

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Capitol Extension  
Room E1.028  
1100 Congress Avenue  
Austin, Texas

October 10, 2019  
8:00 a.m.

MEMBERS:

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

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING  
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER	9
ROLL CALL	
CERTIFICATION OF QUORUM	
CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	10
EXECUTIVE	
a) Presentation, discussion, and possible action on Board meeting minutes summaries for June 27, 2019 and July 25, 2019	
LEGAL	
b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related scattered site properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), and 2503 N Wilson (HTC 70084 / CMTS 913)	
c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Weldon Blackard (HOME 539112 / CMTS 2706)	
ASSET MANAGEMENT	
d) Presentation, discussion, and possible action a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement  01150 Limestone Ridge Apartments Big Spring	
HOME AND HOMELESSNESS PROGRAMS	
e) Presentation, discussion, and possible action on 2020 Homeless Housing and Services Program Youth Set-Aside funds for the City of San Antonio	
RULES	
f) Presentation, discussion, and possible action on an order proposing amendments	

to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication in the *Texas Register* (PULLED)

- g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting the repeal of 10 TAC §2.204, Contents of a Quality Improvement Plan; an order adopting new 10 TAC §2.204, Contents of a Quality Improvement Plan; and directing that they be published for adoption in the *Texas Register*
- h) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, an order adopting new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication in the *Texas Register*
- I) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order adopting new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the *Texas Register*

#### BOND FINANCE

- j) Presentation, discussion, and possible action on Inducement Resolution No. 20-002 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

19611 Granada Terrace Houston  
 19613 THF 333 Holly The Woodlands  
 19614 THF The Pines The Woodlands  
 19615 Oaks on Clark San Antonio

- k) Presentation, discussion, and possible action on Resolution No. 20-003 Authorizing the Execution of an Irrevocable Instructions and Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Churchill at Pinnacle Park Series 2004
- l) Presentation, discussion, and possible action on Resolution No. 20-004 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

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  - c) Report regarding a Request for Proposal for Underwriters issued by the Texas Department of Housing and Community Affairs
  - d) Report regarding a Request for Proposal for TBA Program Administrator issued by the Texas Department of Housing and Community Affairs
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- c) Presentation, discussion, and possible 71 action on the proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and the proposed new 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and directing the publication for public comment in the *Texas Register*
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P R O C E E D I N G S

1  
2 MR. GOODWIN: Welcome to the monthly Board  
3 meeting of the Texas Department of Housing and Community  
4 Affairs for October 10, 2019.

5 We'll start with roll call. Mr. Braden?

6 MR. BRADEN: Here.

7 MR. GOODWIN: Ms. Bingham?

8 MS. BINGHAM ESCAREÑO: Here.

9 MR. GOODWIN: Ms. Thomason?

10 MS. THOMASON: Here.

11 MR. GOODWIN: Ms. Reséndiz?

12 MS. RESÉNDIZ: Present.

13 MR. GOODWIN: Mr. Vasquez?

14 MR. GRAHAM: Here.

15 MR. GOODWIN: Okay. We have a quorum.

16 You're going to be asked to use your  
17 imagination because this is the first time I've ever been  
18 in a state building where there's not a Texas flag or an  
19 American flag, but on the lapel of Board Member Vasquez  
20 there is an American flag and state flag, so if you  
21 wouldn't mind join me by standing and saying a pledge to  
22 both, led by our leader.

23 (The Pledge of Allegiance and the Texas  
24 Allegiance were recited.)

25 MR. GOODWIN: Okay. Our consent agenda, we

1 have a few items that have been pulled from the agenda,  
2 and I'm going to go over all of those on the consent and  
3 the action first so that we can get a motion to approve  
4 the consent agenda as modified. We are pulling item 1(f),  
5 we are pulling item 6(b), 6(d) -- I'm sorry, I said 6, I  
6 meant 7 -- 7(b) and 7(d), and we're pulling one item from  
7 item 8(a) and that is file 17736.

8 So I will ask if any Board members want  
9 anything pulled from the consent agenda that was not just  
10 mentioned, or anybody in the public that wants anything on  
11 the consent agenda pulled and discussed.

12 (No response.)

13 MR. GOODWIN: If not, I'll entertain a motion  
14 to approve the consent agenda as amended.

15 MS. BINGHAM ESCAREÑO: Move to approve the  
16 consent agenda as amended.

17 MR. GOODWIN: Second?

18 MS. THOMASON: Second.

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

20 Any discussion?

21 (No response.)

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

23 (A chorus of ayes.)

24 MR. GOODWIN: Opposed?

25 (No response.)

1 MR. GOODWIN: Okay. Moving into our action  
2 items. Our first action item is action item number 3, the  
3 Governing Board. Presentation, discussion, and possible  
4 action on the election of Governing Board officers, which  
5 means a vice chairperson, and Ms. Thomason, you have a  
6 motion you wanted to make?

7 MS. THOMASON: Yes, I did.

8 I would like to make a motion to nominate  
9 Leslie Bingham for the chairperson. I believe her tenure  
10 and experience and knowledge of the Department and  
11 programs more than qualifies her.

12 MR. GOODWIN: Thank you. Do I hear a second?

13 MS. RESÉNDIZ: Second.

14 MR. ECCLES: It's vice chair.

15 MR. GOODWIN: Vice chair.

16 MS. THOMASON: Vice chair.

17 MR. GOODWIN: Oh, you wanted to take my place.

18 I tried to talk her into that a long time ago and she  
19 wouldn't do it.

20 (General talking and laughter.)

21 MS. THOMASON: Vice chair.

22 MR. GOODWIN: All right. So we have a motion  
23 and a second. Any 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: Congratulations, Ms. Bingham.

5 MS. BINGHAM ESCAREÑO: Thank you very much.

6 MR. GOODWIN: I'm sorry. We do secretary and  
7 treasurer, and that's Beau. Right?

8 MS. BINGHAM ESCAREÑO: The secretary is  
9 currently general counsel, the treasurer is currently the  
10 director of Administration who is David Cervantes.

11 MR. GOODWIN: David Cervantes.

12 So we need to have a nomination for secretary  
13 and treasurer. Can we do both at the same time, Beau?

14 MR. ECCLES: Absolutely.

15 MR. GOODWIN: Okay. So do I hear a nomination  
16 for secretary and for David Cervantes as treasurer?

17 You sure you want to do it, David?

18 MR. CERVANTES: (Speaking from audience.) Yes,  
19 sir.

20 MR. GOODWIN: See, you thought you weren't  
21 going to get to talk ever again in this meeting. Do you  
22 have an acceptance speech or a campaign speech you'd like  
23 to make?

24 (General laughter.)

25 MS. THOMASON: I'll make another motion to have

1 Beau, our general counsel, as secretary, and Mr. Cervantes  
2 as the treasurer.

3 MR. GOODWIN: Second?

4 MS. BINGHAM ESCAREÑO: Second.

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

6 Any discussion?

7 (No response.)

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

9 (A chorus of ayes.)

10 MR. GOODWIN: Opposed?

11 (No response.)

12 MR. GOODWIN: Congratulations, David.

13 Congratulations, Beau. It comes with no extra pay.

14 MR. ECCLES: Understood.

15 (General laughter.)

16 MR. GOODWIN: Item 4, Compliance.

17 Good morning.

18 MS. MURPHY: Good morning. Patricia Murphy,

19 director of Compliance.

20 Item 4 on your agenda is presentation,

21 discussion, and possible action on dispute of the

22 Compliance Division's assessment of the applicant's

23 compliance history to be reported to the Executive Award

24 Review Advisory Committee regarding Shiloh Estates,

25 application number 19439.

1           This item is similar but not exactly the same  
2 as some disputes that you heard at the June 27 meeting.  
3 Like the disputes that were before you in June, at this  
4 time there are no uncorrected events of noncompliance  
5 associated with the properties controlled by this  
6 applicant group. These are all issues that were not  
7 corrected within the allowed corrective action period.

8           This dispute is the result of a previous  
9 participation review which is required by 2306.057. The  
10 Department's rule that provide the process and procedures  
11 for this review takes into account the size of the  
12 applicant's portfolio, the number of events of  
13 noncompliance that were not fixed within their applicable  
14 corrective action period, and classifies an applicant's  
15 portfolio as a Category 1, 2 or 3. The rule then goes on  
16 to require the Compliance Division to recommend to EARAC  
17 denial of Category 3 applicants. EARAC in turn should  
18 then recommend denial to the Board.

19           The trigger for this application being  
20 classified as a Category 3 is the compliance history of  
21 the City of Dallas Housing Finance Corporation. This is  
22 the third previous participation review the City of Dallas  
23 Housing Finance Corporation has been through since April  
24 of 2019. Each time they partner with different  
25 organizations and each time they partner they've been

1 approved, but this particular application, when combined  
2 with these particular applicant, creates the Category 3  
3 designation. Nonetheless, the underlying issues  
4 themselves are unchanged and have been accepted by EARAC  
5 and the Board as recently as the September 5, 2019 Board  
6 meeting in association with application 19419, Palladium  
7 Redbird.

8           The applicant in this matter has provided an  
9 explanation for why its issues of noncompliance were not  
10 corrected during the corrective action period and has  
11 indicated that they've taken measures to ensure the issues  
12 will not be repeated. Specifically, the applicant has  
13 contracted with a third party to provide oversight for  
14 compliance with affirmative marketing requirements and  
15 tenant files, they replaced the property manager, and they  
16 established a new process to vet contractors. However,  
17 the Previous Participation Rule requires the Compliance  
18 Division to recommend denial of the award as the combined  
19 portfolio is a Category 3.

20           Do you have any questions for me before you  
21 take action on this item?

22           MR. GOODWIN: Any questions for Patricia?

23           (No response.)

24           MR. GOODWIN: Do I hear a motion to accept  
25 staff's recommendation for denial?

1 MR. VASQUEZ: Move to accept the staff's  
2 recommendation for denial.

3 MR. GOODWIN: Do I hear a second?

4 MS. THOMASON: Second.

5 MR. GOODWIN: Now any discussion? Anybody that  
6 wants to speak to this in the audience?

7 MR. ECCLES: This is item 4?

8 MS. MURPHY: Correct.

9 MR. GOODWIN: This is item 4.

10 MS. MURPHY: So similar to the June 27 Board  
11 meeting, although the rule requires that we recommend  
12 denial, the Board does have discretion in this matter.

13 MR. GOODWIN: John, did you want to speak?

14 MR. SHACKELFORD: I wanted to answer any  
15 questions if anybody had any. Avis Chaisson with the City  
16 of Dallas was supposed to be here but she texted me and  
17 said she's a little held up in traffic, to help explain if  
18 the Board had any issues with the project, Providence at  
19 Mockingbird that seems to be the chronic issue that the  
20 City of Dallas has on that one deal. Otherwise, I don't  
21 have anything else to contribute.

22 MR. GOODWIN: Okay.

23 MR. WILKINSON: Mr. Chairman, am I not reading  
24 this correctly, item 4, that the recommendation is not  
25 denial?



1 MS. MURPHY: Let's see. Correct, yes. Yes,  
2 right, that you should not preclude a positive  
3 recommendation and it's authorized to proceed with the  
4 remaining, yes.

5 MR. WILKINSON: So staff recommendation is  
6 authorize to proceed.

7 MR. GOODWIN: Oh, it's authorize to proceed,  
8 not to deny and stop the project.

9 MS. MURPHY: Correct, yes.

10 MR. GOODWIN: Okay. That's what I had in my  
11 notes about the agenda and that's why I was slowing down  
12 on this process. I was a little taken aback, so thank you  
13 for making that clarification.

14 MR. VASQUEZ: So the staff is recommending?

15 MR. GOODWIN: To move forward on this project.

16 MS. MURPHY: Yes.

17 MR. VASQUEZ: To move forward.

18 MR. GOODWIN: And we addressed this in a  
19 previous Board meeting. This is just a follow up to what  
20 we did in a previous Board meeting.

21 MS. MURPHY: Correct.

22 MR. GOODWIN: Okay. So let's withdraw that  
23 motion.

24 MR. VASQUEZ: I withdraw my motion, Mr.  
25 Chairman.

1 MR. GOODWIN: Withdraw that motion. Okay. Now  
2 we'll accept another motion to accept staff's  
3 recommendation.

4 MR. BRADEN: Mr. Chair, I'll make a motion to  
5 accept staff's recommendation and determine that EARAC may  
6 provide it with a positive award.

7 MR. GOODWIN: Okay. A second?

8 MS. THOMASON: Second.

9 MR. GOODWIN: Any other questions or  
10 discussion?

11 (No response.)

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

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Thank you. Thanks, John.

17 MR. SHACKELFORD: Thank you.

18 MR. GOODWIN: Item number 5, HOME and  
19 Homelessness Programs.

20 MS. VERSYP: Good morning. I'm Abigail Versyp,  
21 I'm director of HOME and Homelessness Programs.

22 I'm presenting first item 5(a) which is the  
23 inaugural round of awards for the new Ending Homelessness  
24 Fund. The EH Fund was established in the last legislative  
25 session to be effective September 1, 2017. The fund

1 allows persons registering their vehicles or renewing  
2 registrations to donate directly to end homelessness in  
3 the State of Texas. A hundred percent of the funds in  
4 this program are collected through direct donation, and  
5 TDHCA is tasked with administering the fund. The fund is  
6 only made available to cities and counties so we can't  
7 make it available directly to nonprofit organizations.

