SESSION**

The Board may go into Executive Session (close its meeting to the public):

**J.B. Goodwin**  
Chair

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

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

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

**OPEN SESSION**

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

**ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

**NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:**

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

**NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**FEBRUARY 21, 2019**

Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously authorized release of the 2018-1 Multifamily Direct Loan Notice of Funding Availability (NOFA) for up to \$28,862,745 with the application acceptance period beginning on January 4, 2018;

**WHEREAS**, the NOFA has since been amended several times, increasing the amount available to \$62,304,276;

**WHEREAS**, Application #18503, which requested \$2,000,000 in Direct Loan funds for Eastern Oaks Apartments, is a Priority 3 application under the 2018-1 NOFA which has received complete reviews for compliance with program and underwriting requirements;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Medium Portfolio Category 3 and deemed acceptable with conditions by the Executive Award and Review Advisory Committee (EARAC) after review and discussion;

**WHEREAS**, the Direct Loan is the only source of Department funding for this Application and 10 TAC §13.8(c)(6) requires Applications in which the Direct Loan is the only source of Department funding to provide equity in amounts not less than 20% of Total Housing Development Costs and an Appraisal that results in total repayable loan to value of not more than 80%;

**WHEREAS**, the Long Term Feasibility requirements in 10 TAC §10.302(i)(5)(B) of the 2018 Uniform Multifamily Rules requires a Development to not have any negative cash flow throughout the term of the Direct Loan, regardless of the exceptions that exist in 10 TAC §10.302(i)(6);

**WHEREAS**, the Applicant has provided a waiver request of 10 TAC §13.8(c)(6)(A) in accordance with 10 TAC §10.207, asserting that, because this Application is being submitted and will be owned by a public housing authority (PHA) with limited means that are already stretched thin among other programs and services that the PHA operates, and because bringing owner equity into the funding stack



would cause the need for additional waivers with regard to Debt Coverage Ratio, the PHA had no ability to prevent needing a waiver of 10 TAC §13.8(c)(6)(A)

**WHEREAS**, the risk that is intended to be mitigated by 10 TAC §13.8(c)(6)(A) is being partially mitigated by the Applicant's financial institution certifying that that Applicant has liquid assets equal to at least 10 percent of Total Housing Development Costs;

**WHEREAS**, the Applicant has provided a waiver request of 10 TAC §13.8(c)(6)(C) in accordance with 10 TAC §10.207, asserting that, because this property was public housing until 2016, it has not been able to pursue any funding outside of the little operating and capital assistance it has received from Department of Housing and Urban Development (HUD) since it was built, and the PHA had no ability to prevent needing a waiver of 10 TAC §13.8(c)(6)(C);

**WHEREAS**, the risk that is intended to be mitigated by 10 TAC §13.8(c)(6)(C) is being partially mitigated by the reasonable expectation that the post-rehabilitation value of the property will significantly exceed the current as-is value that shows the Department's loan at 89% loan to value;

**WHEREAS**, pursuant to 10 TAC §10.302(i)(6)(A), the Acting Director has the authority to waive certain infeasibility conclusions, and after review of documentation submitted by the Applicant has found it to support unique circumstances that would provide mitigation;

**WHEREAS**, because the rental income for all 30 units in the property is set by HUD for the next 18 years under the Project Based Rental Assistance (PBRA) Contract at a level that will keep the property cash flow positive, staff finds that sufficient mitigation is being provided;

**WHEREAS**, the Long Term Feasibility requirements at 10 TAC §10.302(i)(5)(B) relies on 10 TAC §10.302(d)(4) to determine the Debt Coverage Ratio (DCR) and 10 TAC §10.302(d)(5) regarding the Long Term Proforma for proposed Developments, which must also be waived in order to waive 10 TAC §10.302(i)(5)(B);

**WHEREAS**, the Applicant has also asserted that waiving these rules would allow the Department to fulfill its obligation in Tex. Gov't Code §2306.001(3) of contributing to the "preservation, development, and redevelopment of neighborhoods and communities, including the cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;"

**WHEREAS**, this Application has committed to restricting 20 of the 30 units with 30% Direct Loan income and rent restrictions with the remaining units subject to similar requirements under the Housing Assistance Payment contract in connection with the Rental Assistance Demonstration (RAD) Program conversion;

