

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

John H. Reagan Building  
Room JHR 140  
105 W. 15th Street  
Austin, Texas

January 18, 2018  
8:00 a.m.

MEMBERS:

J.B. GOODWIN, Chair  
LESLIE BINGHAM ESCAREÑO, Vice Chair  
PAUL BRADEN, Member  
ASUSENA RESÉNDIZ Member  
SHARON THOMASON, Member  
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director

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Austin

- g) Presentation, discussion, and possible action on Inducement Resolution No. 18-013, McMullen Square Apartments, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2018 Waiting List
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P R O C E E D I N G S

1  
2 MR. GOODWIN: I call to order the January 18  
3 meeting of the Texas Department of Housing and Community  
4 Affairs, and we will start with Tim leading us in the  
5 pledge.

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

8 MR. GOODWIN: Please accept my apologies for  
9 the bronchial cedar fever kind of voice.

10 Michael, I think you have a resolution to read  
11 into the record.

12 Sorry. We need to take roll first.

13 Ms. Bingham is not here.

14 Mr. Braden?

15 MR. BRADEN: Here.

16 MR. GOODWIN: Mr. Goodwin, yes.

17 Ms. Reséndiz?

18 MS. RESÉNDIZ: Present.

19 MR. GOODWIN: Ms. Thomason?

20 MS. THOMASON: Present.

21 MR. GOODWIN: And Mr. Vasquez is not here. We  
22 have a quorum.

23 Michael.

24 MR. LYTTLE: Yes, sir. We have a resolution to  
25 read into the record. It reads as follows:

1                   "Whereas, February 2018 is Black History Month,  
2 and has a nationally designated theme of "African  
3 Americans in Times of War," commemorating the centennial  
4 of the end of the First World War in 1918;

5                   "Whereas, the Texas Department of Housing and  
6 Community Affairs (the "Department") recognizes the  
7 significance of Black History Month as an important time  
8 to acknowledge the struggles and to celebrate the  
9 contributions of African American soldiers and sailors,  
10 veterans, and civilians in Texas' history, American  
11 history, and world history;

12                   "Whereas, the Department recognizes the roles  
13 of African Americans in times of war, from the  
14 Revolutionary War Era to that of the present "War against  
15 Terrorism," in making the world safe for democracy; and

16                   "Whereas, the Department recognizes that the  
17 ethnic and racial diversity of Texas soldiers and veterans  
18 enriches and strengthens not only our nation=s military,  
19 but our nation as a community;

20                   "Now, therefore, it is hereby resolved, that  
21 the Texas Department of Housing and Community Affairs C

22                   "(1) recognizes the significance of Black  
23 History Month as an important time to acknowledge, better  
24 understand, and celebrate the history of African  
25 Americans, and encourages the continued celebration of

1 this month to provide an opportunity for all peoples of  
2 the State of Texas to learn more about the roles of  
3 African Americans in every American war, from the  
4 Revolutionary War Era to that of the present "War against  
5 Terrorism" and its effects on the past, present and future  
6 of our Lone Star State, the United States, and the World;  
7 and

8 "(2) recognizes the specific and unique issues  
9 faced by African Americans in times of war, including the  
10 impact of migration and urban development, and the  
11 responsibility of providing equal housing opportunities  
12 for all.

13 "The Governing Board of the Texas Department of  
14 Housing and Community Affairs does hereby celebrate  
15 February 2018 as Black History Month in Texas and  
16 encourages all Texas individuals and organizations, public  
17 and private, to join and work together in this  
18 observance."

19 MR. GOODWIN: Do I hear a motion to adopt the  
20 resolution?

21 MR. BRADEN: So moved.

22 MR. GOODWIN: Second?

23 MS. THOMASON: Second.

24 MR. GOODWIN: Moved and seconded. All those in  
25 favor say aye.



1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: It passes.

5 We have the consent agenda and consent agenda  
6 report items. Any Board members want to pull any of those  
7 items?

8 (No response.)

9 MR. GOODWIN: If not, I'll received a motion  
10 for acceptance of the consent agenda and consent agenda  
11 report items.

12 MS. RESÉNDIZ: So moved.

13 MR. GOODWIN: So moved. A second?

14 MR. BRADEN: Second.

15 MR. GOODWIN: Moved and seconded. All in favor  
16 say aye.

17 (A chorus of ayes.)

18 MR. GOODWIN: Opposed?

19 (No response.)

20 MR. GOODWIN: Okay. Then we'll move into item  
21 3, the action items. We will start with the quarterly  
22 report on Texas Homeownership Division. Cathy --not  
23 Cathy, Monica.

24 MS. GALUSKI: Good morning. Monica Galuski.  
25 Cathy is unfortunately not here. She's attending to an

1 ill family member, so we wish her well and wish she were  
2 here, because I'm wholly unprepared to present this, but  
3 the good thing is, as you can see in your report, the  
4 charts speak for themselves. We are continuing to have  
5 extremely high activity in our homeownership programs for  
6 single families.

7 Our TBA program, which is our core lending  
8 program, we're currently averaging about \$96 million a  
9 month. Just back a year and a half, two years ago, we  
10 were doing a total of \$250 million a year, so that is  
11 significant.

12 Our MCC activity is still extremely high on the  
13 standalone front, and this is all sort of due to changes  
14 that we made to the structure of the program, bringing in  
15 the new master servicer, setting up a line of credit with  
16 Federal Home Loan Bank, getting the loan with Wood Forest,  
17 so we're able to offer a very attractive product.

18 One very noteworthy thing is we have maintained  
19 very strict income and purchase price limits. We are  
20 still maintaining our lending for true low to moderate  
21 income homebuyers, true first time homebuyers, and that's  
22 something that I think we can be really proud of. We're  
23 staying true to the mission.

24 Cathy's group is phenomenal. Their lender  
25 relationships, the way they've maintained and expanded

1 those relationships and their ongoing relationship just  
2 continues to allow us to be successful in this area.

3 So sorry I'm not Cathy. We wish her and her  
4 family well. Does anyone have any questions?

5 MR. GOODWIN: Any questions for this unprepared  
6 witness?

7 (General laughter.)

8 MR. GOODWIN: Thank you. Do I hear a motion to  
9 accept the report?

10 MR. BRADEN: So moved.

11 MR. GOODWIN: Second?

12 MS. THOMASON: Second.

13 MR. GOODWIN: Any other questions?

14 (No response.)

15 MR. GOODWIN: If not, all in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Moving on to 4(b). Patricia, I  
20 think you're going to talk to us a little about the change  
21 in reporting to the Internal Revenue regarding eligible  
22 status -- eligible basis -- I'm sorry.

23 MS. MURPHY: Yes. Good morning. Patricia  
24 Murphy, chief of Compliance.

25 The next item is a report to you and the wider

1 audience about compliance issues related to eligible basis  
2 and reporting of those matters to the Internal Revenue  
3 Service.

4 As you know, we monitor for compliance with the  
5 Housing Tax Credit Program, so when we go to monitor a  
6 property, if we identify noncompliance, we give the owner  
7 notice, give them a period of time to cure those issues or  
8 show they were continually in compliance. At the end of  
9 that period, if there truly was noncompliance, we report  
10 that to the Internal Revenue Service on Form 8823. The  
11 IRS has a guide for state housing finance agencies to use  
12 when monitoring for the Housing Tax Credit Program that we  
13 rely on.

14 Historically, if properties were charging for  
15 amenities, such as garages or storage or covered parking  
16 or things such as that, we checked to see if the owner had  
17 excess basis or had voluntarily removed those items from  
18 eligible basis when they submitted their cost  
19 certification. Staff attended a training class that  
20 instructed that charging for amenities that could  
21 potentially be included in the development's eligible  
22 basis is an issue that we're supposed to be reporting to  
23 the IRS on Form 8823. There may be no tax impact but the  
24 state housing finance agency does not have sufficient  
25 information to make that determination, only the IRS does.

1 After that class we contacted the IRS and requested  
2 guidance on the matter. The IRS program analyst indicated  
3 that, indeed, we were to report any time a development was  
4 charging for amenities that could be included in the  
5 property's eligible basis.

6 Upon posting of this Board report, it has come  
7 to my attention that this issue has been circulated  
8 broadly and perhaps there are some other points of view on  
9 this issue. So to be certain, again yesterday we  
10 contacted the IRS and we also shared the report item  
11 that's in your Board book. The IRS analyst that we spoke  
12 with in the fall has retired and this new IRS analyst  
13 would like some time to visit with the attorneys of the  
14 Treasury Department and provide additional guidance.