8 After an outreach effort to obtain stakeholder  
9 feedback, we were able to adopt rules effective December  
10 30, 2018. The rule allows the direct award of funds to  
11 cities and counties that have an existing Emergency  
12 Solutions Grant or an HHSP grant at the time that we make  
13 the funds available. At the time that we offered funds  
14 this round, there were seven eligible entities. The  
15 cities of Arlington, Austin, Dallas, El Paso and Plano  
16 accepted an award for the EH Fund.

17 Here come the flags.

18 (General laughter.)

19 MS. VERSYP: The City of Texarkana initially  
20 declined but then requested to participate in order to  
21 fund a local shelter that we talked about at the last  
22 Board meeting, Randy Sams' Outreach Center. The City of  
23 Houston has declined to participate entirely.

24 The initial offering of funds was originally  
25 about \$175,000 to be split evenly amongst each entity

1 accepting funds. Since the City of Texarkana requested to  
2 withdraw their declination of funds and the Department  
3 agreed, and other cities had already been informed of  
4 their award amount, additional funds were made available  
5 so that Texarkana could have an equal award to everybody  
6 else. So the total of the award today is right at  
7 \$210,000. The remaining balance, there's some funding  
8 left in the pot right now, is going to be combined with  
9 future collections and awarded in state fiscal year 2021.

10 The funds are going to be utilized for projects  
11 such as funding transitional housing for homeless youth in  
12 the city of Austin and funding rapid rehousing for  
13 families in Plano.

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

16 MR. VASQUEZ: Abigail, I'm just curious. Why  
17 would a municipality decline to participate?

18 MS. VERSYP: I think because the award amount  
19 was so small that administratively they just decided it  
20 wasn't something they were interested in at the time.

21 MR. VASQUEZ: Okay.

22 MR. GOODWIN: Is this similar in dollar amount  
23 to what we had last year?

24 MS. VERSYP: It's pretty steady, right about  
25 \$12,000 a month. We have never awarded funds before

1 because we were waiting to build up enough funding for it  
2 to be significant, so we think that we'll continue to  
3 collect probably around that same \$12,000 a month because  
4 it's been so steady.

5 MR. WILKINSON: Or more. Tell your friends.

6 MS. VERSYP: Yes, absolutely. It's pretty  
7 amazing to have a program that's just direct donations by  
8 Texans who are not compelled to for any other reason than  
9 they feel passionately about this.

10 MR. GOODWIN: Do I hear a motion to accept  
11 staff's recommendation?

12 MS. BINGHAM ESCAREÑO: I move to approve  
13 staff's recommendation.

14 MR. GOODWIN: Second?

15 MR. VASQUEZ: Second.

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

17 Any questions or discussion?

18 (No response.)

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

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: Okay. Item 5(b).

24 MS. VERSYP: Item 5(b), this is a  
25 recommendation to approve a six-month extension to the

1 2018 ESG contract with Youth and Family Alliance. They do  
2 business as LifeWorks, and so that's how we'll refer to  
3 them.

4 LifeWorks was awarded 2018 ESG funds. They're  
5 a youth services provider here in Austin. More than half  
6 of their original was programmed for emergency shelter.  
7 Prior to the award of funds, our ESG program was monitored  
8 by HUD. HUD specifically monitored LifeWorks emergency  
9 shelter for compliance. During the monitoring there,  
10 unfortunately, was a finding that LifeWorks didn't obtain  
11 written documentation to verify homeless status of all  
12 residents at the shelter. Specifically, the shelter was  
13 primarily occupied by either children in foster care or  
14 youth over the age of 18 that were in extended foster  
15 care.

16 In response to the finding, LifeWorks,  
17 independent of TDHCA, submitted the question to both the  
18 auditor, who is our field office representative, and HUD,  
19 through an automated technical assistance tool, requesting  
20 that HUD make a determination that youth in extended  
21 foster care are not wards of the state and therefore meet  
22 the definition of homeless. The responses that LifeWorks  
23 received conflicted with one another and the finding  
24 remained unresolved until final disposition of the  
25 question was received in August of this year.

1 TDHCA was informed on August 21 that neither  
2 TDHCA nor its subrecipient, such as LifeWorks, should  
3 expend funds to provide services to youth in extended  
4 foster care, affirming the finding issued almost a year  
5 prior. The results were communicated to LifeWorks, but  
6 due to the longer than expected period of time for  
7 response, LifeWorks was not able to fully expend the  
8 awarded funds since the funds could not be utilized as  
9 originally intended, and costs for emergency shelter must  
10 be allocated to serve only the proportionate share of  
11 eligible clients which is a small group within the  
12 shelter.

13 LifeWorks has requested an extension of six  
14 months to expend the remaining funds. The rules governing  
15 ESG authorize the Board to grant such extensions if the  
16 extension is needed to provide services required under the  
17 contract and evidences good cause for failure to meet a  
18 benchmark. Staff agrees that these conditions have been  
19 met and agrees that a six-month extension is reasonable,  
20 given the circumstances.

21 I'm happy to answer any questions.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: Do I hear a recommendation of  
25 approval from staff's recommendation?

1 MR. VASQUEZ: Move to approve staff's  
2 recommendation for the extension.

3 MR. GOODWIN: Second?

4 MR. BRADEN: Second.

5 MR. GOODWIN: So it's been moved and seconded.  
6 Did you have any comments that you wanted to make? You  
7 need to state your name.

8 MS. McDOWELL: Susan McDowell. I'm chief  
9 executive officer of LifeWorks.

10 I'm going to take a tiny second to thank you  
11 for your last action. We will put those funds to good  
12 work with youth homelessness in Austin, Texas.

13 I just want to take a moment to recognize and  
14 thank staff for their patience and diligence and  
15 creativity and tenacity through this process. The finding  
16 represented something new for both TDHCA and LifeWorks in  
17 terms of our understanding around who is eligible in  
18 shelters for this funding and who isn't. The issue is  
19 actually not resolved definitively within HUD yet, so  
20 there's a possibility I may be back in the future to talk  
21 about this issue, but it has been kind of kind of  
22 uncharted territory involving the interpretations of two  
23 state agencies and a federal agency, so the complications  
24 abound.

25 So, Abigail, I want to thank you for walking



1 through all of this with us and for y'all's flexibility in  
2 creating and supporting funds to be used with youth and  
3 homelessness.

4 MR. GOODWIN: And we want to thank you for the  
5 great job you and your organization do. Thank you very  
6 much.

7 MS. McDOWELL: One other really quick thing.  
8 So we are nearing completion of the Works Too, again,  
9 thanks to funds you all have made available, and I will  
10 send a notice within the next month to you for our grand  
11 opening and hope that many of you can attend and help us  
12 celebrate housing for youth in Austin. So thank you.

13 MR. GOODWIN: Thank you.

14 Any other questions?

15 (No response.)

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

17 (A chorus of ayes.)

18 MR. GOODWIN: Opposed?

19 (No response.)

20 MR. GOODWIN: Moving on to item 6, Asset  
21 Management.

22 By the way, I want to say to everybody if you  
23 plan to speak on any of these items, please move up into  
24 the first or second row.

25 We have a couple of letters that we need to

1 read in. We'll get staff's report and then, Michael, I'll  
2 ask you to read those in.

3 MR. BANUELOS: Good morning. Rosalio Banuelos,  
4 director of Multifamily Asset Management.

5 Item 6 is presentation, discussion, and  
6 possible action regarding a material amendment to the  
7 housing tax credit application for Memorial Apartments,  
8 file number 18235.

9 This is a 246-unit rehabilitation development  
10 in McAllen which was approved for \$1,883,683 of annual  
11 housing tax credits in 2018 under the USDA set-aside. The  
12 development is owned by Texas McAllen Memorial Apartments  
13 II, LP, which is controlled by Residential Construction,  
14 LP and the Housing Authority of the County of Hidalgo.  
15 The property currently has a housing assistance payment  
16 contract attached to 64 of the units and a USDA contract  
17 on 142 of the units, benefitting Farm Workers of America  
18 by subsidizing their rent.

19 The property was approved for credits in 2012  
20 but the developer wasn't able to secure approval from USDA  
21 post award and the 2012 credits were returned. The  
22 development owner is now requesting an amendment to the  
23 application to prepay the USDA 514 loan and remove the  
24 corresponding USDA rental subsidy from the development,  
25 while still qualifying for an award under the at-risk set-

1     aside.

2                     The owner indicated that the development is not  
3     eligible for USDA funding because USDA does not consider  
4     the property eligible under the 514 financing structure  
5     due to the ground lease structure for the tax exemption.  
6     In addition, the USDA has questioned whether the property  
7     is meeting its purpose of serving farm labor workers as  
8     less than 25 percent of the units receiving USDA rental  
9     assistance are occupied by farm labor qualified  
10    households. The property currently relies on an annual  
11    waiver from USDA to occupy a majority of the RD units with  
12    non-farm labor qualified residents in the affordable  
13    housing.

14                    Texas Government Code describes the USDA set-  
15    aside addressed by this application which sought an award  
16    to rehabilitate an existing development with a USDA loan  
17    and ongoing affordability restrictions. As stated in  
18    statute, any funds allocated to developments under this  
19    subsection that involve rehabilitation must come from the  
20    funds set aside for at-risk developments. Accordingly,  
21    the statute requires that a credit award for this USDA  
22    set-aside application would come from the amounts in the  
23    at-risk set-aside but that does not mean that applications  
24    for rehabilitation submitted under the USDA set-aside  
25    would be evaluated under a different rule and statutory

1 criteria for at-risk developments.

2           There were check boxes on the application for  
3 this development that were checked off for both the USDA  
4 and at-risk set-aside where the applicant confirms that it  
5 is applying for those set-asides, however, the application  
6 contained no information or statement describing how the  
7 application met the requirements under the at-risk set-  
8 aside which would include that the stipulation to maintain  
9 affordability was nearing expiration within two calendar  
10 years of July 31, 2018, and no evidence of a HUD mortgage  
11 that was eligible for prepayment.

12           A hyperlink to the application can be found on  
13 the second paragraph of the letter on page 394 of the  
14 Board book, and pages 218 and 221 of the application show  
15 that the applicant selected neither of these required  
16 elements to fulfill the at-risk definition elements. On  
17 the other hand, there are a number of other references in  
18 the application that illustrate that the award being  
19 sought was under the USDA set-aside and that the  
20 development was expected to continue as a USDA property.

21           Up until March of 2019, the applicant was still  
22 moving forward with the USDA application process but a  
23 letter dated March 12, 2019 -- which is included in your  
24 Board materials -- USDA informed the applicant that USDA  
25 had completed their review of the transfer application

1 that was received on February 12, 2019, and found that the  
2 application was incomplete. The letter listed 37 items  
3 that needed to be submitted and/or corrected in order to  
4 have a complete application.

5 Additionally, while prepayment of the 514 loan  
6 was considered by the applicant prior to the 2018 award,  
7 there was no indication in the application that prepayment  
8 of the 514 loan would be approved by USDA or that all USDA  
9 assistance was anticipated to be removed from the  
10 transaction.

11 In order to qualify as at-risk, the 2018 QAP  
12 requires that any stipulation to maintain affordability in  
13 the contract will be considered to be nearing expiration  
14 or nearing the end of its term if expiration will occur or  
15 the term will end with two years of the year the  
16 application is submitted.

17 It is the applicant's position that as the term  
18 "nearing expiration" is used in statute without  
19 definition, it should be considered satisfied by the  
20 decision to prepay the USDA loan, but this disregards the  
21 wording in the QAP on this point. Staff determines when  
22 affordability is nearing expiration in accordance with the  
23 wording of the statute and of the TDHCA rule.

24 The applicant is essentially creating its own  
25 at-risk by prepaying the USDA loan, but absent of the

1 prepayment, neither the HAP or the USDA subsidies for the  
2 development are due to expire within two years of July 31,  
3 2018, and the USDA loan and associated subsidies will not  
4 expire until 2040 and the HAP contract does not expire  
5 until 2033. Therefore, the application would not be  
6 eligible under the at-risk set-aside.

7 Staff evaluated the proposed amendment for  
8 scoring purposes and determined that the application was  
9 not eligible for an award if not in the at-risk set-aside,  
10 given that the development scored 129 points but the  
11 lowest scoring application that received an award in  
12 Region 11 Urban scored 153 points.

13 The amendment rules state that an amendment  
14 request will be denied if the Department finds that the  
15 request would have changed the scoring of an application  
16 in the competitive process such that the application would  
17 not have received funding award, or if the need for the  
18 proposed modification was reasonably foreseeable or  
19 preventable by the applicant at the time that the  
20 application was submitted, unless good cause is found for  
21 the approval of the amendment.

22 Therefore, staff recommends denial of the  
23 amendment request to prepay the USDA loan and accept the  
24 USDA Farm Labor Program.

25 That's all I have, but I'm available for

1 questions.

2 MR. GOODWIN: Before we read the letters, any  
3 questions?

4 (No response.)

5 MR. GOODWIN: Read the letters, Michael, if you  
6 would, please.

7 MR. LYTTLE: The first letter is addressed to  
8 the Board from Congressman Vicente Gonzalez.

9 "I am proud to represent the 15th District of  
10 Texas in the United States House of Representatives and  
11 write today as a supporter of the Housing Tax Credit and  
12 other affordable housing programs in your jurisdiction.