**WHEREAS**, the Department is not limited to the National Housing Trust Fund requirements identified in the NOFA for the Supportive Housing/Soft Repayment Set-Aside (as this rehabilitation activity is ineligible for that fund source); and

**WHEREAS**, staff recommends the Board approve the waivers requested and award this Application the requested \$2,000,000 in TCAP Repayment Funds (TCAP RF) in order to preserve government-assisted housing occupied by extremely low income households; and

**NOW, therefore, it is hereby**

**RESOLVED**, that waiver of 10 TAC §13.8(c)(6)(A) and (C) related to equity and loan-to-value requirements and 10 TAC §10.302(i)(5)(B) related to Long Term Feasibility is hereby approved;

**FURTHER RESOLVED**, that an award of \$2,000,000 in TCAP RF from the 2018-1 NOFA for Eastern Oaks Apartments is hereby approved in the form presented at this meeting; and

**FURTHER RESOLVED**, that the Board's approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to assure compliance with the applicable rules and requirements.

### **BACKGROUND**

On December 14, 2017, the Board approved the issuance of a NOFA for up to \$28,862,745, which has subsequently been amended to increase the amount available to \$62,304,276 within three set-asides:

- \$22,324,041 in Supportive Housing/ Soft Repayment set-aside, composed of \$3.3 million in TCAP RF, and \$19,024,041 in National Housing Trust Fund
- \$8,215,058 of HOME funds under the CHDO set-aside,
- \$31,765,177 in the General set-aside, composed of \$17,318,946 in HOME, \$5 million in NSP1 Program Income and \$9,446,231 in TCAP RF.

Eastern Oaks Apartments was constructed in 1982 as public housing, and has had minimal repairs completed since that date. It was converted from public housing units to Project Based Rental Assistance on all 30 of the units through HUD RAD program in 2016, along with two other Housing Authority of Travis County properties (Summit Oaks and Alexander Oaks) that utilized 9% competitive housing tax credits as the majority of their financing. Since Eastern Oaks was not

viable as a competitive Housing Tax Credit Application, the property was not included in the tax credit component of the RAD transaction in order to be financed with other soft funding. The subject Application was received in 2018, so that the 2018 Multifamily Direct Loan, and Uniform Multifamily Rules apply.

Staff is recommending the Board's approval of the waivers requested in the Housing Authority of Travis County's (HATC) application (18503) based on HATC demonstrating that they could not have foreseen or prevented needing these waivers as a result of limitations under which a public housing property must operate within. Approval of these waivers will allow the Department to ultimately award TCAP RF totaling \$2,000,000 as a deferred forgivable loan at 0% interest rate with a 30-year term under the Supportive Housing/Soft Repayment Set-Aside, and assist HATC in repairing and modernizing Eastern Oaks Apartments. The waivers requested impact Department requirements regarding feasibility conclusions (10 TAC §10.302(i)(5)(B)) and risk mitigation (10 TAC §13.8(c)(6)(A) and (C)).

With regard to feasibility requirements, while 10 TAC §10.302(i)(4)(A) and 10 TAC §10.302(i)(5)(A) do not apply as a result of the Development meeting the requirements of 10 TAC §10.302(i)(6)(B)(i), which gives an exception to Developments that receive HUD RAD for at least 50% of the units, 10 TAC §10.302(i)(5)(B) requires the Development to be found infeasible if there is negative cash flow through the Direct Loan term. Cash flow for Eastern Oaks is projected to go negative in Year 8 according to the Department's proforma. However, because the PBRA contract is expected to be adjusted annually to cover any shortfall between income and expenses, staff is reasonably confident that cash flow will not go negative as long as the PBRA contract remains in place. The Direct Loan is structured as a deferred forgivable loan – with repayment provisions only in place as a remedy in the event of non-compliance with the terms of the Direct Loan Land Use Restriction Agreement – which 10 TAC §10.302(i)(5)(B) does not contemplate in this context. Additionally, the Applicant provided a resolution from its Board dated February 7, 2019, that irrevocably commits to funding any operating deficits apart from the PBRA that may arise during the affordability period.

Additional risk mitigation is being provided in order to satisfy the intent of the requirements in 10 TAC §13.8(c)(6), by way of \$3 million (inclusive of the Department's \$2 million deferred forgivable loan), or 88.2%, of the \$3.4 million in total sources being soft debt that has minimal, if any, repayment provisions. This Application is minimally leveraged with the \$400,000 from Lone Star National Bank representing the only hard pay debt.