15 So at this time we're going to continue to  
16 handle the matter as we always have. If properties are  
17 charging for amenities, we will look to see if there is  
18 excess basis, enough to reasonably cover the cost of the  
19 amenity, and if so, we won't say anything.

20 We wanted to still present this item today and  
21 hear comment, if there is any, but to frame this issue, we  
22 need to do a little like Tax Credits 101, so I'm going to  
23 run through some examples that are pretty general in  
24 nature but illustrate the issue.

25 So eligible basis is the total depreciable cost

1 of developing a property. I think the easiest way to  
2 think of it is as the cost of construction. So if you  
3 take your eligible basis and you multiply it by the  
4 applicable fraction, which is the low income occupancy of  
5 the property, so if a property is supposed to be 100  
6 percent low income or 80 percent low income, you take the  
7 eligible basis times applicable fraction equals qualified  
8 basis. If you multiply the qualified basis times the  
9 applicable credit percentage, the 9 percent or the 4  
10 percent, that equals tax credits the owner is allowed to  
11 claim. So eligible basis, applicable fraction, credit  
12 percentage.

13 Owners use IRS Form 8609 to actually claim the  
14 credit. It's a two-part form and Part 1 is completed by  
15 the state housing finance agency, Part 2 is completed by  
16 the owner the first year they claim the credit. In  
17 general, when staff completes Part 1 of the 8609, they  
18 indicate the maximum amount of credits that an owner can  
19 claim which is limited by the amount that they were  
20 allocated when they were awarded. If a property has  
21 construction cost overruns -- which we hear a lot about,  
22 construction costs are rising -- so if they have  
23 construction cost overruns, they're eligible basis will be  
24 greater than the amount that was anticipated at the time  
25 of the award. This is like their excess basis.

1 Throughout the compliance period if the property  
2 experiences noncompliance, they can use that excess basis  
3 to kind of cover the decrease in the applicable fraction.

4 So let me give you just a simple example.  
5 Let's say at application a property expected to have an  
6 eligible basis of a million dollars, they said we're going  
7 to be 100 percent low income, and they were in 9 percent  
8 credit. So they would get \$90,000 from our ceiling.  
9 Right? The 9 percent is a competitive process so we only  
10 have a certain amount that we can award, they would get  
11 \$90,000 of that, and they can claim that every year for  
12 ten years.

13 So if they do their property and their  
14 construction and they have construction cost overrun,  
15 let's say they come in at \$1.3 million and they're still  
16 doing 100 percent and 9 percent credit, they still only  
17 get \$90,000 because that's all we set aside for them and  
18 that's what they get. This is different for 4 percent  
19 credit, but for the 9 percent credit, that's kind of how  
20 it works.

21 So when the owner completes Part 2 of the 8609,  
22 each building's eligible basis is reported to the IRS,  
23 it's reported on line 7. In the example that I've just  
24 given, the owner can list their eligible basis as \$1.3  
25 million because that's how much they spent in developing

1 the property. If there's noncompliance, and let's say the  
2 applicable fraction falls to 90 percent, there's no tax  
3 impact because \$1.3 million times 90 percent times the 9  
4 percent credit still comes t more than \$90,000, so despite  
5 the noncompliance, they can claim all of the credit that  
6 was allocated to them.

7           However, if the property's eligible basis  
8 includes amenities, like parking, storage, garages, and  
9 they're charging tenants for those items, they're not to  
10 be included in the eligible basis, but there's no way for  
11 the IRS to know they're charging for those things if we  
12 don't report it. So if they were charging for amenities  
13 and experience noncompliance, then there is a possible tax  
14 consequence.

15           So we are awaiting guidance from the Internal  
16 Revenue Service, the gentleman we spoke with yesterday to  
17 get a clear understanding of the issue, because if there's  
18 no noncompliance and we report that they're charging for  
19 things in eligible basis, who cares. Right? So we're  
20 waiting for some guidance from the IRS on this matter on  
21 exactly what they would like us to report and when and  
22 under what circumstances, and we'll bring back to you an  
23 update at that time. But we wanted to go ahead and still  
24 present this today, and if there's any public comment on  
25 the matter, we'd like to know other people's perspectives



1 on this and even share that with the IRS.

2 Do you have any questions?

3 MR. GOODWIN: Thank you, Patricia. Any  
4 questions?

5 (No response.)

6 MR. GOODWIN: No questions. Any public  
7 comment? Cynthia, did you want to comment?

8 MS. BAST: Yes, thank you. Good morning. I'm  
9 Cynthia Bast of Locke Lord.

10 First of all, I want to say I truly appreciate  
11 Patricia bringing this out in this very open manner so  
12 that we could all know about this shift. I've been doing  
13 this for a long time and I have seen over the years that  
14 from time to time there is a shift in the way someone at  
15 the IRS or someone at HUD looks at a program, looks at a  
16 procedure, and wants to see something happen differently.

17 This particular issue, as Patricia indicated,  
18 has been in place for a long time, this procedure of not  
19 reporting charging for things when there's excess basis or  
20 they were excluded from basis, and a change would be a  
21 very big deal for the owners out there. To this date, the  
22 Department, I believe, has relied upon the accountants,  
23 the developer general partners, and the investors to self-  
24 police, that they're reporting to the IRS what is  
25 legitimately in their eligible basis and they're not

1 charging for things that would have been included in that  
2 eligible basis, and so this brings another element to it  
3 with the Form 8823.

4           There are partnership agreements out there  
5 between developers and investors that say if you have an  
6 8823 that that potentially creates a fault with the  
7 investor. Investors have concerns about that too, it puts  
8 them on the IRS radar screen for potential review, audit,  
9 et cetera. So this really would be a very big change, and  
10 I just want to put that out there.

11           And so because of that, when I saw it, I  
12 consulted with my colleague lawyers here in Texas who  
13 represent clients before this agency, and we all agreed  
14 that I would reach out to the American Bar Association,  
15 which has a listserv for attorneys practicing in  
16 affordable housing. It's a very vibrant group that shares  
17 thoughts and ideas on a regular basis, and so I did reach  
18 out to that group and asked if anyone else was seeing this  
19 in their states, if they were seeing their allocating  
20 agencies getting this interpretation, taking this path, or  
21 even if any of them were talking to the IRS or hearing  
22 this from the IRS, and I got no responses that anyone in  
23 any other jurisdiction was aware of this kind of potential  
24 change in the way IRS was looking at things.

25           So I sincerely appreciate that the Department

1 is doing everything it can to try to get a good answer  
2 from the IRS because it will have very meaningful  
3 implications to everyone across the country, and I thank  
4 you for the time.

5 MR. GOODWIN: Okay. Any questions?

6 (No response.)

7 MS. LATSHA: Good morning.

8 MR. GOODWIN: Good morning.

9 MS. LATSHA: Jean Latsha with Pedcor  
10 Investments.

11 I just wanted to kind of echo what Cynthia was  
12 saying. This kind of came to my attention through Cynthia  
13 and that whole blast just a couple of days ago. We are a  
14 national development company and kind of looking into this  
15 too. Haven't had a chance to really research it as far as  
16 what other states are doing, but as an example, all of our  
17 4 percent tax-exempt bond developments in Texas, we don't  
18 include in basis carports and garages and we do get income  
19 from renting out those carports and garages which is part  
20 of the entire financial structure of these developments.  
21 And so just to echo what Cynthia said, in that very just  
22 one specific example, it would be a huge change if  
23 suddenly we weren't able to charge for them or whatever it  
24 is that that implication would be.

25 And so just from an owner-developer-operator

1 perspective, just wanted to echo what Cynthia said, and  
2 also appreciate that staff is really looking into this to  
3 make sure it's handled the right way. Thank you.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MR. GOODWIN: Patricia, I had a question. Did  
7 I understand you to say that this only affected the 9  
8 percent?

9 MS. MURPHY: No. The example I gave was a 9  
10 percent credit.

11 MR. GOODWIN: But it would also have the same  
12 impact on the 4 percent?

13 MS. MURPHY: Correct.

14 MR. GOODWIN: Okay. I just wanted that  
15 clarification. Thank you.

16 MS. MURPHY: Thank you.

17 MR. GOODWIN: Any other comments?

18 (No response.)