13 "The issues presented in front of the Board are  
14 backed up with evidence that there is indeed dire need for  
15 repairs at Memorial Apartments in McAllen, Texas. I have  
16 heard from both the Hidalgo County Housing Authority and  
17 my constituents who live in these apartments and I speak  
18 from the standpoint of someone who has litigated mold,  
19 water damage, fire and other covered items under insurance  
20 policies, as well as engaged in serious construction  
21 defect litigation for our school districts prior to my  
22 taking office.

23 "The housing authority has informed me that the  
24 problems before the Board stem, in part, from  
25 misinformation provided or a refusal to provide

1 information in a timely manner by the U.S. Department of  
2 Agriculture office. This should not jeopardize the  
3 housing authority's ability to complete their  
4 redevelopment with the funds the Texas Department of  
5 Housing and Community Affairs has already awarded.

6 "My office assisted the housing authority  
7 connect with USDA Washington staff to secure the necessary  
8 approvals. I've been advised that it is not in dispute at  
9 this time. USDA indicated in writing to TDHCA staff this  
10 essential fact, and the housing authority has assured me  
11 that approval of the financing and modernization plans are  
12 lawful and compliant with the Texas governing statute.

13 "These residents are the real driving factor  
14 here. In some instances residents have complained about  
15 health hazards such as fallen drywall, mold and unhealthy  
16 conditions. They deserve better and these plans can help  
17 them. My appeal to you is that the wheels turn as fast as  
18 possible as they are the ones we serve.

19 "I respectfully request that the funding  
20 currently awarded remain in place for this USDA farm labor  
21 development."

22 And the second letter is to the Board from  
23 State Senator Juan "Chuy" Hinojosa. It reads:

24 "This letter is in support of the amendment  
25 request by Texas McAllen Memorial Apartments II, LP and



1 the Housing Authority of the County of Hidalgo. The  
2 amendment proposes to prepay the United States Department  
3 of Agriculture 514 loan and remove the corresponding USDA  
4 rental subsidy for Memorial Apartments.

5 "While I appreciate TDHCA staff's thorough  
6 review of the application, I respectfully disagree with  
7 their recommendation. The recommendation fails to  
8 recognize and articulate the safety concerns and hazardous  
9 conditions of the Memorial Apartments.

10 "In an assessment of the ceilings at the  
11 apartment complex conducted in 2018 by Raba-Kistner  
12 Consultants, it was determined and recommended that all  
13 ceilings be replaced. This assessment was conducted after  
14 several ceilings had collapsed unexpectedly in the  
15 preceding 12-month period. The current conditions of the  
16 structure are of grave concern and the safety of the  
17 tenants is a priority.

18 "While the recommendation to deny the removal  
19 of the USDA subsidy may seem simple, the consequence of  
20 this decision is harmful in that it could lead to a  
21 possible loss and/or recoupment of the previously approved  
22 2018 housing tax credits. This loss of funding will  
23 further delay the much needed and long overdue  
24 rehabilitation of the Memorial Apartments.

25 "As you discuss this item, I urge you to keep

1 in mind the statutory purpose of TDHCA: to assist local  
2 governments in providing public services for their  
3 residents and helping them overcome financial, social and  
4 environmental problems. What's more, the purpose of the  
5 Tax Credit Program is to 'Prevent losses for any reason to  
6 the state supply of suitable, affordable, residential  
7 rental units by enabling the rehabilitation of rental  
8 housing, or by providing other preventive financial  
9 support.'

10 "I support the amendment requested by the owner  
11 and the Housing Authority of the County of Hidalgo because  
12 it would align with these stated goals by helping to  
13 ensure that the Memorial Apartments receive the repairs  
14 they desperately need to remain a suitable, affordable  
15 place for the residents of Hidalgo County to live.

16 "I thank you for your time and hope that you  
17 will consider this information when deliberating on this  
18 agenda item.

19 "Sincerely, Juan "Chuy" Hinojosa, State Senator  
20 District 20."

21 MR. GOODWIN: Thank you, Michael.

22 Any questions from any Board members?

23 (No response.)

24 MR. GOODWIN: If not, I've got a question.  
25 Sixty percent of these units currently receive a USDA

1 rental assistance?

2 MR. BANUELOS: 142 of them.

3 MR. GOODWIN: About 60 percent of the overall  
4 units? I thought I heard you say that they had to apply  
5 every year for a waiver because they weren't able to meet  
6 the restrictions of USDA, comply with USDA, and I'm  
7 curious what number of units haven't complied. Is that  
8 five of the 142 units or is it 70 of the 142, do you know?

9 MR. BANUELOS: I don't have the information.

10 MR. FISHER: (Speaking from audience.) One  
11 hundred.

12 MR. GOODWIN: One hundred of them don't comply,  
13 so you're only able to meet USDA on about 40 of the 140.

14 MR. FISHER: (Speaking from audience.) And  
15 those 40 are retired farm labor workers, not an actual  
16 worker.

17 MR. GOODWIN: Okay.

18 Any other questions before we take a motion to  
19 hear comments on this?

20 MS. RESÉNDIZ: I have a question.

21 MR. GOODWIN: Okay.

22 MS. RESÉNDIZ: So by paying off those  
23 subsidies, are we looking at being able to pay off the  
24 USDA loan?

25 MR. BANUELOS: So by paying off the USDA loan,

1 the rental subsidies would go away with that prepayment.

2 And just to add to that, as part of the  
3 prepayment agreement, there would be a reserve account  
4 that is intended to assist the USDA tenants that are  
5 living at the property currently until the end of their  
6 tenancy, until they move out. Once the tenant moves out,  
7 the new tenant would not be receiving any assistance from  
8 USDA or that reserve that would be put in place.

9 MR. GOODWIN: And just to make sure I  
10 understood you correctly, had this application come in  
11 without the USDA subsidy, it would have not have scored  
12 high enough to have received the award that it received in  
13 the 2018 round.

14 MR. BANUELOS: That is correct. So the  
15 application came under the USDA set-aside. The question  
16 here is whether absent the USDA set-side the application  
17 would have qualified under the at-risk set-aside. And for  
18 the at-risk set-aside there are two provisions that would  
19 have be satisfied, or one or the other, that any subsidy  
20 would expire within two years or that there would be a HUD  
21 insured mortgage that would be eligible for prepayment.  
22 In this case the USDA loan doesn't qualify under that  
23 provision, and absent of the election to prepay the USDA  
24 loan, the subsidy would not expire so it would just  
25 continue past the two years.

1 MR. GOODWIN: And assuming the Board voted in  
2 favor of staff's recommendation, what position would it  
3 put this project in to reapply?

4 MR. BANUELOS: It would be either they keep the  
5 USDA assistance, so I mentioned in the presentation that  
6 USDA issued a letter identifying the corrections that  
7 would need to be made in order to comply with the  
8 requirements, if the applicant can make that work, they  
9 can move forward as proposed in the application in 2018.  
10 Otherwise, it would be their election to return the  
11 credits or present an alternative solution, if there is  
12 one.

13 MR. GOODWIN: And then could they reapply for  
14 those credits in the next round?

15 MR. BANUELOS: Yes. It would be in the  
16 application that would come and go through the competitive  
17 process again.

18 MR. VASQUEZ: It would go through the  
19 competitive process but then clearly as an at-risk  
20 application?

21 MR. BANUELOS: They would need to document how  
22 it qualifies under at-risk. We don't believe that it  
23 qualifies under at-risk because of the election to prepay  
24 the USDA loan. If there's any other way to see that,  
25 then, yes, they could apply under that.

1           MR. WILKINSON: This was central to the issue,  
2 this novel interpretation, it's not completely  
3 unreasonable but novel for us: Can you put yourself at  
4 risk by ending your USDA relationship? And that's to our  
5 rule at least would say no, and that's why we have staff  
6 recommendation, the main reason staff recommendation is  
7 what it is. If the Board wanted to use their discretion  
8 otherwise, that's a different thing, but the idea that  
9 staff could agree to this new interpretation of at-risk  
10 was, I thought, beyond what would be appropriate for us.

11           MS. BINGHAM ESCAREÑO: So in the process of  
12 trying to figure this out, the applicant did the -- in  
13 other words, the decision from USDA took a while to  
14 happen, right, and then once that decision came -- I mean,  
15 obviously it sounds like from the letters this is a  
16 worthy, valid application, it's a needed development that  
17 would help -- that they did the best they could with what  
18 they had to try to figure it out. Right? They're bumping  
19 themselves into we're at risk because of this.

20           MR. BRADEN: But there isn't a substantive  
21 risk, it's voluntary.

22           MR. WILKINSON: And I think they'll have more  
23 details on why it can't work out with USDA when they  
24 speak.

25           MS. RESÉNDIZ: So since they've already paid

1 that off to the USDA then the project is no longer at  
2 risk.

3 MR. GOODWIN: It becomes at risk if it's paid  
4 off.

5 MS. RESÉNDIZ: It becomes at risk.

6 MR. VASQUEZ: Just on the scoring questions,  
7 because just seeing on the face of it the score looks  
8 really low that it would have received, by us awarding the  
9 tax credits as it was applied, was there another group  
10 behind them that did not get an award because we gave this  
11 one an award?

12 MR. BANUELOS: I'll let Marni speak to that.  
13 So this one came in as a USDA set-aside. Maybe Marni can  
14 clarify.

15 MS. HOLLOWAY: Marni Holloway, Multifamily  
16 Finance.

17 In 2018 we actually were under-subscribed.

18 MR. VASQUEZ: So this didn't force someone else  
19 out.

20 MS. HOLLOWAY: It didn't force someone else.  
21 What it did was those funds would have otherwise gone into  
22 the collapse and we would have picked up another award  
23 somewhere in the state.

24 MR. VASQUEZ: Okay. So yes and no.

25 MS. HOLLOWAY: So yes and no.

1 MR. VASQUEZ: Not directly.

2 MS. HOLLOWAY: Yes and no.

3 If these funds were returned at this point,  
4 they would also go back into the collapse. We don't have  
5 any remaining applications in the USDA set-aside for the  
6 current year, so that would also roll down and we would  
7 pick up another application.

8 MS. RESÉNDIZ: So what does that mean for the  
9 farm workers that are currently seeking living assistance  
10 from that particular development, and are there  
11 developments just directly around there, at least within  
12 close proximity, that can assist them?

13 MS. HOLLOWAY: I can't answer the question  
14 about whether there's anything in proximity. I can say  
15 that it's my understanding that for the current tenants  
16 who are farm workers, the reserve that's being put in  
17 place would allow them to continue their tenancy but the  
18 development would no longer carry that requirement to  
19 serve farm workers. So they wouldn't have that  
20 requirement to market to or to seek out farm workers as  
21 residents for the property.

22 MS. RESÉNDIZ: And how many units currently?  
23 I'm sorry. I believe that question was already answered.

24 MR. BANUELOS: 142 of the units are covered by  
25 USDA.



1 MS. RESÉNDIZ: Out of how many units?

2 MR. BANUELOS: 246.

3 MS. RESÉNDIZ: 246. Okay.

4 MR. GOODWIN: Okay. Any other questions?

5 MR. WILKINSON: I'll also add this is a source  
6 of funding for rehab so they would continue to exist as is  
7 but they wouldn't be able to rehabilitate the units absent  
8 another new source of funding.

9 MS. HOLLOWAY: So if the Board chooses to move  
10 forward with this development, it would move forward as a  
11 tax credit development, and it would have a HAP contract  
12 on some portion of the units.

13 MS. RESÉNDIZ: But to pay off the loan that  
14 wouldn't allow for farm worker housing.

15 MS. HOLLOWAY: I'm sure a farm worker could  
16 live there. There wouldn't be a requirement for the  
17 development to actively seek farm workers as tenants, as  
18 residents. They wouldn't have that requirement to  
19 affirmatively market or to reach out to organizations that  
20 are working with farm workers.

21 MR. GOODWIN: Any other questions?

22 (No response.)

23 MR. GOODWIN: If not, I'll hear a motion to  
24 entertain comments.

25 MR. VASQUEZ: I would move to hear comments.

1 MR. GOODWIN: Entertain comments. Second?

2 MS. THOMASON: Second.

3 MR. GOODWIN: All in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Okay. I see we have people that  
6 want to speak, so if you don't mind, come up and sign in  
7 and tell us who you are.

8 MR. FISHER: Good morning, Board members. I'm  
9 Bill Fisher with Sonoma Housing. I'm the development  
10 advisor to the partnership and the housing authority and  
11 the other sponsor.

12 This isn't a USDA app, it was never a USDA app,  
13 it was both at-risk and USDA. This is the very  
14 experienced team here and we knew literally from pre-app  
15 that we would get an award if we were USDA or at-risk or  
16 both. That is what this application shows, all the  
17 material is in there.

18 At-risk is a statutory issue and I'm going to  
19 leave that to Mr. Shackelford to address, so I'm going to  
20 address the application issues that staff has raised.

21 Let me first start out with it's been re-  
22 underwritten, it's completely feasible and supports the  
23 award that was made. The applicant has no idea how staff  
24 is coming up with their position. We applied for two set-  
25 asides, at-risk and USDA at pre-app, at-risk and USDA at

1 application. The application log shows us as the only  
2 USDA transaction that is both USDA and at-risk, and our  
3 commitment notice says set-asides, plural, at-risk and  
4 USDA. The statute that they're referencing of how they  
5 are somehow -- we're at-risk in our commitment notice and  
6 everything but we're really not at-risk is not even cited  
7 in any of the material they've provided us.