The \$2,000,000 TCAP RF loan comprises approximately 59% of Total Housing Development Costs, with additional funding coming from the City of Austin (\$1,000,000) and Lone Star National Bank (\$400,000). Since the Department's loan amounts to more than 50% of Total Housing Development Costs, the Applicant provided a letter from their financial institution (International Bank of Commerce) indicating that they have liquid assets equal to at least 10% of Total Housing Development Costs that could be contributed to the development.

The TCAP RF loan will be superior to the Lone Star National Bank loan and the City of Austin's loan, and will maintain first lien position during the construction and permanent periods. The recommended application and award amounts are outlined in the attached award recommendations log behind this Board item.

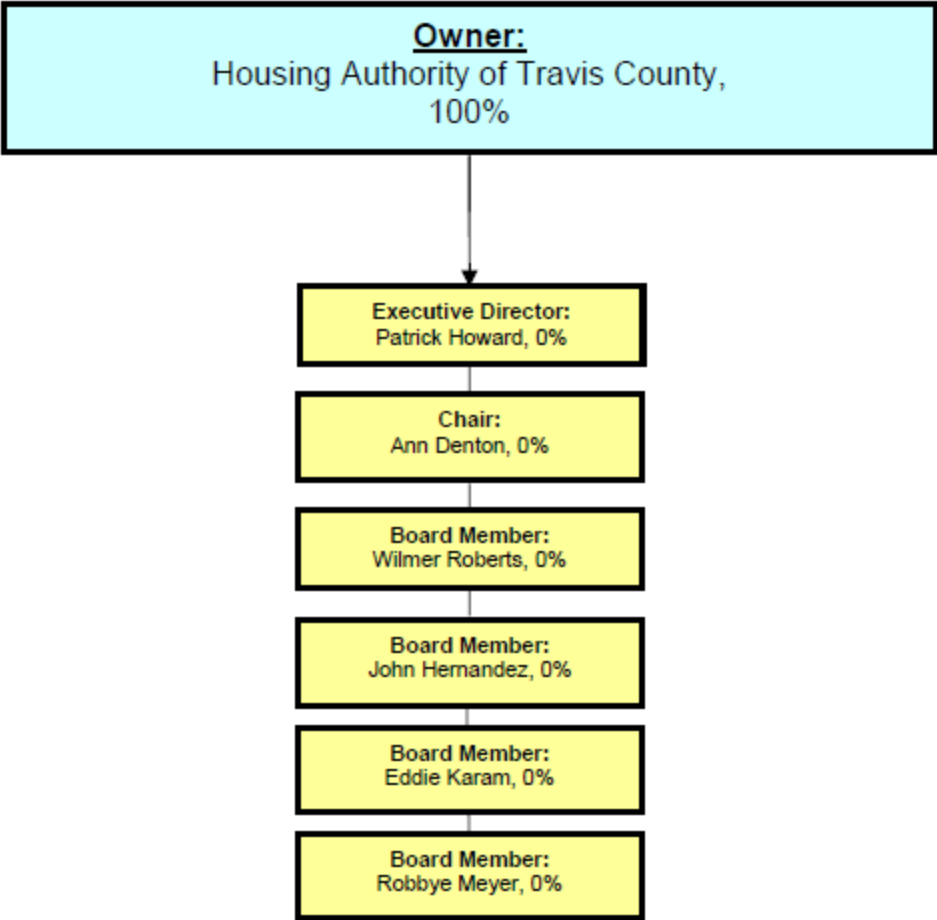
This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

Should the recommended award be approved, \$10,391,000 will remain available under the NOFA, of which eight applications requesting \$10,391,000 are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.