19 MR. GOODWIN: Do I hear a motion to accept this  
20 report?

21 MS. THOMASON: So moved.

22 MR. GOODWIN: Moved. Second?

23 MR. BRADEN: Second.

24 MR. GOODWIN: Any discussion?

25 (No response.)

1 MR. GOODWIN: All in favor say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Opposed?

4 (No response.)

5 MR. GOODWIN: Okay. We'll move on to 4(a).

6 Marni.

7 MS. HOLLOWAY: Good morning, Chairman Oxer --  
8 Chairman Goodwin -- I'm sorry.

9 MR. GOODWIN: That's okay.

10 MS. HOLLOWAY: It's really early. I should  
11 have taken you up on that coffee.

12 MR. GOODWIN: I know I've had a big impact on  
13 you.

14 (General laughter.)

15 MS. HOLLOWAY: Chairman Goodwin, members of the  
16 Board, I'm Marni Holloway, the director of the Multifamily  
17 Finance Division.

18 Item 4(a) is presentation, discussion and  
19 possible action on a request for rural designation under  
20 10 TAC 10.204(5)(B) for the Cameron Park Colonia. So  
21 under statute and rule, a political subdivision or a  
22 census designated place may request to be designated as  
23 rural if the area meets certain criteria. This  
24 designation would allow an application for 9 percent  
25 credits to compete in the rural subregion, which is

1 generally less competitive, and would allow for the longer  
2 distance measurements used for rural opportunity index.

3 Cameron County has submitted a request that an  
4 unincorporated colonia area surrounded by the City of  
5 Brownsville be designated as rural. The area includes the  
6 census designated place Cameron Park. The request for  
7 rural designation was supported by a letter and materials  
8 provided by the county judge of Cameron County and  
9 supplemental information requested by the staff. After  
10 reviewing the information, staff cannot confirm the rural  
11 nature of the area and the rule requires that if staff  
12 cannot make a determination, a recommendation of denial be  
13 presented to the Board.

14 The county judge is a local government official  
15 with authority to speak on behalf of the area in question  
16 and his letter relates to this area alone, not the entire  
17 county. This is important because the areas requesting  
18 designation may not have a population that exceeds 25,000,  
19 so although Cameron County as a whole has a population  
20 greater than the limit, the request is limited to this  
21 much smaller area. If the Board determines that this  
22 threshold matter has been addressed, it must consider  
23 whether the county judge has provided sufficient support  
24 of the five other factors contained in the rule for his  
25 assessment that the limited area in question is rural in

1 nature.

2           Again, this area is entirely surrounded by the  
3 City of Brownsville which is in the Brownsville-Harlingen  
4 metropolitan area. The judge has stated that the area  
5 contains a large amount of agricultural or undeveloped  
6 land, a high number of residents without sewage service  
7 and unpaved streets, and is considered by HUD and USDA and  
8 state use of CDBG and Housing Trust Fund to be rural.  
9 It's important to note that these funds sources I've just  
10 mentioned actually consider the area to be a colonia which  
11 does not necessarily equate directly to rural. The state,  
12 along with federal agencies, has been working in the  
13 colonia for more than a decade to improve the conditions  
14 that led to this original designation. And I've asked  
15 Homero to stick around in case you have any questions  
16 about colonias because he's been leading our efforts in  
17 that area.

18           The area does contain some developed parts,  
19 developed areas and housing that's not atypical for the  
20 City of Brownsville, it also has two elementary schools.  
21 These features are not uncommon in similarly sized rural  
22 communities throughout the state. Staff believes that  
23 deference to the county judge's assessment of all these  
24 factors considered as a whole is warranted, but because of  
25 the area's location within a major city and metropolitan

1 area, believes that this is a matter most appropriately  
2 handled by the Board, therefore, staff requests that the  
3 Board determine if the request for rural designation for  
4 the Cameron Park Colonia and adjacent unincorporated area  
5 is acceptable.

6 I'd be happy to take any questions.

7 MR. GOODWIN: With no recommendation from  
8 staff?

9 MS. HOLLOWAY: We have no recommendation.

10 MR. GOODWIN: Questions?

11 MR. BRADEN: I have a question.

12 MR. GOODWIN: Paul.

13 MR. BRADEN: So, Marni, is this colonia right  
14 next to Brownsville?

15 MS. HOLLOWAY: It's completely surrounded by  
16 the City of Brownsville.

17 MR. BRADEN: Is it raw land that's around? I  
18 mean, did they send you a map?

19 MS. HOLLOWAY: There's some pictures and maps  
20 in your Board book. There are parts of this area that are  
21 immediately adjacent to neighborhoods and commercial  
22 development and that kind of thing. There's a part of the  
23 area sort of to the north that's within an unincorporated  
24 area that appears to be more agricultural uses, but then  
25 if you go into the City of Brownsville a little bit



1 further north then that continues to be agricultural land.

2 So it in many ways matching the surrounding area but is  
3 not part of the City of Brownsville.

4 MR. BRADEN: Okay. And how was the 25,000  
5 persons measured? I mean, did they give you a geographic  
6 boundary and then made certification that within that?

7 MS. HOLLOWAY: The boundary is really the city  
8 limits of Brownsville that surround this area.

9 MR. BRADEN: But that's not what we're  
10 measuring the 25,000 by.

11 MS. HOLLOWAY: Within this area is where we're  
12 measuring.

13 MR. BRADEN: So somebody told you what within  
14 this area means.

15 MS. HOLLOWAY: Yes.

16 MR. IRVINE: If you go to the map on page 17 of  
17 the Board supplement, you can see a pretty good visual  
18 representation of the higher density development in the  
19 southwest corner and a larger swab of undeveloped land on  
20 the other side.

21 MS. HOLLOWAY: Right. So that more densely  
22 developed area is, in fact, the Cameron Park Colonia and  
23 the census designated place.

24 MR. GOODWIN: Additional questions?

25 (No response.)

1 MR. GOODWIN: I'd like to make the  
2 recommendation that we table this and go into executive  
3 session after hearing the remainder of action items 4 to  
4 seek legal advice.

5 MR. BRADEN: So moved.

6 MR. GOODWIN: So moved. Second?

7 MS. RESÉNDIZ: Second.

8 MR. GOODWIN: All in favor say aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: Okay. Moving on to 4(b).

11 MS. HOLLOWAY: Moving on, 4(b) is presentation,  
12 discussion and possible action regarding site eligibility  
13 under 10 TAC 10.101(a)(2) related to undesirable site  
14 features for Residences of Stillwater in Georgetown.

15 The undesirable site features rule states that  
16 developments proposed within the applicable distance of  
17 any of the undesirable features may be considered  
18 ineligible unless the applicant provides acceptable  
19 information regarding mitigation of those undesirable site  
20 features.

21 A request has been submitted by an applicant  
22 proposing a 4 percent housing tax credit development in  
23 Georgetown that is within 500 feet of a railroad and  
24 acceptable mitigation for the distance was not provided.  
25 The proposed development, again, is located in northeast

1 Georgetown. The site is surrounded primarily by vacant  
2 land with a railroad track about 450 feet north of the  
3 site. The land between has been represented as future  
4 commercial development.

5 The applicant contends that based on their own  
6 research of the Federal Transportation Administration  
7 Noise and Vibration Manual, there is no minimum separation  
8 requirement between railroads and residential uses and  
9 that the manual addresses mitigation in cases where  
10 railroads might have a significant impact on noise levels.

11 They assert that while HUD does not impose a separation  
12 distance of housing from railroads, they do prohibit  
13 developments with unacceptable noise exposures and in some  
14 instances provide for mitigation. They've represented  
15 that they are proposing to use HUD financing and will be  
16 required to comply with those standards regarding noise as  
17 a result.

18 So there are three operative parts of this rule  
19 to be considered. One of them is the measurement.  
20 Development sites located within 500 feet of active  
21 railroad tracks measure from the closest rail to the  
22 boundary of the development site unless the applicant  
23 provides evidence that the city or community as adopted a  
24 railroad quiet zone or the railroad in question is  
25 considered commuter or light rail. So that's the

1 measurement under the undesirable site features.

2           Also within the rule for potential mitigation  
3 where there is a local ordinance that regulates the  
4 proximity of such undesirable feature to a multifamily  
5 development that has a smaller distance than the minimum  
6 distance as noted below -- so that would be the list of  
7 undesirable features -- then such smaller distances may be  
8 used, and documentation, such as a copy of the local  
9 ordinance identifying such distances, must be included in  
10 the application. We took a couple of these items last  
11 year about proximity to railroads, one in the Fort Worth  
12 area, one in the Valley, I don't remember exactly where;  
13 one had provided evidence of ordinance, the other did not.