8 The concept that we did not provide the  
9 information is flawed. The rental assistance contract is  
10 in there. It expires after one year. All of the  
11 documentation related to the loan which is being prepaid  
12 by agreement, which is statutory, ends the rental  
13 assistance within two years. So we complied with the  
14 statute and the rules. We provided material for that. In  
15 addition to that, that was discussed. Not only that,  
16 there is written communication with staff that says we're  
17 paying off the 514 loan and it meets our at-risk test.  
18 That is an email prior to award.

19 At the award a condition of the underwriting  
20 report prior to award says, Show us the 514 loan can be  
21 prepaid. And then there's a further condition in our  
22 commitment notice that deals with the exact same issue,  
23 and the payoff of the 514 loan is fundamental to the at-  
24 risk because by statute, USDA if the loan is paid off, the  
25 rental assistance goes away.

1           The fundamental question related to the  
2 voluntary payoff is irrelevant to the statute, but let's  
3 talk about voluntary. You must be kidding me. The  
4 executive director asked us to get in writing from USDA  
5 why they were accepting payoff of this, and they're  
6 telling you in as nice a way as possible, you're at risk,  
7 you do not meet the intent of this program, we can't fund  
8 it, we don't want to fund it, you're relying on a waiver  
9 we don't have to give you.

10           The conditions, they don't feel like they can  
11 fund the transaction anymore because it is not rural, it's  
12 not agricultural, we're just a victim of Texas progress.  
13 Right? We were rural and in the county -- it's the county  
14 housing authority -- we're in the middle of McAllen now  
15 and USDA funding, 514 and 515, we're not even eligible for  
16 anymore.

17           So we have done it all. We are at-risk and  
18 USDA. That was our app, that's our award. Now, what this  
19 amendment is asking you to do, we're dropping USDA, so we  
20 do not qualify for the award under USDA but we clearly do  
21 under at-risk, and we applied for both and we were awarded  
22 for both and we knew at the time, from pre-app on, because  
23 as Marni said, it was undeserved, as long as the  
24 application was compliant we would be awarded under one or  
25 the other or both.

1           Let me also mention, because I know for some of  
2 you this is important about real estate. Sixty acres in  
3 downtown McAllen, 246 apartments, USDA has over \$15  
4 million in this transaction that they advanced to build  
5 it. They're accepting \$4 million to get us out of the  
6 program. So we are also acquiring 246 units and 60 acres  
7 in downtown McAllen, which is an indication of why we're  
8 at-risk with USDA. They want us out of the program and  
9 staff really knows that from the 2012 application.

10           So I would really appreciate you all looking  
11 carefully at it. I provided a supplement in the Board  
12 package that provides written documentation for everything  
13 I've stated today, and the idea that they keep saying  
14 we're a USDA application is nonsense. The application is  
15 clear, both boxes are checked, we are the only one like  
16 that in the app log, which is attached.

17           Happy to answer any questions.

18           MR. GOODWIN: Any questions?

19           MS. RESÉNDIZ: Are you able to tell me what was  
20 cited, more or less, in the material that staff gave you?

21           MR. FISHER: As far as what we gave them?

22           MS. RESÉNDIZ: Correct.

23           MR. FISHER: Oh, my goodness. Well, first of  
24 all --

25           MS. RESÉNDIZ: A quick summation that led to

1 the misunderstanding.

2 MR. FISHER: They wrote a letter to us a week  
3 ago and said, we never evaluated it as at-risk. Even  
4 though we checked both boxes, staff is telling us in  
5 writing one week ago: We never looked at it for at-risk  
6 qualifications. That's Rosalio's letter from Thursday a  
7 week ago.

8 Why? If you look at this record, these  
9 communications from us to Mr. Stewart, we're paying off  
10 the 514 loan and we're at-risk. In our original financing  
11 application, look at it, there's no 514 money in there,  
12 we're paying it off from day one. Now, we are obligated  
13 to try and continue the rental subsidy, and the housing  
14 authority board wanted to continue the USDA rental  
15 subsidy. USDA is not going to do it, and they've told the  
16 board and the staff, and Mr. Wilkinson particularly, in  
17 writing because he said, Look, I need to understand this  
18 better, can you get USDA to write me a letter? And I  
19 think it's pretty clear: your diminished need waiver, you  
20 don't meet the mission, goodbye, we're accepting  
21 prepayment. Acceptance of prepayment ends the rental  
22 subsidy and so we're within two years. We comply with the  
23 statute and the rules.

24 And just so you know, our app I put in there,  
25 it circles at-risk and USDA. The rental subsidy contract

1 is in there. It expires every year in June, so it has to  
2 be renewed by USDA every year. Prepayment of the 514  
3 loan, by statute, automatically ends it.

4 And the question of are we doing it  
5 voluntarily, every one of these set-asides and at-risk  
6 involves a voluntary decision. The owner has a HUD, it  
7 has affordability. They prepay it, even though it's got  
8 more term, affordability goes away. HAP contracts, the HAP  
9 contracts returned. HUD will tell you they desperately  
10 tried to extend those. So the applicant is in essence  
11 making a decision, I'm going to end the rental subsidy  
12 which would end affordability which makes it at-risk.

13 The housing authority is the other group in the  
14 set-aside. The housing authority, that's all they do is  
15 affordability, so they're saying if public housing is  
16 involved, it's at-risk because in theory it could be  
17 unaffordable. It could only be unaffordable if the  
18 housing authority made the decision. So the issue of  
19 intent or whatever doesn't matter, but even irrelevant to  
20 that, USDA has already told you we're at-risk. We want  
21 out of this program.

22 Let's be honest, we'll be back here next year  
23 telling you all that the diminished need waiver has not  
24 been granted, we have 246 low income residents and they're  
25 not subsidizing 142 units. What do you think is going to

1 happen? People are going to get evicted. So we are  
2 at-risk in every meaning of the word, statutorily as well  
3 as a practical matter, and we'd really appreciate your  
4 consideration of our position and our information.

5 MR. GOODWIN: Was the 60 acres fully developed,  
6 like 40 units to the acre?

7 MR. FISHER: Our section is probably on about  
8 35, but we end up with all 60 because right now there's  
9 basically a park that's equipped with children's  
10 playground equipment and everything else that's part of  
11 the 60 acres that the whole community enjoys. And what's  
12 your money going to do besides cure these conditions?  
13 Make it accessible, provide additional amenities, put a  
14 washer and dryer hookup in every unit. You know, these  
15 people do God's work. They serve the poor, the senior who  
16 has no other place to go, many of the residents are  
17 disabled, this is a special needs population, as with many  
18 housing authorities.

19 MR. GOODWIN: Okay. Any other questions?

20 (No response.)

21 MR. GOODWIN: John, did you want to speak?

22 MR. SHACKELFORD: (Speaking from audience.)

23 I'll be after the others that want to speak.

24 MR. FISHER: Thank you.

25 MR. GOODWIN: Thank you.



1 MR. REYES: Mr. Chair, good morning, everyone.  
2 Thank you for being here. I traveled six hours but it is  
3 very important to us.

4 MR. GOODWIN: We need your name and we need for  
5 you to sign in. Thank you.

6 MR. REYES: I'm sorry. My name is Noe Reyes.  
7 Thank you for seeing us, having us here.

8 I am a product of affordable housing and even  
9 though I live, I grew up ten miles south of this  
10 community, Memorial Apartments, I actually went to McAllen  
11 Memorial which is adjacent to the community. And I have  
12 friends that grew up there and now they became property  
13 owners and now they're contributing citizens, nurses,  
14 teachers, so they were migrants at that time and now  
15 they're not, and we have new families in there but we also  
16 have the elderly there.

17 I became a speech pathologist and I've been a  
18 speech pathologist for 18 years so I've done some home  
19 health. I've been on the housing authority for the county  
20 for four years, I'm the current chair, but throughout my  
21 career I got the opportunity to revisit some of the homes  
22 where my friends used to live 30 years ago, and they need  
23 help. The weather, the elements, time, you know, it takes  
24 a toll.

25 So I've gone to see children there with their

1 families, with parents, their living environment, not only  
2 and out of their home, but also the elderly. I serve from  
3 zero to 100-plus, so I've gotten to see and work with them  
4 in their homes and they need help. It's not accessible.  
5 When I learned that they were awarded, I got excited,  
6 everybody did, and here we are asking for help. I know  
7 there might be a little glitch on something that happened,  
8 but I know that the heart is in the right place and  
9 hopefully we can get this done.

10 I want to assure you that Ms. Carrizalas, which  
11 is the current manager there, over 20 years of experience  
12 there in that community, will make sure that every cent  
13 that you award to us goes into good effect.

14 So thank you for your time, and again, please  
15 help us out.

16 MR. GOODWIN: Thank you.

17 Any questions?

18 (No response.)

19 MR. GOODWIN: Okay. Next.

20 MR. MALDONADO: Mr. Chairman, members of this  
21 Board, my name is Juan Maldonado. I am a member of the  
22 board of directors appointed by the Honorable County Judge  
23 Richard Cortez, former mayor of McAllen and now county  
24 judge. I am also a former elected official. The judge  
25 saw fit to appoint me because I am a former farm worker,

1 migrant.

2 MR. VASQUEZ: Mr. Maldonado, board of directors  
3 of what?

4 MR. MALDONADO: Hidalgo County Housing  
5 Authority.

6 MR. VASQUEZ: Okay. Thank you.

7 MR. MALDONADO: I apologize.

8 We try desperately, we try hard to keep the  
9 units throughout the county operating efficiently and  
10 safely. We know the difficulties, we've lived the  
11 difficulties, and most of the board members have lived the  
12 difficulties. We grew up in fields alongside Chuy  
13 Hinojosa. I call him Chuy. He is the honorable state  
14 representative -- I'm sorry state senator. So we've been  
15 in the cotton fields, we've been there and we know the  
16 people that reside in these units. When I was an elected  
17 official I'd campaign the fields. I've got pictures to  
18 show where I'd be out there shaking hands with people  
19 picking fruits like I did when I was a young man.

20 We come before you because we want to make sure  
21 that y'all understand what our conditions are in South  
22 Texas. Yes, we're not the major agriculture center of  
23 Texas anymore and we have kind of evolved into other  
24 economic fields, but we still have a major -- I think even  
25 today, I know that a few years ago, but even today we

1 house in Hidalgo County, Mr. Chairman, we house the  
2 highest percentage of farm workers in the State of Texas  
3 and probably in the country in this county. And a lot of  
4 low income, indigent members of our community, we try as  
5 best we can to cover.

6 Now, we also understand that people, one of the  
7 basic human needs, according to Maslow, you know, the  
8 hierarchy of needs and all that kind of stuff that I  
9 learned at the university when I was studying, dictates  
10 that one of the basic, the most basic need human beings,  
11 all of us have is the need for physiological fulfillment,  
12 housing, food, you know, that kind of thing. And so we  
13 understand, having lived the farm worker life, having  
14 migrated up and down this state, picking cotton and in the  
15 Valley, of course, all the fruits you can imagine, we  
16 understand the needs.

17 We come to you because we need you, we need the  
18 help in our communities, the poorest of the poor. So we  
19 come before you, we ask for your help.

20 MR. GOODWIN: Thank you.

21 MR. MALDONADO: Thank you.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: Next.

25 MR. LOPEZ: Good morning, Mr. Chair and Board

1 members. My name is Mike Lopez. I'm the executive  
2 director for the Hidalgo County Housing Authority, been  
3 there 28 years, I think, give or take, I forget.

4 Not much to add. You know, we're here asking  
5 for help, asking for your discretion on all this technical  
6 stuff. The attorney will address some of that in a  
7 minute.

8 Just from what I heard, I think the only  
9 addition I have is to say that the farm labor  
10 developments, I don't know if statewide but at least in  
11 our area, are being diminished. Raymondville, Willacy  
12 County farm labor development, they completed their term  
13 with USDA, they're now out on their own. I don't recall  
14 if they kept the subsidy, I don't think so; I think the  
15 subsidy goes away, I'm not sure. San Juan Housing  
16 Authority, their labor development done, they finished  
17 their term.

18 Our development has been there since 1948, the  
19 Memorial Apartments, then rebuilt in 1976, and we're at  
20 the tail end. You know, Bill alluded to that, we're 20 to  
21 25 percent farm labor. There's still farm labor housing  
22 needs over there except it's being addressed in a  
23 different way, so we've just reached that point.

24 I've been at this ten years, the last ten years  
25 you awarded us, the housing authority, you awarded us tax

1 credits in 2012, worked real hard to get that deal done  
2 but different approach, different team, USDA turned us  
3 down, couldn't do it at that time. This time very highly  
4 professional team, very tedious, detailed, very careful  
5 approach, we get it all done. I was floored when Bill  
6 told me that he had convinced, worked out with USDA,  
7 Washington USDA, Temple -- especially Temple -- that they  
8 had worked out where they were going to accept the tax  
9 credit award in the structure that they had explained to  
10 you. I was astonished. I said, really? I said, Oh,  
11 great. So I thought we were going to get the repairs  
12 needed with this money. All of a sudden the state now  
13 doesn't want to do it, the Department.

14 So I've been trying, it's frustrating, but  
15 we're here before you, we've got the need, big need, and  
16 seriously the ceilings are collapsing of age. I mean,  
17 that property is 40 years old and they're just too old.  
18 All of a sudden we get a call that the ceiling collapsed.