*Organizational Structure and Previous Participation:* The borrower is the Housing Authority of Travis County, and includes principals as indicated in the organization chart below. At the time of the Previous Participation Review, the applicant was a Medium Portfolio Category 3. EARAC recommends approval with the following conditions::

- 1) HATC has designated the Director of Affordable Housing Program and its Housing Specialist as points of contact for all compliance correspondences. HATC will ensure that these persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to a TDHCA LURA over which the Owner has the power to exercise Control.
- 2) HATC is required to ensure that the Director of Affordable Housing Programs and the Housing Specialist attend and review the trainings listed in (A), (B) and (C) of this subsection and provide TDHCA with certification of attendance or completion no later than **December 31, 2019**.
  - A. Housing Tax Credit Training sponsored by the Texas Apartment Association;
  - B. 1st Thursday Income Eligibility Training conducted by TDHCA staff;
  - C. Review of the TDHCA Compliance Training webinars:
    - i. 2012 Income and Rent Limits Webinar Video;
    - ii. How to properly use the Income and Rent Tool;
    - iii. Income Eligibility Presentation Video;
    - iv. 2015 Tenant Selection Criteria Webinar Video;
    - v. 2015 Tenant Selection Criteria Presentation;
    - vi. 2015 Tenant Selection Criteria- Q and A's;
    - vii. §10.610 - Tenant Selection Criteria;
- 3) The Executive Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

*Public Comment:* There have been no letters of support or opposition received by the Department in connection with this current application.



February 7, 2019

Marni Holloway  
Director of Multifamily Finance Production  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Eastern Oaks Apartments  
4922 Nuckols Crossing Road  
Austin, TX 78744  
TDHCA #18503

Dear Marni:

On behalf of the Housing Authority of Travis County (the "Applicant"), please accept this letter as a request of waiver for the following sections of the Underwriting Rules and Guidelines and the Multifamily Direct Loan Rule:

- **10.302 (i)(4)(A)** which states that a Development's first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 65 percent. This percentage is calculated as 81% for Eastern Oaks.
- **10.302(i)(5)(A) and (B)** which states that a Development's Long Term Pro Forma cannot reflect a Debt Coverage Ratio of below 1.15 or negative cash flow at any time during years two through fifteen. The subject property, Eastern Oaks Apartments, has a first year DCR of 1.31 and a 15-year DCR of 0.72 with years 10-15 experiencing negative cash flow.
- **13.8(c)(6)(A)** which requires that if the Direct Loan is the only source of Department funding for the Development, then the Development Owner must provide equity in the amount not less than 20 percent of Total Housing Development Costs.
- **13.8(c)(6)(C)** which requires that if the Direct Loan is the only source of Department funding for the project an "As-Is" appraisal that provides a loan to value not greater than 80% must be provided.

Per 10 TAC 10.207(1) and (2), please find below the two requirements that a waiver must meet in order to be granted along with the documentation specific to this waiver request and how it meets those requirements:

1) **“...the waiver was both not reasonably foreseeable and was not preventable by the Applicant.”**

Eastern Oaks is an existing and occupied public housing authority owned property that has been providing deeply affordable rents for the past 38 years. The property has been adequately maintained with the severely limited income generated off the property, but after almost four decades the property is tired and in desperate need of rehabilitation.

- 10.302 (i)(4)(A) – There is no way for the Applicant to prevent the fact that the expenses forecasted for the property are more than 65 percent of the contract rents established per the HUD RAD program through a HAP contract. The first prevention strategy might be to increase rents and thereby reduce this ratio; however, this is not an option for a public housing authority. HATC’s first mission is to achieve a public need and that need is for more deeply affordable rents. All 30 households at Eastern Oaks pay just 30% of their income toward rent with the HAP subsidy making up the balance. HATC does not have the desire nor the authority to increase rents above those HUD-determined HAP rents. A second prevention strategy might be to decrease the expenses for the property, but doing so would set this property up for financial failure. A small apartment community already loses efficiency of scale. When you start cutting back on expenses, it becomes reflective in lower-quality property management and maintenance of the asset. This is not the type of property that either HATC or TDHCA want to see in their portfolio.
- 10.302(i)(5)(A) and (B) – For 38 years, Eastern Oaks has been operated debt-free. This is purposeful, as the rents have always been low and the property is small with a lean budget and minimal cash flow. When putting together the funding stack for the major rehabilitation of Eastern Oaks, we had the following parameters: fixed rents per the HAP contract, forecasted expenses based off historicals with adjustments for a new building, major funding sources and their terms, and a shared goal of setting this small property up for a healthy financial operation. The sources and uses have been adjusted innumerable times through this MFDL application process in order to try to get the numbers to fit within the required DCR guidelines and no matter how we adjust, we hit a threshold. The first prevention strategy to ensuring a positive cash flow in years 2-15 would be to lower or remove the small debt amount and instead require HATC to put in owner equity. We tried this. Doing so then bumps the first year DCR over the 1.35 threshold and so we would still be asking for a waiver. A second strategy might be to increase rents or lower expenses, but as referenced in the first bullet – HATC cannot raise rents as they are fixed per the HAP contract and lowering expenses is not prudent for long-term financial management. HATC is 100% dedicated to the successful long-term ownership and operation of Eastern Oaks and therefore a very realistic solution was for HATC to make a long-term irrevocable commitment to feed any negative cash flow over the life of the property which mitigates any risk for not meeting the requirement.