14           Also for this year we've added language  
15 regarding cognizant ages that says: If a state or federal  
16 cognizant agency would require a new facility under its  
17 jurisdiction to have a minimum separation from housing,  
18 the Department will defer to that agency and require the  
19 same separation for a new housing facility near an  
20 existing regulated or registered facility. This goes back  
21 to our concrete crushing plant last year, you'll remember,  
22 that was going to be really close to the plant that was  
23 going to be breaking up rocks all day long, so while TCEQ  
24 has a regulation regarding a new concrete crushing plant  
25 near a residential use, we don't have that and there's no

1 way for us to gather all of that so we're going to defer  
2 to those other agencies.

3 So the language in the rule is clear regarding  
4 the type of mitigation that could be submitted in order  
5 for staff to find the development site eligible, despite  
6 the proximity to the railroad track. In this case the  
7 applicant did not provide a local ordinance that allows a  
8 smaller distance than 500 feet, nor did the applicant  
9 provide information from a state or federal cognizant  
10 agency that would regulate how close they could put a new  
11 railroad track next to residential uses. Therefore, staff  
12 recommends that the Board find the development site  
13 ineligible. I'll be happy to take any questions.

14 MR. GOODWIN: Before we do that, I want to hear  
15 a motion to do questions and comments.

16 MS. THOMASON: So moved.

17 MR. GOODWIN: So moved. Second?

18 MR. BRADEN: Second.

19 MR. GOODWIN: Moved and seconded. All in favor  
20 say aye.

21 (A chorus of ayes.)

22 MR. GOODWIN: Okay. Now questions for Marni?

23 (No response.)

24 MR. GOODWIN: I see we have people that want to  
25 speak. Jean, are you or John going to go first?

1 MR. SHACKELFORD: I'll be brief. Good morning,  
2 Mr. Chairman, members of the Board, Mr. Irvine and Mr.  
3 Eccles. I'm counsel for Pedcor, the developer on this  
4 project, but I'm going to yield my time to Ms. Latsha.

5 MR. GOODWIN: Okay.

6 MS. LATSHA: Good morning.

7 MR. GOODWIN: Good morning, Jean.

8 MS. LATSHA: I have to admit I'm looking at all  
9 of this black and channeling Johnny Cash with all of this  
10 railroad stuff. I wanted to say, Good morning, I'm Johnny  
11 Cash, but I'm not. Jean Latsha with Pedcor Investments.

12 I do have a couple of visuals here to give you  
13 a sense of what we're talking about. One of these was  
14 included in our original request but I want to just kind  
15 of blow it up a little bit so that you can see what we're  
16 talking about. This is the site here. It's 427 feet from  
17 the track, and then there's also a 3.3 acre tract here  
18 that's going to be commercial development, this is a to be  
19 proposed road between the commercial and the multifamily,  
20 and this is 230 single family homes that are going to be  
21 under construction shortly before us, if we're successful  
22 here, this is an elementary school and a middle school,  
23 you'll see about 260 feet the tract for the school is from  
24 the track, and then another single family development over  
25 here, only 50 feet from the tracks.

1 MR. IRVINE: And for the public's interest, it  
2 is also substantially the same as what's found at page 230  
3 of the Board materials.

4 MS. LATSHA: Yes, that was.

5 This wasn't included in there, but just to give  
6 you a sense, this is that same track, that same railroad  
7 track extended through the middle of town in Georgetown.  
8 This is another single family neighborhood, Southwestern  
9 University, some student residences, more single family  
10 homes, athletic field, multifamily development, another  
11 public park, all literally right next to the railroad  
12 track.

13 So as Ms. Holloway said, we are asking that  
14 this site be found eligible despite its location within  
15 500 feet of this track. The relevant rule calls for the  
16 Board to determine whether or not an applicant has  
17 provided information regarding mitigation but it does not  
18 state that a specific kind of mitigation is required or  
19 that certain forms of mitigation would not be accepted.  
20 Mitigation is defined as the act of making a condition or  
21 consequence less severe, or lessening the force or  
22 intensity of something unpleasant.

23 So what is it that makes proximity to this  
24 railroad unpleasant? We all know the answer, it's noise.  
25 We have offered to mitigate this situation, we've offered

1 to make the noise from the train less severe, less  
2 intense, less unpleasant by using very specific design and  
3 construction materials.

4 I'm going to put you to our third poster here.

5 This is what's typically found in a noise study that's  
6 conducted when we have to use federal funds, which we do  
7 on this project and most of our projects, which is not  
8 required by TDHCA, it's not required by the Tax Credit  
9 Program. So this is not for this development, this is for  
10 another development that actually just was approved by  
11 TDHCA. This is actually not a train track, this is a very  
12 busy road with a bus stop on it, but you'll see that it's  
13 a heat mat that shows decibel ratings.

14 And so what HUD will do, we'll turn this in and  
15 HUD will say, all right, if you're in this orange zone or  
16 this red zone or this yellow zone, then you have to have  
17 windows with sound transmission classes of 27, but if  
18 you're in another zone, those classes need to be 32 or  
19 higher, if you're in another zone then you have to have an  
20 additional layer of wallboard or something. It's very  
21 precise, it's very specific, and we follow these  
22 guidelines in all of our developments because we do use  
23 HUD 221(b)(4)s with our tax credit development, so that's  
24 what we're proposing here is to conduct that noise study  
25 and to follow the recommendations in that noise study.



1           So we do appreciate that the rule also states  
2 that if we were to find some other regulation, whether a  
3 local ordinance or a federal agency, that dictated an  
4 acceptable distance between a railroad and a multifamily  
5 development that TDHCA would defer to that regulation.  
6 But that provision in the rule is separate from the option  
7 to mitigate. The rule does not state that we must provide  
8 mitigation and that mitigation must be in the form of  
9 finding another regulation. That doesn't even make any  
10 sense, pointing to another regulation is not mitigation at  
11 all. Another regulation would either shorten the  
12 distance, arguably making the need for mitigation even  
13 greater, or it would increase the distance and eliminating  
14 that need for mitigation.

15           The fact is there are two distinct options  
16 presented in the rule: The applicant either mitigates,  
17 meaning he lives inside that 500 foot distance which  
18 potentially creates this unpleasant situation and then  
19 lessens the severity of that situation, or the applicant  
20 finds another regulation to point to. There isn't another  
21 regulation that speaks specifically to distance, so we did  
22 the first which is to provide information regarding  
23 mitigation. We provided concrete ways to minimize the  
24 noise levels created by the train, and on top of that we  
25 did point to federal agencies who do have regulations for

1 minimizing noise levels.

2           The federal agencies on both sides of this  
3 issue, the Federal Railroad Administration and HUD, have  
4 written regulations that do not dictate distance but  
5 instead directly address the unpleasant, however  
6 potentially lifesaving condition, of being near a loud  
7 train horn. But the FRA, the Federal Railroad  
8 Administration, is not going to tell multifamily  
9 developers where they can and can't build housing, and HUD  
10 is not going to tell the Federal Railroad Administration  
11 where they can and can't build a train track. HUD cares  
12 about where housing is placed, and so when evaluating  
13 sites they look at existing conditions which may or may  
14 not include a train track, so we think it appropriate to  
15 look at HUD standards in this case, and that's what we're  
16 offering as mitigation, to follow HUD standards even when  
17 it is not required by the Tax Credit Program.

18           All that said, I think this isn't a bad rule  
19 for TDHCA to have in place. I was having this discussion  
20 with someone else who posed that question: Well, if an  
21 applicant can always come in and solve this problem  
22 through noise mitigation, then why have the rule at all?

23           The answer is because TDHCA doesn't have a rule about  
24 noise mitigation and there are plenty of tax credit  
25 developments that are financed without any other federal

1 monies and so don't have any agency requiring it. I don't  
2 think TDHCA necessarily needs to get in the business of  
3 noise mitigation, although that could be an option in the  
4 future, the rule functions well as it is. It will require  
5 those tax credit developers who would otherwise go  
6 unchecked to do something about the noise created by  
7 nearby trains. Those developers would either pass on this  
8 site because they don't want to bother with noise  
9 mitigation, or they will be forced to mitigate. Again, we  
10 chose to mitigate which is a clear option in the rule.