19 Luckily it hasn't hit a tenant yet, haven't had any  
20 injuries, and I pray that we get these tax credits so we  
21 can get all that repaired all in one swoop.

22 But that's where we are. Appreciate your time,  
23 ask for your help and consideration. Thank you.

24 MR. GOODWIN: Thank you.

25 Any questions?

1 MS. BINGHAM ESCAREÑO: Mr. Chair, I just have a  
2 question as Mr. Shackelford is coming up. If we were to  
3 consider approving the request for the material amendment,  
4 are there requirements that we need to be able to  
5 articulate that it meets? Because it might help us, as we  
6 hear Mr. Shackelford, just to make sure. It's a Beau  
7 question, I think it's a Beau question.

8 MR. ECCLES: Yes. I think that the statutory  
9 and rule requirements really focus on the concept of when  
10 is the subsidy nearing expiration. Those are the words  
11 that are used in the statute as well as the rule. The  
12 rule, which is the QAP at Section 11.53(b)(ii), talks  
13 about a specific date as being when a subsidy is nearing  
14 expiration. It is not defined in the statute. The  
15 applicant here is arguing that because they're going to  
16 prepay the 514 loan that that makes it nearing expiration,  
17 which is an interpretation.

18 In the next section of statute when the term is  
19 being used, first in the definition of at-risk  
20 development -- and this is at Government Code  
21 2306.6702(5), an at-risk development means the development  
22 has received the benefit of a subsidy, including a 514  
23 loan, but is also subject to the following conditions:  
24 the stipulation to maintain affordability and the contract  
25 granting the subsidy is nearing expiration -- that's what

1 I was just mentioning -- or the HUD-insured or HUD-held  
2 mortgage on the development is eligible for prepayment or  
3 is nearing the end of its term. So that's where  
4 prepayment is used, but this is not a HUD-insured or  
5 HUD-held mortgage that we're talking about.

6 So I think legal issue that we're going to be  
7 discussing that Mr. Shackelford would address is just that  
8 concept that I said at the beginning.

9 MS. BINGHAM ESCAREÑO: Nearing expiration.

10 MR. ECCLES: Is the 514 loan is it nearing  
11 expiration by way of their decision to pay it off.

12 MR. WILKINSON: Beau, couldn't the Board grant  
13 the request for material amendment and not take any  
14 position whatsoever on an interpretation of at-risk and  
15 just grant it?

16 MR. ECCLES: Well --

17 MR. WILKINSON: We're not setting precedent  
18 here. Right?

19 MR. ECCLES: Well, we're never setting  
20 precedent. That will be on my tombstone.

21 MR. GOODWIN: So it would be nice in the future  
22 for no one to bring that up again.

23 (General laughter.)

24 MR. ECCLES: I'm not going to hold my breath on  
25 that.



1 I think that the material amendment that we're  
2 talking about here is to allow them to pay off the 514  
3 loan and also be considered an at-risk development, so I  
4 think that probably what the Board would have to do here  
5 is come to the conclusion, though it's not of precedential  
6 value, that these circumstances, as presented here,  
7 satisfy the nearing expiration as set out in the rule, as  
8 well as statute.

9 MR. WILKINSON: But not be bound to those.

10 MR. ECCLES: Not be bound to those. No one  
11 could come back and say, remember what you did on Memorial  
12 in 2019, you have to say that our new circumstances also  
13 constitute that.

14 MR. WILKINSON: Thank you.

15 MS. RESÉNDIZ: So is someone able to tell me  
16 why the original application asked to receive the USDA  
17 subsidies if the idea is pay it back?

18 MR. FISHER: Thank you. Bill Fisher, Sonoma  
19 Housing.

20 We did both because we knew USDA does not like  
21 this project. So what did we do? We said we were at-risk  
22 or USDA, or both, so if we're not at-risk and we remain  
23 USDA, we keep our award because we were under-subscribed.

24 If we're not USDA but we're at-risk, we keep our award.  
25 So there were three possible outcomes where we would keep

1 our award and that's what we put in the application, and  
2 we showed the 514 payoff, we showed trying to keep the  
3 rental subsidy. If we kept the rental subsidy, we'd be  
4 USDA; if we didn't keep the rental subsidy and the loan  
5 was paid, we'd be at-risk.

6 So we did cover both bases, it's clearly in  
7 there. If you look in the app log, all the other USDA  
8 apps are USDA apps only, we're the only one with both. So  
9 we did ask for both. We always knew that this was  
10 possible, that we wouldn't end up being both. We  
11 certainly are never going to rely on USDA. They spent ten  
12 years with USDA after the 2012 award trying to make that  
13 work under their rules. USDA doesn't want it to work,  
14 even if they have statutory authority, for the reasons  
15 they wrote the executive director: this doesn't meet  
16 their mission, they want out, they're rewarding everyone  
17 here by saying you can have this property for the payoff  
18 of the loan, the \$4 million. And in return they get \$4  
19 million and an end of their rental subsidy for non-farm  
20 labor workers.

21 MR. BRADEN: Mr. Chair.

22 You said that there are approximately 40 units  
23 that are still receiving USDA subsidy.

24 MR. FISHER: They subsidize all of the units  
25 with the diminished need waiver, but of the 140 -- we rely

1 on that every year, so if they were not to grant it, which  
2 they don't have to, 100 of those 140 would not be  
3 subsidized. The 40-odd that are there meet the  
4 qualifications of the farm worker set-aside only because  
5 they're retired, they're elderly people who were farm  
6 workers and aren't any longer.

7 MR. BRADEN: Okay. So I guess I'm trying to  
8 get a feel for how many farm workers are serviced by this,  
9 only the 40?

10 MR. FISHER: Only the 40. They subsidize 142  
11 because they are supposed to, but they don't have to do  
12 the other 100 that are non-farm labor workers. We're  
13 required, again, annually at-risk to asked for a  
14 diminished need waiver. They're not required to do it,  
15 they have authority to do it, they have been doing it, but  
16 if they did not, which they can, the rental subsidy would  
17 end on those 100, and I think they've told you that  
18 already.

19 MR. BRADEN: Of the 40 that you have, I guess  
20 the housing authority has made a commitment that they're  
21 going to keep the subsidy with respect to them as long as  
22 they stay in the units?

23 MR. FISHER: That's right. The financing plan,  
24 which has been underwritten as feasible -- and USDA is  
25 requiring it too, you all require it under your rules, we

1 can't disenfranchise these residents, so there's a  
2 substantial rental reserve that allows these people to  
3 live out the term of their lease, and then when they move,  
4 that unit becomes a tax credit unit and continues to be  
5 affordable. If we don't do this and USDA bails out, then  
6 when the unit becomes vacant it is a market rate unit, and  
7 that's what is making us at-risk is if all the  
8 affordability goes away, USDA goes away, rental subsidy  
9 goes away, and there is no affordability restriction.

10 MR. BRADEN: So just to be clear, the 40 that  
11 actually have a connection to the farm workers will be  
12 taken care of even when the USDA is paid off.

13 MR. FISHER: Absolutely, and there's a reserve  
14 that's required in our app, it's required by USDA, it's  
15 required by your rules.

16 MR. BRADEN: The second issue, which I thought  
17 when you did your presentation you made a good point, how  
18 long has this waiver that apparently is an annual waiver  
19 from USDA, how long have they been getting this waiver?

20 MR. FISHER: I know since at least 2012. Has  
21 it been longer than that?

22 MR. LOPEZ: (Speaking from audience.) Oh, it's  
23 been 15-18 years.

24 MR. FISHER: Yes.

25 MR. BRADEN: So you've been asking for waivers

1 for an extended period of time and you've been granted  
2 them by the grace of the USDA. It's clear from their  
3 emails and from other things that, you know, their  
4 patience is wearing out, this doesn't fit their program,  
5 and they're going to take this away one way or the other  
6 very soon.

7 MR. FISHER: Yes, sir, and that's absolutely  
8 true. And we know now USDA, even if they wanted to fund  
9 these needed modernizations, because we're not rural  
10 anymore and we're in the city limits of McAllen, they're  
11 really not in a position to do a lot of funding for it.  
12 So this is the only avenue, and I think clearly in both,  
13 you'll find from the statute, but I think in any practical  
14 sense, this development and this resident population is  
15 clearly at-risk, clearly at-risk of not being affordable  
16 and clearly at-risk of having a major problem about trying  
17 to keep these low income residents in place.

18 MR. BRADEN: And arguably that might be nearing  
19 expiration because of the continuing request for waiver.

20 MR. FISHER: Do not rely on any legal advice  
21 from me. Mr. Shackelford will address the legal issues.

22 (General laughter.)

23 MR. GOODWIN: Thank you, Bill.

24 John.

25 MR. SHACKELFORD: Thank you, Mr. Chairman,

1 members of the Board, Mr. Wilkinson, Mr. Eccles. I'm John  
2 Shackelford, represent the developer and the owner of this  
3 project.

4 Let me come back to you and read something that  
5 was in the application summary prepared by staff before  
6 the award in 2018 was given. This is on page 14 of 21.  
7 It says, "The applicant states that at closing the debt  
8 would be repaid to zero or the minimum amount necessary to  
9 ensure that they had maturing debt under the at-risk  
10 rules." Then the author of the report editorializes and  
11 says, "It is unclear why the applicant would choose to use  
12 market rate debt to pay off existing debt with an interest  
13 rate subsidy. It is also unclear that the USDA will  
14 permit the existing 514 debt to be retired."

15 I've got all these places marked because it's  
16 replete where staff was aware that we were coming in both  
17 USDA and at-risk and there's references all over to this  
18 thing being paid off.

19 And I appreciate Mr. Eccles's words earlier,  
20 and especially, Mr. Braden, what you just said because to  
21 me the first thing I was going to say is, to me, I think  
22 you've heard enough evidence to say if we're getting a  
23 waiver from the USDA every year that they can voluntarily  
24 deny, is that not nearing expiration under whose ever  
25 interpretation you want to accept? To me, that does it

1 right there.

2 But also, in the statute and under the rule,  
3 expiration is not defined, so I went to Google, pulled up  
4 Merriam Webster's definition of expiration, since it's not  
5 a defined term anywhere, and it says -- the first  
6 definition refers to death, so I won't give you that one.

7 Number two, though, is "the fact of coming to an end with  
8 a point at which something ends." To me, if you  
9 voluntarily prepay, you've then triggered an expiration by  
10 its own terms. And I appreciate Mr. Eccles pointing out  
11 that under the at-risk definition the first is the  
12 stipulation to maintain affordability and the contract  
13 granting the subsidy is nearing expiration. We think we  
14 qualify, as I just said.

15 The second one, though, is if it's a  
16 HUD-insured loan or HUD mortgage on the development it's  
17 eligible for prepayment. Well, why would it be that the  
18 legislature allows a prepayment of a HUD loan to satisfy  
19 at-risk, but it would not under a 514 loan? Under what  
20 rationale does that make any sense? To me, it doesn't.

21 To employ the interpretation staff attributed  
22 to it -- and I understand why they did it -- you have to  
23 read into what we're talking about, this nearing  
24 expiration, you have to actually add words into that  
25 sentence to get to the point they're trying to make.

1 They're reading it as expiring to a certain date, a  
2 maturity date, end of the term. It doesn't say that,  
3 that's not what it says here, it just says nearing  
4 expiration. Nearing expiration can come about by any  
5 avenue, prepayment or otherwise. So to me, it could be  
6 about foreclosure, that's nearing expiration.

7 So to me, I think we satisfy that rule that Mr.  
8 Eccles set up really well, that I think this issue comes  
9 down to is it at-risk -- and I think I clearly think it  
10 qualifies as at-risk, and I think you have an avenue to  
11 rationalize, based upon my reading of the Board members'  
12 so inclined to try to find a way to make this work, I  
13 think you have it by, Mr. Braden, what you said, you get a  
14 waiver every year. It's a one-year contract, we don't  
15 have this through the term of the note.

16 Thank you very much.

17 MR. GOODWIN: Thank you.

18 Any questions for Mr. Shackelford?

19 (No response.)

20 MR. GOODWIN: Ms. Bingham, you have a motion  
21 you look like you're getting ready to make?

22 MS. BINGHAM ESCAREÑO: I'd like to move to  
23 approve the request for the material amendment to remove  
24 USDA funding, and I may need a little assistance from  
25 counsel, in that my motion would include that the at-risk



1 status still is satisfied with the prepayment of the 514  
2 loan. Does that work?

3 MR. ECCLES: That the prepayment of the 514  
4 loan under these particular circumstances presented in  
5 these items constitutes nearing expiration under the QAP  
6 Section 11.53(b)(ii).

7 MS. BINGHAM ESCAREÑO: Yes, that.

8 (General laughter.)

9 MR. GOODWIN: I thought you meant to say that.  
10 Do I hear a second?

11 MR. VASQUEZ: Second.

12 MR. GOODWIN: Motion and second. Any further  
13 discussion? Any other questions?

14 (No response.)

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

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Okay. Moving on to item 7, the  
20 rules.

21 MR. BANUELOS: Rosalio Banuelos, director of  
22 Multifamily Asset Management.

23 Item 7(a) is presentation, discussion, and  
24 possible action on an order proposing the repeal of 10 TAC  
25 Chapter 10, Subchapter E, Post Award and Asset Management

1 Requirements, and an order proposing new 10 TAC Chapter  
2 10, Subchapter E, Post Award and Asset Management  
3 Requirements, and directing their publication for public  
4 comment in the *Texas Register*.