13.8(c)(6)(A) - Eastern Oaks, as public housing, has extremely limited income and therefore can only take on minimal debt. In addition, the Housing Authority of Travis County is not a high-yield tax credit developer who has a couple of deals every year. This is one of only a few potential projects, and therefore the developer fee is critical to covering staff and overhead. Over the past few years, HATC has taken great care to improve their financial standing and become more proactive stewards of their assets. They are developing supportive service programs that help sustain and stabilize their residents in housing. The first and only applicable strategy to this waiver request would be for HATC to put in owner equity. This was not foreseeable for the Applicant when putting together the funding stack and is not preventable. The Applicant has applied to the City of Austin for \$1M to further leverage the MFDL funding. The City funding will be deferred forgivable and functions very much like owner equity. Further the whole point of embarking on a major rehabilitation of this property is to preserve this asset and create a financial model that performs better than current. If the HATC were to put in owner equity, this take money away from high priority programs and services and other properties that haven't yet been rehabilitated. Finally, if HATC were to put in owner equity, it would generate at DCR above the 1.35 threshold in year 1 and we would be here asking for that waiver, as well.

- 13.8(c)(6)(C) – This waiver request, again, falls into the nature of this specific transaction with a small, very old and tired, public-housing property. There is nothing about this description that is preventable. The property is what it is. The tired state of the property was reflected in the as-is appraisal as was the 100% project-based HAP contract that further limits the income on the property. The value is low and therefore with the \$2M application request, a critical funding layer for the substantial rehabilitation planned for the property, the loan to value is easily exceeded. The only perceived prevention strategy could be to lower the MFDL application amount, but this would create a domino effect for the application – the application can't support more debt, it isn't financially responsible to pull money away from the lean budgets of Housing Authority's, and then the same waivers and then some additional waivers would likely be triggered.

**2) “The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov’t Code, §§2306.001, 2306.002, 2306.359, and 2306.6701,.... than not granting the waiver.”**

In §2306.001, the very first purpose listed for TDHCA is to “assist local governments in providing essential public services for their residents.” The third purpose is “contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income. Eastern Oaks, owned by the Housing Authority of Travis County achieves both of these purposes providing federally-subsidized, safety-net housing for extremely low-income families. With the MFDL funding, Eastern Oaks will be rehabilitated, preserved and rebirthed to allow the Housing Authority of Travis County to continue offering this critical housing resource for Austin families.

**Waiver Requests:**



Eastern Oaks Apartments is a 30-plus year old existing affordable housing community that the Applicant has owned since its original development. In 2016, the property entered into a 20-year Housing Assistance Payment contract through HUD's Rental Assistance Demonstration program that limits all rents at the property to 30% Median Family Income. As a long-term and responsible owner, HATC is proposing a substantial rehabilitation of the property to provide essential upgrades and modernize the property to create a higher-quality housing option for existing families.

- **10.302(i)(4)(A)** which states that a Development's first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 65 percent. This percentage is calculated as 81% for Eastern Oaks.
- **10.302(i)(5)(A) and (B)** which states that a Development's Long Term Pro Forma cannot reflect a Debt Coverage Ratio of below 1.15 or negative cash flow at any time during years two through fifteen. The subject property, Eastern Oaks Apartments, has a first year DCR of 1.31 and a 15-year DCR of 0.72 with years 10-15 experiencing negative cash flow.

The waiver is being requested on the grounds of the special economic nature of this Development as an existing and occupied public housing authority-owned property subject to a HUD project-based rental assistance contract. Historically, HATC, just like housing authorities across the nation, has struggled with the unalignment of limited rental income and higher-than-average operating costs due to aging housing stock. The HATC is marrying the RAD conversion with the substantial rehabilitation of Eastern Oaks to mitigate this unalignment and preserve long-term affordability AND feasibility. While most of the operating expenses will remain static after the rehabilitation, the maintenance and contract costs for the property should drop significantly during the first five years of operations. Unfortunately, HATC only has an estimate of what those maintenance and contract costs will be as their SEA RAD tax credit project is just now completing and will need a few more months of operations to have a useful comparable.