11 I will add that because Pedcor has been  
12 utilizing HUD financing for years on developments all over  
13 the country, we've actually been doing more than what is  
14 required by TDHCA on all of our projects here in Texas.  
15 We're even mitigating for noise on one of our non-HUD 9  
16 percent tax credit deals that is also in Georgetown, even  
17 though there is absolutely no requirement to do so. We  
18 recognize it as a benefit to our residents and are more  
19 than willing to do it. It's for reasons like that, that  
20 doing more than what is required, that has allowed us to  
21 enjoy the continued support of the City of Georgetown.  
22 The city council has already approved a resolution of  
23 support for this project and there was overwhelming  
24 community support for it and no opposition.

25 So we are here asking for you to find this site

1 eligible despite its location within 500 feet of a  
2 railroad track. We appreciate that that eligibility  
3 should come with a requirement that we follow HUD's  
4 guidelines with respect to noise.

5 Thank you, and I'm happy to take any questions.

6 MR. GOODWIN: Any questions? I have a  
7 question, Jean. You mentioned the elementary school and  
8 you said it was 227 feet?

9 MS. LATSHA: So the track, this is the  
10 elementary school here, this is the middle school, and  
11 this is the track, the field for both of them, this  
12 distance from the track to the railroad tracks, the  
13 running track to that is about 260 feet. I think 500 feet  
14 lands you about here and you're a little over 600 to get  
15 to the school.

16 MR. GOODWIN: To get to the actual school.  
17 Okay.

18 Any other questions?

19 MR. ECCLES: I have a quick question. The  
20 second map that you showed with the train track running  
21 through -- this is Georgetown. Right?

22 MS. LATSHA: Georgetown.

23 MR. ECCLES: Is that part of the track in a  
24 quiet zone or a no horn zone?

25 MS. LATSHA: I did not look at where all of

1       them are, but when I went to the City of Georgetown to ask  
2       about their quiet zones, I was given very little  
3       information about any of them being anywhere. I don't  
4       know that they have one anywhere. I could find out.

5               MR. ECCLES: But there's no quiet zone or  
6       ordinance that's regulating the part of the track that's  
7       running by the proposed development site.

8               MS. LATSHA: Not currently, no. And I can show  
9       you where the -- this is where the train would cross a  
10      road, right, which is a little bit more than 500 feet  
11      away. Most likely when we do one of those heat maps for  
12      the sound, my guess is it would actually heat map like  
13      this way and maybe a little bit from the road, and our  
14      noise mitigation might be more in this corner and down  
15      here. It might not even be as much where that shortest  
16      distance is, it might be. But to my point, this is not  
17      something that's required by the Tax Credit Program, this  
18      is going above and beyond what's required by the Tax  
19      Credit Program to follow HUD's regulations with respect to  
20      noise mitigation.

21              MR. ECCLES: With respect to noise mitigation,  
22      and respectfully, the reason why the rules are silent on  
23      how to do noise mitigation may be that the 500 foot  
24      distance has more to do than just noise.

25              MS. LATSHA: If that's possible, I suppose, but

1 everything that's in the rule talks about quiet zones. I  
2 went back to some of the transcripts and discussions  
3 regarding this rule and they were about noise. My feeling  
4 is, from reading the Federal Railroad Administration, HUD,  
5 the transcripts here, the actual rule from TDHCA, that the  
6 primary concern with the train tracks is noise.

7 MR. ECCLES: Understood, but there is an  
8 element of community standard as well, isn't there? I  
9 mean, considering that it talks about ordinances and if  
10 there's a smaller distance that we'll go with the locals,  
11 if there's a different distance that a cognizant agency  
12 would have that we'll go with those.

13 MS. LATSHA: And again, the reason I think that  
14 those cognizant agencies don't have distance requirements  
15 is because situations are different. Had this been --  
16 let's say the commercial piece had already been developed,  
17 right, and we were going to HUD and doing that noise  
18 study, they might require less noise mitigation because  
19 that noise is already filtered by the commercial  
20 development. Because the commercial development is behind  
21 us right now, we're probably going to have to do a little  
22 bit more noise mitigation than we would if we waited a  
23 year, because the problem with the train is the noise.

24 That's why those federal regulations -- and  
25 when you go to build a train track near a residential

1 development, it's the other way around, if they find there  
2 is an impact on that residential development, they make  
3 the guys building the train build a wall or whatever it is  
4 that they need to do to mitigate that noise. Everything  
5 that I've read has been about noise with respect to being  
6 near a train.

7 MR. ECCLES: Let me ask about the subdivision  
8 that you said of single family that's going to be on the  
9 same side of the track, and if that map that you showed  
10 was oriented properly, it would be to the southwest of the  
11 development that's proposed.

12 MS. LATSHA: Right, just west.

13 MR. ECCLES: How far along in the approval  
14 process has that come?

15 MS. LATSHA: It's platted and they are ready to  
16 start construction they're telling us this year probably  
17 second quarter.

18 MR. ECCLES: How close is the closest house  
19 platted in that subdivision?

20 MS. LATSHA: Fifty feet from the track.

21 MR. ECCLES: And this is all within the  
22 corporate limits of the City of Georgetown.

23 MS. LATSHA: Yes, sir.

24 MR. GOODWIN: Any other questions?

25 MR. BRADEN: I have a question of Marni. So I

1 find Pedcor's argument fairly persuasive, but my concern  
2 would be in terms of how this would be administered on a  
3 going-forward basis, and does the condition eligibility on  
4 meeting HUD requirements give us enough of a bright line  
5 that we can refer to when we have a half a dozen other  
6 people coming in and saying we want the same type of  
7 forgiveness, waiver?

8 MS. HOLLOWAY: Potentially. I think that  
9 making that kind of decision of course will shape requests  
10 in the future, that applicants will be coming in and  
11 saying we're going to do the noise mitigation so give us  
12 an eligibility determination on this property. Yes, the  
13 noise mitigation is important and if they are proceeding  
14 with the HUD financing it will be a requirement and could  
15 be a requirement that's imposed by this Board. We will  
16 find the site eligible if you do these things and then  
17 that would roll all the way through the application  
18 process and into underwriting.

19 The 500 feet is based on information that we  
20 found sort of combining the Railroad Administration and  
21 HUD requirements. Federal Railroad Administration says  
22 that the noise 500 feet from the suburban grade crossing  
23 is at 65 decibels; 65 decibels is the point at which HUD  
24 starts saying -- they call it normally unacceptable and  
25 allow for mitigation. Part of the consideration, though,



1 is that that mitigation is for the interiors of the unit,  
2 it's going to be for the inside, it's not for the outside.

3 It's not for nice days when you have your window open,  
4 it's not for days when you're out by the pool, those kinds  
5 of things, and there is no way to mitigate that sort of  
6 environmental noise coming across.

7 Part of what we started talking about with this  
8 measurement a couple of years ago, and we haven't been  
9 able to find information yet that's really reliable, is  
10 how often do the trains run, what are they carrying, those  
11 kinds of potential impacts are not measurements that we've  
12 been able to reliably get to yet because of Homeland  
13 Security stuff. This could be a track that there's one  
14 train a day, there's two trains a week, or it could be --  
15 I haven't even looked at this -- the same line that runs  
16 through Marfa and there's 20 trains a day.

17 MR. BRADEN: Does anybody have that  
18 information, how frequently? Do you all have that, how  
19 frequently trains go?

20 MS. LATSHA: I don't have that information now  
21 but that would all be part of a noise study, right, so if  
22 it were 20 trains a day, the horn was just ridiculously  
23 loud, that will all come out when we perform a noise study  
24 on this development. That's exactly why the map that I  
25 showed you earlier, that's a really, really busy road and

1 a road that's actually going to become even busier because  
2 there's plans to expand it, and so we actually had to  
3 revise that map to take into consideration the traffic  
4 that's going to be on that road once it's expanded and  
5 everything else. So like I said, they're very specific  
6 studies and the train traffic itself will be taken into  
7 account when that noise study is performed.

8 MR. BRADEN: And I do agree, Beau, that I don't  
9 think it's all noise, I mean, I do think there's risk of  
10 injury, there's all the other complications living next to  
11 railroad tracks, but apparently Georgetown has accepted  
12 that considering what they're platting right next to it.