5 On Board approval the proposed 2020 Asset  
6 Management rules will be posted to the Department's  
7 website and published in the *Texas Register*. Public  
8 comment will be accepted between October 25, 2019 and  
9 November 8, 2019. The Asset Management rules, after  
10 consideration of public comment, will be brought before  
11 the Board on December 12, 2019 for final approval and  
12 subsequently published in the *Texas Register* for adoption.

13 I will not go into every change in detail, but  
14 the most significant of the proposed changes are needed to  
15 correct rule references, clarify language or processes,  
16 include TCAP RF in the section for annual written  
17 approvals, add a cost certification requirement for  
18 Housing Tax Credit properties layered with National  
19 Housing Trust Fund, reduce the reporting burdens of  
20 duplicate materials at 10 percent test and cost  
21 certification, implement recommendations made by the  
22 Department's internal auditor for cost certification  
23 process, create more efficiency in the creation of special  
24 reserve account agreements and the release of special  
25 reserve funds by eliminating the requirement for a pre-

1 approved plan and eliminating the requirement for the  
2 financial institution's representative's signature in  
3 special reserve account agreements.

4 We also intend to reduce the number of  
5 notifications on non-material amendments related to  
6 changes in guarantors, revise the requirements for  
7 community housing development organizations, or CHDO,  
8 certifications to clarify current Department practice and  
9 meet federal requirements, and to expand the notification  
10 requirements for right of first refusal based on previous  
11 public comment and stakeholder input received.

12 Additionally, while not in the proposed draft,  
13 staff also proposes to add a statement in Section 4, Right  
14 of First Refusal regarding notification requirements,  
15 requiring the certification that the development owner, to  
16 the best of their knowledge and ability, has provided  
17 notifications to the required parties, and we also propose  
18 to remove the requirement for evidence of submission or  
19 receipt of such notifications.

20 Also, the following changes will be made as a  
21 result of input received at the Rules Committee meeting  
22 last night.

23 Under Section 10.404(d)(1) relating to a  
24 special reserve account, we are adding a statement of  
25 "unless otherwise approved by the Department" at the end

1 of the section stating that "proceeds from any refinancing  
2 or other fundraising from the development will be  
3 considered net cash flow for purposes of funding the  
4 special reserve account." This is to allow for other uses  
5 of those funds such as repairs to the property and other  
6 things that would assist the property.

7 Also, in the section for special reserve  
8 accounts, we are adding a section 10.404(d)(4) stating  
9 that the development owner must make a reasonable effort  
10 to notify tenants of the existence of the special reserve  
11 account, and how to submit an application to access funds  
12 from the special reserve. Documentation of such efforts  
13 must be kept onsite and made available to the Department  
14 upon request.

15 Lastly, the changes initially proposed by staff  
16 to Section 10.408(d)(2) relating to brokers for the  
17 qualified contract process will be eliminated, and  
18 therefore, no changes will be made regarding the  
19 Department's ability to disapprove a broker, and the  
20 broker fee will continue limited to a fee not to exceed 6  
21 percent of the qualified contract price.

22 That's all on the Asset Management rules, but  
23 I'm available to provide further detail or answer any  
24 questions.

25 MR. GOODWIN: Mr. Chairman of the Rules

1 Committee, any comments?

2 MR. VASQUEZ: Thank you, Chairman Goodwin.

3 And again, as Mr. Banuelos said, we had a  
4 meeting last night of the Rules Committee, and again, I  
5 think it was very beneficial as continuing this process,  
6 had good stakeholder input from the development community  
7 and other advocates for members of the constituencies, and  
8 there was some good discussions and we did have some  
9 changes or amendments to what we propose for the new  
10 rules. Again, that process was in depth, and again, this  
11 publication still allows for final comments as we move  
12 forward.

13 MR. GOODWIN: Would you make a motion to  
14 approved staff's recommendation on 7(a)?

15 MR. VASQUEZ: Yes. I move to approve staff's  
16 recommendations on the Asset Management rules, as detailed  
17 as amended by the Rules Committee meeting last night, and  
18 to publish in the *Texas Register*.

19 MR. GOODWIN: And a second?

20 MR. BRADEN: Second.

21 MR. GOODWIN: Anybody want to speak to this  
22 rule?

23 (No response.)

24 MR. GOODWIN: Okay. If not, all those approve  
25 say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: Thank you. You sat there a long  
5 time.

6 (General laughter.)

7 MR. GOODWIN: Item 7(c). Andrew.

8 MR. SINNOTT: Good morning, Chairman Goodwin,  
9 members of the Board.

10 MR. GOODWIN: Good morning.

11 MR. SINNOTT: Andrew Sinnott, Multifamily Loan  
12 Programs administrator.

13 As Mr. Vasquez said, last night we had the  
14 Rules Committee meeting. The Multifamily Direct Loan Rule  
15 was also among the rules considered, so this item relates  
16 to a new 10 TAC Chapter 13, Multifamily Direct Loan Rule  
17 for 2020.

18 And first, as I said, last night at the Rules  
19 Committee meeting, organizationally our policy research  
20 specialist, Alena Morgan, did a great job of organizing  
21 the rule within each section, so I just want to  
22 acknowledge her efforts. I also want to acknowledge the  
23 work and valuable feedback that Bobby, Beau, Marni,  
24 Brooke, Megan Sylvester, and Monita Johnson-Henley in our  
25 Legal Division, Brent Stewart and Tom Cavanaugh in our

1 Real Estate Analysis Division, and Rosalio Banuelos and  
2 Laura Debellas in our Asset Management Division put into  
3 this rule. I don't know this as a fact, but I would guess  
4 that the Direct Loan program involves more divisions  
5 within the agency than nearly any other program, and this  
6 rule could not have been drafted without multiple  
7 divisions' input.

8 So no changes were made at last night's Rules  
9 Committee meeting, so what's in the Board book today is  
10 accurate. The Direct Loan Rule that's approved today will  
11 be available for public comment, in compliance with the  
12 State Administrative Procedures Act, in the *Texas Register*  
13 from October 25, 2019 through November 14, 2019, and  
14 public comment in accordance with the citizen  
15 participation plan requirements in 24 CFR 91.105, will be  
16 accepted between October 14 and November 14, 2019.

17 I can discuss any of the highlights of the rule  
18 changes that we made this year, if you like, or if not, I  
19 can just put this up for approval and feel free to ask any  
20 questions?

21 MR. GOODWIN: Comments?

22 MR. VASQUEZ: I have a motion.

23 MR. GOODWIN: Okay. We'll accept a motion.

24 MR. VASQUEZ: Mr. Chairman, I move that the  
25 proposed repeal and proposed new rule for the Multifamily

1 Direct Loan rules, as presented by staff this morning, be  
2 approved by the Board and directed for publication and  
3 public comment in the *Texas Register*.

4 MR. GOODWIN: Do I hear a second?

5 MS. THOMASON: Second.

6 MR. GOODWIN: Any discussion?

7 (No response.)

8 MR. GOODWIN: No one wants to comment. All  
9 those in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: Okay. Thank you, Andrew.

14 MR. SINNOTT: Thank you.

15 MR. GOODWIN: Moving on to item 7(e). Were you  
16 hiding in the back there, Raul? Did you think we were  
17 going to skip you?

18 (General laughter.)

19 MR. GONZALES: Good morning. My name is Raul  
20 Gonzales, director of the Housing Trust Fund, Office of  
21 Colonia Initiatives, and Neighborhood Stabilization  
22 Programs.

23 On item 7(e), staff is recommending the repeal  
24 of the existing 10 TAC Chapter 20, the rule that governs  
25 our single-family programs, and adoption of the new rule



1 with revisions.

2 After approval today, the updated rule will be  
3 published in the *Texas Register*. A 30-day comment period  
4 was held from August 9 to September 9 and 35 comments were  
5 received, the vast majority of them on the Fair Housing  
6 Affirmative Marketing subchapter of the rule. Other  
7 comments pertained to program definitions, threshold  
8 requirements for administrators applying for funds,  
9 inspections, inspector requirements and acceptable  
10 documentation related to these requirements.

11 To respond to the comments, staff has modified  
12 the rule being recommended for adoption in several ways,  
13 which I will lay out for you. Because the subchapter on  
14 Fair Housing Affirmative Marketing received the most  
15 comments, I will summarize those changes first.

16 Based on the comments received, affirmative  
17 marketing and wait list requirements will no longer be  
18 required for state funded single-family programs, namely  
19 the Texas Bootstrap Loan Program and the Amy Young Barrier  
20 Removal Program. This is a change from the current  
21 version of the rule. This requirement will remain for our  
22 federally funded single-family programs as they are well  
23 regarded as best practices, however, the Department is  
24 removing the requirement for affirmative marketing, a wait  
25 list policy and a 30-day waiting period prior to client

1 selection for programs that are state funded only.

2 Also as a result of public comments, we have  
3 reduced the waiting period prior to client selection  
4 during which administrators with federally funded programs  
5 collect applications from prospective beneficiaries has  
6 been reduced from 30 days to 21 days. It is after this  
7 21-day waiting period that the administrator may use a  
8 neutral random process to actually select eligible  
9 households. This is a change from staff's original  
10 proposal and this change, the 21-day period of application  
11 collection prior to client selection, applies only to our  
12 federally funded programs, it will no longer apply to our  
13 state funded only programs.

14 We provided further guidance on requirements  
15 for housing counseling and mobility counseling in  
16 compliance with new federal regulations governing this  
17 issue. We made the availability of TDHCA single-family  
18 fair housing affirmative marketing forms more prevalent in  
19 the rule in order to provide administrators more options  
20 for documenting compliance with federal requirements. We  
21 clarified that administrators may resubmit previously  
22 approved marketing plans if no changes are needed.

23 As it relates to other parts of the current  
24 rule, other changes in response to public comment include:  
25 we added definitions for terms referred to elsewhere in

1 the rule, development, improvement survey and reverse  
2 mortgages; we included relevant citations from the Texas  
3 Tax Code and provided further guidance on households  
4 addressing tax delinquencies; we clarified that the  
5 subchapter on insurance and title requirements will not  
6 apply to the Amy Young Barrier Removal Program which is a  
7 grant assistance; and we specified requirements for title  
8 reports, loans by third party lenders, and refinancing  
9 primary mortgages.

10 With that, I'm happy to answer any questions.

11 MR. GOODWIN: Any questions?

12 (No response.)

13 MR. GOODWIN: If not, do I hear a motion?

14 MR. VASQUEZ: Mr. Chairman, I move that we  
15 approve the order adopting the repeal of 10 TAC Chapter  
16 20, Single-family Programs Umbrella Rule, and further  
17 order adopting the new 10 TAC Chapter 20, Single Family  
18 Programs Umbrella Rule, and direct the publication of  
19 these rules in the *Texas Register*.

20 MR. GOODWIN: Second?

21 MS. BINGHAM ESCAREÑO: Second.

22 MR. GOODWIN: Okay. Question? You need to  
23 come up, put your name down.

24 MS. LONEY: Good morning, Mr. Chairman and  
25 Board members. My name is Lauren Loney, L-O-N-E-Y. I'm

1 an attorney and co-director of advocacy at Texas Housers,  
2 the statewide nonprofit that advocates for low income  
3 tenants in our affordable housing programs.

4 We strongly believe that affirmative marketing  
5 is an important and vital component of making sure that  
6 low income tenants and particularly tenants of color have  
7 access to safe, affordable housing in neighborhoods that  
8 any of us in this room would want to live in. It's cited  
9 as a very essential tool for making sure that there are  
10 proactive efforts to bring historically excluded members  
11 of our society into neighborhoods that they otherwise  
12 might not know how to access or have ready access to. So  
13 to that end, any efforts to reduce the requirements for  
14 affirmative marketing, including wait listing, simply  
15 because they're state funded programs rather than federal  
16 programs, is just counter to the goal of reducing racial  
17 segregation in our housing neighborhoods.

18 So I understand that I am quite late in the  
19 game for commenting on this rule, but I really felt the  
20 need to make it very clear that Texas Housers does not  
21 support any efforts to reduce this kind of affirmative  
22 marketing simply because a program is funded by state  
23 sources of money rather than federal.

24 Thank you.

25 MR. GOODWIN: Any questions?

1 (No response.)

2 MR. GOODWIN: Any other comments?

3 MS. LEDBETTER PARHAM: Hi. I'm Amy Ledbetter  
4 Parham. I'm the state director for Habitat Humanity  
5 Texas.

6 And I know I'm between you and lunch, it's a  
7 long meeting already, but I wanted to say thank you to the  
8 staff for the work with rules changes that were made, and  
9 we support the rules changes as they are written. I've  
10 worked with our offices from Texarkana to Lubbock to the  
11 Valley across the state, and will continue to work with  
12 them to expand the use of the Texas Bootstrap Program into  
13 communities that are generally under-served. That's our  
14 primary market and we will continue to work with that to  
15 make sure that as many Texans as possible can get housing.

16 The State's Housing Trust Fund is one of the  
17 top housing trust funds in the nation, so be really proud  
18 of the work that Bobby and his team at the Housing Trust  
19 Fund are doing, and we support this measure.

20 MR. GOODWIN: Thank you.

21 Any other comments?

22 (No response.)

23 MR. GOODWIN: If not, we have a motion. All  
24 those in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. Item 7(f).