The rental income for this property is set by HUD. HATC, as a public corporation serving the community, is irrevocably committed to the long-term feasibility of the project and will dedicate sufficient equity from its reserve in the case cash flow approaches a negative in Year 15 and has provided evidence of that irrevocable commitment to TDHCA.

- **13.8(c)(6)(A)** which requires that if the Direct Loan is the only source of Department funding for the Development, then the Development Owner must provide equity in the amount not less than 20 percent of Total Housing Development Costs.
- **13.8(c)(6)(C)** which requires that if the Direct Loan is the only source of Department funding for the project an "As-Is" appraisal that provides a loan to value not greater than 80% must be provided.

The waiver is being requested on the grounds that the property has such low rents it can only support minimal debt and therefore the balance of the funding on the property essentially functions as owner equity which includes a \$1M deferred forgivable loan from the City of Austin and TDHCA's \$2M deferred forgivable funding request. In addition, due to the HAP contract on the property, any cash flow from the property is strictly monitored by HUD and therefore this is not a case where a property owner or any affiliate are getting paid more in fee based on available cash flow. The Applicant has also provided a letter from International Bank of Commerce confirming the liquidity available of at least 10% of development costs per 13.8(c)(5)(A) as further evidence of risk mitigation.

The "as is" appraisal provided with the application that shows a value of \$2,240,000. With the original MFDL application amount of \$1,750,000 the loan to value was 78 percent which is under the 80% threshold. However, since the MFDL application amount has been increased to \$2,000,000, the loan to value is now 89.3%.

**Fortunately, there are exceptions for both referenced rule sections as a PATH FORWARD:**

**10.302 (i)(4)(A):** Section 10.302(i)(6)(B) allows for a project meeting one of the listed clauses be considered feasible in reference to paragraph (4)(A). Per 10.302(i)((6)(B)(i), "The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application." Eastern Oaks has a RAD contract on 100% of the units and that documentation was submitted at Application.

**10.302 (i)(5)(A):**Section 10.302(i)(6)(B) allows for a project meeting one of the listed clauses be considered feasible in reference to paragraph (5)(A). Per 10.302(i)((6)(B)(i), "The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application." Eastern Oaks has a RAD contract on 100% of the units and that documentation was submitted at Application.

**10.302 (i)(5)(B):** Unfortunately, Section 10.302(i)(6)(B) which allows for a project meeting one of the listed clauses be considered feasible in reference to paragraph (5)(A), does not apply to paragraph (5)(B) regarding negative cash flow in MFDL loans. This makes no sense in this particular situation since the Housing Authority of Travis County has successfully operated Eastern Oaks for 38 years and has successfully weathered any dips in cash flow by their irrevocable commitment to their public housing purpose. We respectfully ask exception of this infeasibility conclusion per section 10.302 (i)(6)(A) which allows the Executive Director or Committee to waive the requirement if documentation to support unique circumstances and mitigation is provided by Applicant. We ask that this letter and the irrevocable commitment on behalf of HATC to cover any and all operating deficits be that documentation of unique circumstances and mitigation.

# HATC

HOUSING AUTHORITY OF TRAVIS COUNTY

We appreciate the thoughtful consideration of these waivers as it allows this critical housing resource to continue moving forward with the planned rehabilitation.

Please feel free to contact me with any questions at (512) 854-1888.

Sincerely,



Robert Onion

Director of Real Estate, Housing Authority of Travis County



International Bank  
of Commerce

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February 7, 2019

To whom it may concern,

Please be advised that the Housing Authority of Travis County maintains a banking relationship with International Bank of Commerce ("IBC"). Based on the account relationship that the Housing Authority of Travis County currently holds with IBC as of this date, they have enough liquidity to contribute \$340,000, if necessary, towards a development known as Eastern Oaks Apartments.

If you require any additional information, please feel free to contact me at (956) 547-1019.

Sincerely,

Lee Reed

Executive Vice President

International Bank of Commerce – Brownsville

(956) 547-1000 Ext. 21019

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# **PULLED FROM THE AGENDA**