13 MS. LATSHA: And I would say anecdotally, I  
14 mean, I live in a nice neighborhood and I'm 300 feet from  
15 a train track. Right? It's difficult to get 500 feet  
16 from a train track, and it's difficult too to also assess,  
17 you know, what's more dangerous: 500 feet from a railroad  
18 track or 100 feet from a busy road. It might be the  
19 second, but at the same time we're encouraged to be in  
20 urban areas where you do have high traffic and good  
21 visibility and bus stops, and guess what, those things all  
22 come with busy roads that are, I would say, more dangerous  
23 than being 500 feet from a railroad track.

24 MR. GOODWIN: Jean, I have a question. Beau  
25 brought up the question of how close was the nearest

1     platted house going to be. How close on your site is the  
2     nearest structure going to be?

3             MS. LATSHA: Sure. So we have a 20 foot  
4     setback so we're at 427 feet to our site boundary right  
5     now, and so then you add 20 feet, and so you're at about  
6     447, probably more like 450 because we don't want to  
7     encroach on that setback. The site layout as it is right  
8     now, there's one residential building that's kind of long  
9     ways and the other one that is oriented the other way so  
10    that the cap of the building is by the site boundary, so  
11    you're probably talking about maybe 20 to 24 units that  
12    would be -- because they're three-story buildings,  
13    right -- that would be, I would guess, within that 500  
14    feet.

15            MR. GOODWIN: Additional questions?

16            (No response.)

17            MR. GOODWIN: John, anything additional you  
18    want to add?

19            MR. SHACKELFORD: No, sir.

20            MR. GOODWIN: Okay. Marni, anything else you  
21    would like to add?

22            MS. HOLLOWAY: No, I don't have anything unless  
23    there are any further questions.

24            MR. GOODWIN: Okay. We need a motion to either  
25    accept staff's recommendation or deny staff's

1 recommendation.

2 MR. IRVINE: To find it eligible or not.

3 MR. GOODWIN: To find it eligible or not.

4 MR. BRADEN: I'll make a motion to accept the  
5 mitigating factors and find the site eligible.

6 MR. GOODWIN: We have a motion. Do we have a  
7 second?

8 MS. HOLLOWAY: May I?

9 MR. GOODWIN: Well, let's have a second first.

10 MS. THOMASON: Second.

11 MR. GOODWIN: We have a motion and a second.

12 Any additional comments?

13 MS. HOLLOWAY: Is your accepting those  
14 mitigating factors, is that a condition of eligibility?

15 MR. BRADEN: We would find the site eligible  
16 conditioned on the eligibility for complying with the HUD  
17 requirements on noise mitigation.

18 MR. GOODWIN: Do you accept that?

19 MS. THOMASON: Yes.

20 MR. GOODWIN: Any additional comments or  
21 questions?

22 (No response.)

23 MR. GOODWIN: All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: Opposed?

1 (No response.)

2 MR. GOODWIN: Okay. There we have it.

3 MS. HOLLOWAY: Thank you.

4 MR. GOODWIN: Now we have item 4(c), Andrew.

5 MR. SINNOTT: Good morning, Chairman Goodwin,  
6 members of the Board. My name is Andrew Sinnott,  
7 Multifamily Loan Program administrator.

8 Item 4(c) is presentation, discussion and  
9 possible action regarding an award of Direct Loan funds  
10 from the 2017-1 Multifamily Direct Loan NOFA for the  
11 Vineyard on Lancaster in Fort Worth.

12 The Vineyard on Lancaster received an  
13 allocation of 9 percent housing tax credits this past July  
14 for the new construction of 104 units serving a supportive  
15 housing population, and the applicant returned in October  
16 requesting \$1.1 million in Direct Loan funds from the  
17 supportive housing soft repayment set-aside. The \$1.1  
18 million would relieve the burden on Union Gospel Mission  
19 of Tarrant County, which is the sole member of the general  
20 partner entity, it would relieve the burden on their  
21 endowment fund which they're using as owner equity for  
22 this development, so it would reduce the owner equity that  
23 they're providing from \$4.8 million to \$3.7 million.  
24 Having this \$1.1 million also hedges against any price  
25 increases that are expected to come as a result of labor

1 and material shortages post Hurricane Harvey.

2           The \$1.1 million will come from the  
3 Department's 2016 allocation of National Housing Trust  
4 Fund which requires NHTF assisted units to be targeted to  
5 30 percent AMI households. As a result, ten 50 percent  
6 tax credit units will be further restricted to 30 percent  
7 AMI, and one 30 percent tax credit unit will be layered  
8 with a 30 percent NHTF unit, so we're getting a little  
9 deeper affordability as a result of this \$1.1 million  
10 investment.

11           This award will be structured as a soft  
12 repayable loan in accordance with 10 TAC 13.4(a)(1)(A) of  
13 the Multifamily Direct Loan rule. And with that, staff  
14 recommends approval of \$1.1 million in NHTF funds from the  
15 supportive housing soft repayment set-aside for the  
16 Vineyard on Lancaster.

17           MR. GOODWIN: Any questions?

18           (No response.)

19           MR. GOODWIN: If not, I'll entertain a motion  
20 to approve.

21           MR. BRADEN: So moved.

22           MR. GOODWIN: Moved. Second?

23           MS. RESÉNDIZ: Second.

24           MR. GOODWIN: Moved and seconded. Any other  
25 discussion, any public comment?

1 (No response.)

2 MR. GOODWIN: If not, all those in favor say  
3 aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Thank you, Andrew.

8 MR. SINNOTT: Thank you.

9 MR. GOODWIN: Marti, 4(d).

10 MS. HOLLOWAY: Item 4(d) is presentation,  
11 discussion, and possible action regarding the  
12 interpretation of provisions of the Qualified Allocation  
13 Plan relating to the claiming of disaster points; the  
14 timing of submittal of resolutions of local government  
15 support or opposition and state representative input  
16 letters; and the handling of these matters by staff if  
17 they create a change in self-score that would disqualify  
18 an applicant for pre-application points. I think that's  
19 the longest one I've ever seen.

20 An application for 9 percent credits may  
21 receive ten points if at the time of application  
22 submission or at any time within the two-year period  
23 preceding the date of submission the development is  
24 located in an area declared to be a disaster by the  
25 governor under Texas Government Code 418.014, so it's a

1 very specific requirement for that declaration.

2 Twenty-five counties in Region 3 that have had  
3 an eligible declared disaster event will see that  
4 eligibility expire prior to the full application delivery  
5 date on March 1. The last eligible disaster declaration  
6 was made for these counties on January 26 of 2016. The  
7 Department has received multiple inquiries regarding the  
8 deadline for submitting an application that would be  
9 eligible to receive those ten points. Staff initially  
10 provided guidance that everything that would have been due  
11 with a full application on March 1, 2018 would now be due  
12 on January 26, 2017, which is two years after the date of  
13 declaration, in order to claim those ten points.

14 Most recently, an inquiry suggested that the  
15 expiration date of the two-year period following the  
16 declaration should be February 26, 2018 because the  
17 declaration had an effective period of 30 days, so the  
18 declaration lasted until February 26 of 2016. The  
19 prospective applicant argued that the state of disaster  
20 continues until a number of events occur, one of them  
21 being just that 30 days elapse. They argue that the area  
22 would continue to be an area declared to be a disaster,  
23 which is language in statute, until 30 days after that  
24 declaration. Staff found no evidence that the declaration  
25 issued on January 26 was renewed or terminated, and



1 therefore, concluded that it terminated just by effect on  
2 February 26 of 2016.

3           The March 31 full application delivery date is  
4 described in rule. One of the questions presented is  
5 whether the full application delivery date is an on or  
6 before date as opposed to an express requirement to submit  
7 applications only on March 1. Staff has given the  
8 guidance that submitting applications early to meet the  
9 two-year mark is acceptable. The Board must make this  
10 determination, as well as determine whether the duration  
11 of the existence of a disaster area is counted in that  
12 two-year time frame.

13           In addition, there is an issue regarding the  
14 appropriate date to submit materials from elected  
15 officials. Potential applicants have advised that their  
16 representatives and local governments are relying on the  
17 program calendar in rule which states as separate items  
18 within a single box. So they're distinct items but in  
19 this one box on the calendar. Full applications are due  
20 by March 1 and final input from elected officials,  
21 including local government resolutions of support and  
22 input from state representatives, is due by March 1. The  
23 Board must determine whether the undefined term "the  
24 complete application" includes both the full application  
25 and the final input from elected officials by the two-year

1 mark or whether the final input from elected officials may  
2 be submitted by March 1.