4 MR. GONZALES: Again, Raul Gonzales, director  
5 of Office of Colonia Initiatives, Housing Trust Fund, and  
6 Neighborhood Stabilization Program.

7 On item 7(f) staff is recommending the repeal  
8 of the existing 10 TAC Chapter 26, the rule that governs  
9 our State Housing Trust Fund, and an adoption of a new  
10 rule with revisions.

11 After approval today, the updated rule will be  
12 published in the *Texas Register*. A 30-day public comment  
13 period was held from August 9 through September 9, and  
14 four comments were received regarding assistance limits,  
15 administrative funding limits, removing or reducing the  
16 practice of dispersing funds geographically, allowance to  
17 correct life-threatening hazards, and project due date  
18 extensions. No revisions were made to the proposed rule  
19 changes based on these comments.

20 The final HTF rule to be adopted has these main  
21 changes from the current version of the rule: it  
22 clarifies how the Department may utilize HTF loan  
23 repayments and interest earnings to resolve unanticipated  
24 challenges when administering the single-family programs;  
25 it removes a \$20,000 cap on grant assistance from the

1 program in order to provide flexibility and responsiveness  
2 to rising construction costs; it modifies a qualified  
3 inspector minimum experience requirement from five years  
4 to three years to increase availability of capable  
5 inspectors; it includes citations for requirements  
6 regarding financial accountability and the Department's  
7 previous participation review; creates an extension for  
8 certain pre-1995 manufactured housing units to participate  
9 in the program as long as they receive exterior-only  
10 accessibility modifications; and adds a 12-month warranty  
11 requirement on all project deliverables.

12 With that, I'm happy to answer any questions.

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: If not, do I hear a motion?

16 MR. VASQUEZ: Mr. Chairman, I move that the  
17 Board adopt the repeal of 10 TAC Chapter 26, Texas Housing  
18 Trust Fund Rule and further adopt new 10 TAC Chapter 26  
19 Housing Trust Fund Rule as presented, and direct the  
20 publication of the new rules in the *Texas Register*.

21 MR. GOODWIN: Okay. Beau, do we officially  
22 adopt the rule here or are we just adopting the publishing  
23 it in the *Texas Register* and then do we adopt it after the  
24 *Texas Register*?

25 MR. ECCLES: For the ones that have already

1 gone --

2 MR. VASQUEZ: This is the second round.

3 MR. ECCLES: Yes, this is the second round, so  
4 this is adopting.

5 MR. GOODWIN: Okay. This is adopting. I just  
6 want to be sure of that.

7 And a second?

8 MR. BRADEN: Second.

9 MR. GOODWIN: Okay. Any comments?

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. VASQUEZ: Did I ever make a motion in  
16 error?

17 MR. GOODWIN: I just heard it differently that  
18 way. It must be because we're getting close to the  
19 bathroom break.

20 MR. VASQUEZ: No breaks. We've got the game  
21 tonight.

22 MS. BINGHAM ESCAREÑO: No breaks.

23 (General laughter.)

24 MR. GOODWIN: 7(g), Tom.

25 MR. GOURIS: Good morning, Board members. My



1 name is Tom Gouris. I'm the direct of Special  
2 Initiatives. I'm going to talk to you about migrant farm  
3 worker housing and our requirements that we're proposing  
4 to amend or revise and repeal and adopt.

5 Since 2005, the Department has been responsible  
6 for licensing of migrant labor housing facilities that  
7 house three or more individuals for three or more days,  
8 and any facility that does that comes to us to get  
9 licensed. It's a voluntary issue from their perspective.

10 We're responsible for licensing them but we have very  
11 limited authority or ability to find and pursue these  
12 folks that might be housing folks.

13 About a year ago we started working on revising  
14 the rules to give ourselves a little bit better ability to  
15 license folks and make it a little bit more efficient. We  
16 identified that the H-2A visa program, which is a way for  
17 employers to bring immigrants to this country to work in  
18 the agricultural industry, that those kinds of visas,  
19 those employers that use those kind of visas are required  
20 to provide housing, and so we began to look for ways to  
21 identify those housing facilities that might be being  
22 used. And so we reached out to the Texas Workforce  
23 Commission because we discovered that they also inspect  
24 those properties, and we asked them for copies of their  
25 inspections and tried to reach out to the employers and

1 let them know about the licensing requirements.

2 We also determined that the inspection process  
3 that TWC uses is very similar to ours so as we started  
4 working on the rules, we started looking for ways to not  
5 have a duplication of effort and inspect these properties  
6 twice, and so one of the proposals in these rules is to,  
7 in fact, use the TWC inspection and any other Department  
8 of Labor or other federal inspection process that is  
9 similar to ours to be able to use those inspections if  
10 they're current, and also get a certification for some  
11 standards that are not beyond but are in addition to the  
12 standards that are already required for the federal  
13 inspection. The OSHA and ETA standards that exist have  
14 some overlap and they have some things that don't overlap  
15 and so we identified the things that didn't overlap and  
16 things that were near and dear to the representatives that  
17 are interested in this process and kept those in our  
18 rules.

19 So what you'll see in our rules is a lot of  
20 redlining of items but most of those remain a part of the  
21 rule as referenced in the OSHA and ETA standard, and then  
22 we identified the eleven things that weren't going to be  
23 maintained in the OSHA and ETA standards and we  
24 highlighted those to make those specifically required in  
25 our rule.

1           As I said, we reached out to those employers  
2 who were using the H-2A process and posting those jobs  
3 that they had on the DOL website, reached out to those and  
4 we've been very successful in getting a number of them to  
5 become licensed. We had something on the order of 40  
6 licensees, 48 licensees last year, and we're up to 240  
7 licensees now, so we've made great progress there. We  
8 think that that's about half of the current universe of  
9 eligible H-2A facilities, and we expect that we will  
10 continue to make progress in getting the remainder that  
11 need to be licensed.

12           We've heard from a lot of folks, and we may  
13 hear from some folks today, worker advocates, but we've  
14 also heard from some employers and the employer community  
15 and what their concern is that we don't overburden and  
16 they're frustrated with us in the double inspections and  
17 the fees that are required from two separate state  
18 agencies, so we're mindful of that as we move forward with  
19 our revisions to our rules.

20           One more thing, the fees that we collect, they  
21 are used for the licensing and inspection process and to  
22 support our marketing outreach efforts. Last biennium we  
23 were allowed to utilize about \$10,500 of those fees that  
24 were collected. For this current biennium that cap was  
25 raised to \$35,000, so we have a little bit more leeway,

1 which is good, but that also means that our fee structure  
2 doesn't have to be as aggressive for those H-2A employers,  
3 so we're proposing to reduce the fee for H-2A employers  
4 that have a current inspection to \$75 for the year,  
5 whereas, other employers will remain at \$250.

6 So in addition to the reduction and elimination  
7 of the duplication of inspections and those eleven  
8 standards that I mentioned, and the reduction in fees, a  
9 couple of other substantial changes have been that we've  
10 clarified who's responsible for getting a license by  
11 creating a definition of a provider so that we make sure  
12 that we identify who is responsible for that. And we're  
13 allowing prospective licensees to provide evidence of  
14 corrective action in lieu of having another inspection, or  
15 they can accept the findings of the noncompliance and the  
16 denial of the application, so we've clarified that  
17 language. And then we've also realigned the rule with the  
18 statute with regards to civil penalties that are up to  
19 \$200 per day for each violation. The current rule and the  
20 statute weren't in sync and so we cleaned that up.

21 That's all I have for presentation. If you  
22 have questions, I'll be glad to answer them.

23 MR. GOODWIN: Any questions?

24 MS. RESÉNDIZ: Tom, how many locations do we  
25 currently have at the \$75?

1 MR. GOURIS: We have none at \$75. We  
2 anticipate that of the 240 we have had in the last year,  
3 something of the order of 180 of them or so would probably  
4 qualify for the \$75 fee.

5 MS. RESÉNDIZ: Okay. That number is really  
6 high in my head because our marketing and outreach we're  
7 looking at \$10,000, then it was raised to \$35-  
8 approximately, we're going to use that for marketing and  
9 outreach.

10 MR. GOURIS: And inspections.

11 MS. RESÉNDIZ: So if we're not getting the \$150  
12 from approximately that number you just mentioned --  
13 sorry, I can't do the math that fast --

14 MR. GOURIS: So if we charged the full \$250, we  
15 would raise more money. We don't have the authority to  
16 use that money because of the budgetary process that we've  
17 gone through has limited our biennium budget to \$35,000.  
18 When we calculated the \$75, we anticipated what additional  
19 facilities might get licensed in the coming year, and we  
20 came to a price that we thought we'd still be able to use  
21 the full \$35,000.

22 MR. WILKINSON: We thought we'd easily meet the  
23 appropriation with that \$75.

24 MS. RESÉNDIZ: Thank you.

25 MR. GOODWIN: Any other questions?

1 (No response.)

2 MR. GOODWIN: If not, do I hear a motion?

3 MR. VASQUEZ: Then we'll consider comments  
4 after the motion?

5 MR. GOODWIN: We'll hear the comments after the  
6 motion.

7 MR. VASQUEZ: Mr. Chairman, I move that we  
8 order the proposed repeal of 10 TAC Chapter 26, Migrant  
9 Labor Housing Facilities, and propose a new 10 TAC  
10 Chapter --

11 MR. GOODWIN: You said 26, but I think you  
12 meant Chapter 90, don't you?

13 MR. VASQUEZ: Did I say 26? 10 TAC Chapter 90,  
14 Migrant Labor Housing Facilities, and propose a new 10 TAC  
15 Chapter 90, Migrant Labor Housing Facilities Rule, as  
16 amended by the presentation last night.

17 MR. WILKINSON: Actually, we had no amendments  
18 last night.

19 MR. VASQUEZ: No amendments. Okay. Then as  
20 presented, and direct the publication of the new rules for  
21 public comment in the *Texas Register*.

22 MR. GOODWIN: And a second?

23 MR. BRADEN: Second.

24 MR. GOODWIN: Okay. It's been moved and  
25 seconded. Did you want to comment?

1 MR. MAUCH: Yes. And I also have written  
2 comments for folks, if I can pass those out really  
3 quickly?

4 MR. GOODWIN: Beau?

5 MR. ECCLES: That's generally not how we do  
6 public comment.

7 MR. GOODWIN: You can send those in to the  
8 Department.

9 MR. VASQUEZ: They were submitted to the  
10 Department already.

11 MR. MAUCH: Yes, and they were delivered at the  
12 Rules Committee last night as well.

13 MR. GOURIS: I received them yesterday.

14 MR. MAUCH: So my name is Dave Mauch. I am an  
15 attorney with Texas Rio Grande Legal Aid on our farm  
16 worker team where we provide fee legal services to migrant  
17 farm workers in Texas and six other southern states.

18 There's a lot of nitty-gritty to get into with  
19 these rules. We're not going to have enough time to do  
20 that today. I really just want to give a little bit of  
21 context for where we're at and talk about the two, I  
22 think, biggest issues here.

23 In terms of farm worker housing now, we  
24 reviewed the information two weeks ago, and 60 percent of  
25 the H-2A employers don't have a license. All those

1 employers were sent a letter by the Department a year ago,  
2 60 percent of them decided they didn't want to comply, and  
3 as far as we're aware, there has been no enforcement  
4 action.

5 The impact of the dropped fee from \$250 to \$75,  
6 based on the number of current H-2A licensees, that's a  
7 net decrease of about \$30,000 annually that would be  
8 raised in receipts. That's important because it does  
9 impact appropriations and funding for this actual  
10 enforcement program. The past two legislative sessions,  
11 appropriations for TDHCA's migrant labor housing facility  
12 enforcement has been tied to receipts from the previous  
13 biennium, so by decreasing the fee, you're decreasing the  
14 amount that's going to be able to be appropriated in the  
15 future legislative session to the tune of about, you know,  
16 almost the entire current budget, which we're already very  
17 inadequate compared to what other states spend.

18 Bad housing conditions are really widespread in  
19 Texas. We've had clients at TRLA who have been forced to  
20 live in shipping containers that were covered in hay and  
21 ostrich feces, we've had people who slept in housing where  
22 they were asked to sleep on concrete and showers were  
23 outside facing a road, we have clients who have to deal  
24 with scorpions, roaches, tarantulas, bedbugs routinely in  
25 the housing. I've had clients who taped themselves into



1 the sleeping bags at night because they were afraid of  
2 pests getting in. This is a big deal, it does impact  
3 people's day-to-day lives throughout the work season.

4 The other important thing to note is that TDHCA  
5 did an internal audit of the migrant labor housing  
6 facility enforcement and found some real substantial  
7 discrepancies. I would urge the Board, before considering  
8 publication of this rule, to review the audit to make sure  
9 that the rule as proposed complies with the  
10 recommendations of the audit. Notably, the audit found  
11 that the current inspection process is not adequate  
12 because TDHCA is doing things like approving a license for  
13 a houser that is not meeting the standards based on the  
14 houser's promise that they will fix things and then never  
15 actually following up or documenting that the houser has  
16 fixed things.

17 What we see right now is that this is a  
18 completely voluntary system because there has been no  
19 enforcement, and the proposed rules would decrease  
20 enforcement by decreasing and by drastically decreasing  
21 the amount of inspections delivered.