3 Complicating matters, applicants requested  
4 points for declared disaster areas in the pre-app, who do  
5 not qualify for those points as a result of the Board's  
6 action today, will suffer a penalty of the loss of six  
7 pre-application points. The pre-application final  
8 delivery date was January 9, so that die is cast, they've  
9 already submitted their pre-apps. Applicants affected by  
10 this issue may or may not have claimed points in their  
11 pre-app for this item and potentially will lose pre-  
12 application points unless the Board addresses this issue.

13 So there are five questions regarding this  
14 matter. One, may an applicant claim those ten disaster  
15 points under the rule if they submit their application  
16 within two years from when the declaration expired? What  
17 is the full application delivery date and does it include  
18 all of the information I mentioned? If an application is  
19 submitted prior to March 1 in order to claim points, may  
20 the applicant also provide support resolutions and letters  
21 up to and including March 1? If elected official input is  
22 allowed to be submitted by March 1, does the Board  
23 consider the balance of the application a complete  
24 application as required by statute? So if they submitted  
25 the complete application without the support information

1 by that expiration date, does that meet the statutory  
2 requirement? And finally, if an applicant's pre-  
3 application self-score regarding disaster points is  
4 affected by the Board's interpretation on these matters,  
5 will the difference in number of points render them  
6 ineligible for the full pre-application points?

7 Staff is requesting direction from the Board  
8 for applications for development sites that are in  
9 counties that have an eligible declared disaster event  
10 that will expire prior to March 1, 2018, and further,  
11 staff recommends that pre-applications affected by the  
12 Board action on this issue be allowed to adjust their pre-  
13 application points in accordance with the Board's order  
14 without penalty, which in effect waives the limitation in  
15 rule that the score between pre-application and full  
16 application may not vary by more than four points.

17 I'd be happy to take any questions.

18 MR. GOODWIN: I want to hear a motion to accept  
19 comments and questions.

20 MR. BRADEN: So moved.

21 MR. GOODWIN: Second?

22 MS. THOMASON: Second.

23 MR. GOODWIN: All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: Okay. Now questions.

1 MR. BRADEN: I have one question. So without  
2 taking into account the disaster relief issue, when the  
3 March 1 deadline for a full application, do we require  
4 letters of support at that March 1 deadline?

5 MS. HOLLOWAY: Yes.

6 MR. BRADEN: So when we say a full application  
7 is due, we expect all letters of support and everything to  
8 be part of that.

9 MS. HOLLOWAY: Yes.

10 MR. BRADEN: Okay.

11 MR. GOODWIN: Other questions of Marni?

12 (A chorus of ayes.)

13 MR. GOODWIN: I see we have people who would  
14 like to comment. Thank you, Marni.

15 MR. COMBS: Yes. Ryan Combs with Palladium.

16 I would like to make a comment because as a  
17 development community we have to follow staff's direction,  
18 I mean, we really live and die by following staff's  
19 direction, and so much so that we have a plan, then we  
20 have rules, and then there's also a procedures manual on  
21 top of that, and then there's other direction that's just  
22 given. Staff is very prescriptive in how they would like  
23 us to do things, and as a development community we can  
24 live and die on how well we follow staff's direction, and  
25 staff gave direction that in order to receive disaster

1 declaration points in these certain counties, applications  
2 had to be in by January 26.

3 Well, then that direction was reinterpreted  
4 last week when pre-applications were due which left no  
5 time for applicants to respond, and so some of the results  
6 are, I know us, as well as many other developers, we had  
7 sites that we looked at and we thought these would be  
8 competitive but there's absolutely no way that we can go  
9 get everything that we need to support all those different  
10 things to have a full application by January 26, so we let  
11 those applications go. If we had known that that was  
12 going to be reinterpreted, we lost those opportunities.  
13 When that new direction came in when pre-applications were  
14 due, we had no time to respond to that, and so there's a  
15 real result of those things.

16 And so what I would like to do is I would like  
17 to make a proposal because the Texas Government Code lays  
18 out an order of how these items are to be prioritized, it  
19 doesn't necessarily give a score but it gives an order as  
20 to how items are to be prioritized. Now, it so happens  
21 that declared disaster area kind of falls between an  
22 eleven-point item and a nine-point item, and so that's  
23 where the ten points for this item comes in the QAP,  
24 however, the nine-point item just below, that's a maximum  
25 amount of points that's allowed, the nine-point item just

1 below this is for QCT support. Well, that nine points is  
2 a maximum, you can also get eight points, you can also get  
3 four points, so there's a scale, a range that's there.

4 And so what I'm requesting from the Board is  
5 that the Board recognize that the staff gave direction and  
6 there are consequences when staff gives direction to those  
7 of us in the development community that are doing our best  
8 to react to and follow staff's direction, that the Board  
9 recognize that there was direction given and that there  
10 could be a maximum points given to applications that  
11 submit before January 26, being the declaration date, and  
12 then a lesser point value given to applications, so  
13 they're still getting points but lesser point value given  
14 to applications that are submitted before the expiration  
15 of the declared disaster are.

16 I think statute allows that but that's  
17 something I want to put out there because we've done our  
18 best to follow staff's direction and unfortunately, when  
19 there's a change that happens with the day that pre-  
20 applications are due, it leaves really no opportunity to  
21 respond and react in the development community.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: Thank you.

25 MR. COMBS: Thank you.

1 MS. ANDERSON: Good morning. My name is Sarah  
2 Anderson, and this is a very complicated and convoluted  
3 issue, and as was said, there's about five different  
4 issues before you. I think I'm only to address two of  
5 them. I would actually say that there's three. One would  
6 be whether or not the due date should be January 26 or  
7 February 26, and I'm not going to address that. I think  
8 that that will be a change from the way it's always been  
9 done but I think that that is also a discretionary item  
10 for you guys.

11 The other one that I would like to address has  
12 to do with the submission of what's considered a complete  
13 application and the submission of the local resolution of  
14 support and the state rep resolution of support. Those  
15 two items have always been distinctly separate from the  
16 application. As a matter of fact, they both used to be  
17 due April 1, further proof that they were never part of  
18 the full application to begin with or considered to be  
19 part of the complete application. The QAP specifically  
20 actually says that those items can go directly to the  
21 Department and that the Department will add them to the  
22 application on the website, so they are not considered  
23 part of the full application.

24 And when you look at the definition, it's not  
25 completely defined, the only time the complete application

1 is mentioned in the QAP says that it is essentially an  
2 application where all of the exhibits that are required to  
3 be in the application are there. Again, these two  
4 exhibits are distinctly separate and not considered to be  
5 part of a complete application. So I would argue that the  
6 state rep support and the local support resolution are  
7 separate and can be submitted separately.

8 The other issue comes up is whether or not  
9 people should be penalized for how they took the disaster  
10 points. We sat here a month ago and somebody brought this  
11 issue up before you and it was said these disaster points  
12 are going to be tricky, and it was requested that the pre-  
13 app not take into consideration the disaster points. It  
14 was put before you, this decision, Marni told you the pre-  
15 application has always included the disaster points,  
16 that's the way it's always been done. To then come back a  
17 month later and have this re-litigated because somebody  
18 didn't make the right decision doesn't seem very fair.

19 I would say we advised our clients, who spent a  
20 lot of money hedging their bet on this, who split their  
21 sites, submitted two applications, put a lot of money to  
22 make sure that they would be on the right side of whatever  
23 decision was made, and everybody else could have done the  
24 same thing. And to now come back and say, well, we  
25 already discussed it, we already litigated, we already



1 told you what our decision was, but now that some people  
2 aren't happy we're going to come back and change how we're  
3 going to address the scoring for a disaster seems like a  
4 really bad precedent. I don't want to be here in July  
5 arguing that my clients lost their deal because the rules  
6 were changed. Somebody will be harmed for making a  
7 change, whereas, the harm on this side without making the  
8 scoring change is something we did to ourselves in our own  
9 decisions.

10 Thank you.

11 MR. GOODWIN: Thank you. Any questions?

12 (No response.)

13 MS. LATSHA: Good morning again. Jean Latsha  
14 for the third time.

15 I will agree with Sarah with respect to the  
16 pre-application points. You know, we all had the same  
17 information, whether that information changes or not,  
18 staff said January 26, whether that should be a February  
19 26 deadline or a January 26 deadline or whatever, all of  
20 that information was out there, we all could have read  
21 statute and made our own decisions on what that should be,  
22 all the language is there. You make a decision on January  
23 9, you claim the points or you don't, maybe that's based  
24 on how far you are in your own application process, maybe  
25 it's based on staff's guidance, maybe it's based on your

1 own research of statute, whatever, but it's a decision we  
2 make and I do think that everybody should have to live  
3 with the decision they made when they claimed points or  
4 not on their pre-application.

5 That being said, I think that staff could stand  
6 by their January 26 deadline when you read the rule. The  
7 language says -- let's see, what does it say -- let's see,  
8 let me find it -- an application may receive ten points if  
9 at the time of application submission or at any time  
10 within the two-year period preceding the date of  
11 submission the development site is located in an area  
12 declared to be a disaster. I think you could take that  
13 phrase "declared to be a disaster" as it was declared on  
14 January 26. The language didn't say something like was  
15 considered to be in a state of disaster within the last  
16 two years.

17 I think you can read it and read the statutory  
18 language on both sides and say that, you know what,  
19 January 26 is the deadline for those ten points, that's  
20 what staff said, that's the information everybody took  
21 when they were turning in their pre-apps, and then issue  
22 is over. I know that there's a lot of arguments on both  
23 sides of the fence here but I think there's a legitimate  
24 argument for keeping the January 26, keeping the pre-app  
25 points how they are and moving along. And that's all I

1 have.

2 MR. GOODWIN: Okay. Any questions?

3 (No response.)

4 MR. MICHAELS: Good morning. Thank you. My  
5 name is Russ Michaels. I represent a few clients on this  
6 matter, I'm a lawyer.

7 First of all, I just want to kind of bring up  
8 something -- I haven't really prepared for this -- staff  
9 has done an excellent job this year of getting us  
10 information early so that we can start early, and it's  
11 been amazing. I know in the roundtables last year, part  
12 of the reason that they gave us the rules and they gave us  
13 the QAP and they gave us things early so that we could  
14 actually start finding land early, and a lot of us relied  
15 on a lot of the information that was kind of going towards  
16 the December 1 governor-approved deadline. When the  
17 governor came in and changed everything, shifted the  
18 disaster declaration, that's fine because he has the  
19 ability to do that, but the good faith that staff has done  
20 for us to get us information early has been fantastic.

21 I know last year a lot of stuff happened on the  
22 back-end. We were here in July arguing about as the crow  
23 flies because of something that was interpreted early and  
24 it hurt a lot of developers on the back-end. Now we're on  
25 the front-end where we're talking now about interpretation

1 issues and I think we have a good chance of keeping  
2 everything static so that it doesn't disrupt as much.

3 Now, I can tell you from experience that the  
4 majority of people that are talking about this topic are  
5 talking about two counties, Collin and Dallas County.  
6 It's really just affecting one area. Now, I don't want to  
7 say that across the board because there are some counties  
8 in there, but this is where the heavy hitter issue really  
9 is. My clients have gone to their state rep, they've  
10 gotten their resolutions of support, they're teed up,  
11 ready to serve you a January 26 application that's full,  
12 it's got every single thing in it, because that's what we  
13 relied on.

14 I would request that that stay static because  
15 that's what staff told us and that moving forward  
16 everybody else that wants to claim ten points does what  
17 we've been doing, we've been busting our rears to get that  
18 in because we knew that that's what the governor had said,  
19 that's what the staff told us to do. And so if you're  
20 going to claim ten points, then do it based on the 26th of  
21 January, not trying to say, hey, let's move this to  
22 February 26 so we can give you a piecemeal full  
23 application prior to March 1 which is kind of how it's  
24 been for the last five years, ten years, or as long as  
25 I've been in the program.

1           So again, just as a recap, I appreciate what  
2 staff has done, I really do. They gave us a lot of great  
3 language this year, they went in and cleaned up the QAP,  
4 they cleaned up the language, last year we had issues with  
5 it. They gave us a fantastic rule book, they gave us a  
6 fantastic QAP this year, we started early, we got some  
7 really good sites, but to shift everything right on some  
8 of the developers, especially the ones up in Dallas where  
9 there's probably 40-50 different applications up there  
10 that are wanting this to go one way or another, I think it  
11 would be detrimental.

12           And as far as the good faith that we've  
13 actually developed between staff and the developers from  
14 what went down last year, I think keeping it static would  
15 be the best way to go at this point.

16           Thanks for your time.

17           MR. GOODWIN: Any questions? Any additional  
18 comments?

19           (No response.)

20           MR. GOODWIN: If not, the Board is going to  
21 move into executive session, so if you'll allow me the  
22 opportunity to read this, then we will come back.

23           Motion to table first.

24           MR. BRADEN: I'll make a motion to table this  
25 and consult with attorneys in executive session.

1 MR. GOODWIN: Okay. And a second?

2 MS. THOMASON: Second.

3 MR. GOODWIN: Moved and seconded. Any  
4 discussion?

5 (No response.)

6 MR. GOODWIN: All in favor say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: Okay. The Governing Board of the  
11 Texas Department of Housing and Community Affairs will go  
12 into closed or executive session at this time, pursuant to  
13 Texas Government Code 551.071 to seek and receive the  
14 legal advice of its attorney.

15 The closed session will be held in the anteroom  
16 of this room, John H. Reagan 140, within the John H.  
17 Reagan State Office Building. The date is January 18 and  
18 the time is 9:15, and we will reconvene back here at 9:30.

19 (Whereupon, at 9:15 a.m., the meeting was  
20 recessed, to reconvene this same day, Thursday, January  
21 18, 2018, following conclusion of the executive session.)

22 MR. GOODWIN: The Board is now reconvened in  
23 open session at 10:16 a.m. During the executive session  
24 the Board did not adopt any policy, position, resolution,  
25 rule, regulation or take any formal action or vote on any

1 item.

2 So I will accept a motion to take of the table  
3 item 4(a).

4 MS. THOMASON: Yes, I'll make a motion.

5 MR. GOODWIN: Second?

6 MR. BRADEN: Second.

7 MR. GOODWIN: It's made and seconded. All in  
8 favor say aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: Opposed?

11 (No response.)

12 MR. GOODWIN: Okay. Do I hear a motion on item  
13 4(a).

14 MS. THOMASON: I would like to make a motion to  
15 approve the request for the rural designation.

16 MR. GOODWIN: Okay. Do I hear a second?

17 MR. BRADEN: Second.

18 MR. GOODWIN: They can't hear back there.  
19 Could you speak up a little bit.

20 MS. THOMASON: I said, I would like to make a  
21 motion to approve the request for rural designation.

22 MR. GOODWIN: And it's been seconded. Any  
23 discussion?

24 (No response.)

25 MR. GOODWIN: All those in favor say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: Okay. 4(a) is passed.

5 Now I'll hear a motion to take off the table  
6 item 4(d).

7 MR. BRADEN: So moved.

8 MR. GOODWIN: Second?

9 MS. THOMASON: Second.

10 MR. GOODWIN: It's been moved and seconded.

11 All in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Do I hear a motion on item 4(d)?

16 MR. BRADEN: Yes. I'm going to make a motion  
17 that the two-year disaster period be measured from the  
18 date that the governor took action to declare the area a  
19 disaster area, so in this instance that we're talking  
20 about, that would be measured from the January 26, 2016  
21 date; that any date within the application acceptance  
22 period may be the full application delivery date, so the  
23 March 1 is a due by date so people can file between that  
24 period; three, that all items, including the local  
25 government resolution and the state rep letters, must be



1 submitted for the application to be complete, and  
2 therefore, must be submitted within the two-year period in  
3 order to claim disaster points, and again, that two-year  
4 period would be measured from the January 26 date, the  
5 declaration date. That's my motion.

6 MR. GOODWIN: Okay. Do I hear a second?

7 MS. RESÉNDIZ: Second.

8 MR. GOODWIN: It's been moved and seconded.  
9 Any discussion, questions?

10 (No response.)

11 MR. GOODWIN: All those in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Motion passed.

16 Thank you, Marni.

17 We've hit a point in the agenda where we take  
18 public comments for any further items, so any comments  
19 from staff or anyone in the public?

20 (No response.)

21 MR. GOODWIN: Seeing none, I will entertain a  
22 motion to adjourn.

23 MR. BRADEN: So moved.

24 MR. GOODWIN: Second?

25 MS. THOMASON: Second.

1 MR. GOODWIN: All in favor say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Thank you.

4 (Whereupon, at 10:20 a.m., the meeting was  
5 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: January 18, 2018

I do hereby certify that the foregoing pages, numbers 1 through 67, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

01/23/2018  
\_\_\_\_\_  
(Transcriber) (Date)

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