22 The attestations -- and this is the last thing  
23 I want to cover -- the attestations that the TDHCA wants  
24 to rely on for people who do receive an inspection from  
25 the TWC under federal standards, they're relying on an

1 attestation that they meet the additional state standards  
2 that are in 90.4 of the proposed rule. We know that  
3 attestations don't work because as of two years ago there  
4 were zero H-2A employers in the State of Texas who were  
5 licensed under state law. Every single one of those  
6 almost 400 H-2A employers attested, under penalty of  
7 perjury to the federal government on their application for  
8 H-2A visas, that they were complying with state law. That  
9 was a lie.

10 The current state of play of farm worker  
11 housing in Texas is that enforcement and funding are  
12 needed. While there are some improvements in these rules,  
13 we do believe that the general thrust of these would be to  
14 decrease enforcement and funding when even TDHCA's own  
15 internal audit has found that more is needed.

16 So thank you for your time.

17 MR. GOODWIN: Any other comments? Any  
18 questions? We have a motion on the floor.

19 MR. VASQUEZ: Actually, before we take this, I  
20 just wanted to make some final comments on this area in  
21 particular, the migrant labor housing facilities rules.

22 I think we had some very good input last night.  
23 Mr. Mauch was there and some other colleagues. The whole  
24 process leading up to us getting the rules to this point,  
25 I think, there's been great work with staff and the

1 different constituencies out in the communities. We still  
2 have a ways to go but we've made great improvement, and I  
3 think everyone is saying we have come a long way although  
4 we still have a ways to go, especially on we've added new  
5 areas for easier methods to call in and report violations.  
6 I think we're going forward with better enforcement  
7 capabilities and rules that will address some of these  
8 problems, better penalty mechanisms and such like that  
9 that are incorporated in these rules.

10 We recognize that there's certain funding  
11 issues and arguably unfunded mandates in this, and with  
12 the way the appropriations are done. I think the  
13 community constituents are going to help work with the  
14 legislature to understand that we could afford a bigger  
15 budget if we're going to really do the enforcement on  
16 these.

17 So going forward, I think these rules put us in  
18 a much better position than we were in the past, and I  
19 want to thank all the community members and staff for  
20 really working to get us to this point.

21 MR. GOODWIN: Good. Thank you.

22 MS. RESÉNDIZ: And one last comment, Mr.  
23 Chairman. If there are any out there in the audience, any  
24 of the employers that have H-2A visas, if you've done it  
25 the right way, you haven't had any penalties,

1 congratulations, thank you so much. And the violations  
2 that are so severe as the ones that Mr. Mauch mentioned, I  
3 really hope that those are being addressed accordingly  
4 because there's just no room for that.

5 Anyway, I just had to speak up.

6 MR. GOODWIN: Any other comments or questions?

7 (No response.)

8 MR. GOODWIN: If not, all those in favor of the  
9 motion say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: We're going to use the  
14 prerogative of the chair to take a short little five-  
15 minute recess for Board members to use the restroom if  
16 they want. We'll be back in as quickly as we can.

17 (Whereupon, at 9:45 a.m., a brief recess was  
18 taken; meeting reconvened at 9:54 a.m.)

19 MR. GOODWIN: We are reconvening the October 10  
20 Board meeting, recess is over.

21 We are starting with item number 8. Marni.

22 MS. HOLLOWAY: Good morning, Chairman Goodwin,  
23 members of the Board.

24 This is item 8(a). A couple of housekeeping  
25 details on this one. As you'll recall, we are pulling

1 17736 Providence at Ted Trout Drive; that will be before  
2 you in November. I'd also like to reorder the  
3 presentation, and we will be taking 17295 Legacy Trails of  
4 Decatur as the last item on this one.

5 MR. GOODWIN: Okay.

6 MS. HOLLOWAY: This is presentation,  
7 discussion, and possible action on a request for return  
8 and reallocation of tax credits under 10 TAC 11.65 related  
9 to credit returns resulting from force majeure events.

10 The first one is application 17028 The Vineyard  
11 on Lancaster. This application received an award of  
12 \$1,333,273 on July 27 of 2017. The development proposes  
13 the new construction of 104 supportive housing units in  
14 Fort Worth. The carryover allocation agreement was  
15 executed on December 19, including a certification that  
16 each building will be placed in service by December 31,  
17 2019. We've received a request to extend the placement in  
18 service deadline under the provisions of our rule related  
19 to credit returns resulting from force majeure events.

20 The construction loan agreement indicates the  
21 loan was closed on July 27 of 2018 with a completion date  
22 of October 31, 2019. The development owner has provided  
23 evidence of a force majeure extension from their  
24 construction lender. In their request the development  
25 owner says that 58 construction days have been lost due to

1     rainfall and/or mud for the development between the months  
2     of August 2018 through July 2019. When compared to the  
3     previous five-year annual average rainfall for the area,  
4     approximately 42.4 inches, the development had already  
5     exceeded the annual average by over 19 inches within the  
6     12-month construction period with a total of 61.44 inches  
7     since the groundbreaking.

8             Under the Asset Management rules, all  
9     multifamily developments must submit a construction status  
10    report quarterly. Review of the reports indicate that the  
11    notice to proceed with construction was issued on August 1  
12    of 2018. Beginning with the first field report, problems  
13    with the construction schedule due to rain are mentioned.

14    By the time of report 9 on May 28 of 2019, site visit  
15    notes construction was 50 percent complete, they were  
16    estimated to be seven months behind, with five weather  
17    delays in the month of May and 53 delays of weather delay  
18    through May 31.

19             Staff believes that the development owner has  
20    provided sufficient evidence that the development has been  
21    affected by sudden and unforeseen circumstances outside  
22    the control of the development owner, as described in the  
23    rules, specifically significant and unusual rainfall.

24             Staff recommends that the request for treatment  
25    of The Vineyard on Lancaster under an application of the

1 force majeure rule be approved. The 2017 QAP and Uniform  
2 Multifamily Rules and the 2019 program calendar will be  
3 applicable to this event if approved.

4 I'd be happy to take any questions.

5 MR. GOODWIN: Any questions?

6 (No response.)

7 MR. GOODWIN: If not, I'll hear a motion to  
8 accept staff's recommendation.

9 MS. RESÉNDIZ: Motion to approve.

10 MS. BINGHAM ESCAREÑO: Second.

11 MR. GOODWIN: It's been made and seconded. Any  
12 discussion?

13 MS. RESÉNDIZ: Motion to approve staff's  
14 recommendation on The Vineyard on Lancaster's extension  
15 request.

16 MS. BINGHAM ESCAREÑO: Second.

17 MR. GOODWIN: Okay. No other questions?

18 MR. VASQUEZ: I do have just a general  
19 question. I understand that by the numbers it's been  
20 roughly 50 percent, not even 50 percent more rainfall than  
21 expected, but do we have any kind of parameters on -- is  
22 there a definition of extraordinary to reach force  
23 majeure?

24 MS. HOLLOWAY: No, there is not.

25 MR. VASQUEZ: In any construction plan, one

1 would think that they've already planned for at least the  
2 average and in any proper construction schedule one should  
3 plan for a worst-case scenario. It just seems like its  
4 borderline.

5 MS. HOLLOWAY: In this instance we relied on  
6 the notes in the construction status reports having those  
7 third parties out there inspecting on a regular basis and  
8 looking at the progress of the construction as relates to  
9 the production schedule.

10 So as I mentioned, on May 28 of 2019 the  
11 estimated seven months behind, and they had had 53 days of  
12 weather delays through May 31. So we're relying on that  
13 information in order to make these recommendations.

14 MR. GOODWIN: Does that satisfy your question?

15 MS. THOMASON: Wasn't there a designation of  
16 this being a disaster area by the State of Texas because  
17 of the rainfall? That's in the notes in the Board  
18 package.

19 MS. HOLLOWAY: It may have been declared by the  
20 governor as a disaster area due to the rains, it was not  
21 designated by the federal government, so they would not  
22 have received an automatic ability to extend their placed  
23 in service under the federal regs.

24 MR. VASQUEZ: It just seems like Houston  
25 builders know how to work in the rain. I don't know why



1 Fort Worth can't.

2 (General laughter.)

3 MR. GOODWIN: Well, it's interesting you  
4 brought this up, because Bobby and I had this discussion.  
5 In 1978 we were building houses in subdivisions in north  
6 Houston and we never had an extraordinary rainfall. We  
7 had an inch and a half every three days and we actually  
8 had a subdivision where we couldn't get heavy equipment on  
9 the lots for almost four months. By the time it would dry  
10 out, the next day we'd get another inch and a quarter and  
11 you just couldn't get on there, and we had some projects  
12 delayed, yet under our definition it was not even an  
13 extraordinary year of rainfall, it just happened every  
14 three days and almost killed us.

15 Any other questions?

16 MS. RESÉNDIZ: Same reason for farmers, yeah,  
17 same thing happens with them.

18 MR. GOODWIN: If not, all those in favor of  
19 staff's -- do we have a motion?

20 MR. WILKINSON: Yes.

21 MR. GOODWIN: We have a motion and a second to  
22 accept staff's recommendation. All those in favor say  
23 aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: Opposed?

1 (No response.)

2 MR. GOODWIN: Okay. Next item.

3 MS. HOLLOWAY: The next one is also a force  
4 majeure for application 17327, this is Legacy Trails of  
5 Lindale.

6 An award of 9 percent credits in the amount of  
7 \$889,904 was made to this application on July 27. The  
8 development proposes the new construction of 72 units for  
9 an elderly population in Lindale. As with the previous  
10 item, the carryover allocation agreement included  
11 certification that each building would be placed in  
12 service by December 31 of 2019.

13 On July 31 of 2019, the development owner  
14 submitted a request to extend the placement in service  
15 deadline under the force majeure rule, indicating that  
16 force majeure was triggered by significant and unusual  
17 rainfall. In their request the development owner states  
18 87 construction days have been lost due to rainfall and/or  
19 mud for the development between the months of November  
20 2018 through July 2019, so that's nine months.

21 This claim is supported by a construction  
22 status report from the May 22 site visit which says,  
23 "Current estimated date of substantial completion is  
24 February 5, 2020. Project is progressing at a slow pace  
25 and appears to be approximately three to four months

1 behind the original contracted schedule. The contractor  
2 reported 69 rain days since the beginning of  
3 construction."

4 Staff recommends that the request for treatment  
5 of Legacy Trails of Lindale under the application of the  
6 force majeure rule be approved. The 2017 QAP and Uniform  
7 Multifamily Rules and the 2019 program calendar would be  
8 applicable if approved.

9 I'd be happy to take any questions.

10 MR. GOODWIN: Any questions?

11 (No response.)

12 MR. GOODWIN: Do I hear a motion to accept  
13 staff's recommendation?

14 MR. BRADEN: I'll make a motion to accept  
15 staff's recommendation.

16 MR. GOODWIN: A second?

17 MS. THOMASON: Second. And that Leo can no  
18 longer compare Houston to the rest of the state.

19 MR. GOODWIN: Do you accept that amendment to  
20 your motion?

21 (General laughter.)

22 MR. GOODWIN: Any other questions?

23 (No response.)

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

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay.

4 MS. HOLLOWAY: Next one is application 17290,  
5 this is for Golden Trails.

6 This development received an award of 9 percent  
7 credits in the amount of \$520,840 in July of 2017,  
8 proposes the new construction of 45 units for an elderly  
9 population in West. As with the previous items, their  
10 carryover required that each building would be placed in  
11 service by December 31 of 2019.

12 On August 22 of 2019, the Department received  
13 from the development owner a request to extend the  
14 placement in service deadline under the force majeure  
15 rule, citing significant and unusual rainfall as the  
16 cause. In their request the development owner says,  
17 "McLennan County typically receives approximately 36  
18 inches of rain per year, however, since October 2018, when  
19 the work on the project's foundation commenced, through  
20 June of 2019, a mere nine months, 42.79 inches of rain  
21 have already fallen." The request states: "Due to these  
22 unforeseen issues, a total of 154 construction days have  
23 been affected due to the rainfall and/or the need to allow  
24 the clay to dry sufficiently before construction of the  
25 foundation could proceed."

1           From the third construction status report on  
2 this development the project schedule is cited as a  
3 significant item of concern.

4           Staff recommends that the request for treatment  
5 of Golden Trails under an application of the force majeure  
6 rule be approved, with the 2017 QAP and Uniform  
7 Multifamily Rules applicable and the 2019 program  
8 calendar.

9           MR. GOODWIN: Any questions?

10           (No response.)

11           MR. GOODWIN: Do I hear a motion to accept  
12 staff's recommendation?

13           MS. THOMASON: I'll make a motion to accept  
14 staff's recommendation.

15           MR. GOODWIN: Second?

16           MR. VASQUEZ: Second.

17           MR. GOODWIN: Any further discussion?

18           (No response.)

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

20           (A chorus of ayes.)

21           MR. GOODWIN: Opposed?

22           (No response.)

23           MR. GOODWIN: Okay.

24           MS. HOLLOWAY: Next one is application 17259,  
25 this is Mistletoe Station which received an award of 9

1 percent credits in the amount of \$1,500,000. The  
2 development proposed new construction of 78 units for a  
3 general population in Fort Worth.

4 On September 20 of 2019, we received a request  
5 to extend the placement in service deadline under the  
6 requirements of the force majeure rule due to significant  
7 and unusual rainfall.

8 Per the request, between construction  
9 commencement on September 4 of 2018 and September 26 of  
10 2018, there were only eight working days of construction  
11 on the development during this time. After September 26,  
12 rain caused an additional 32 lost days of construction  
13 through December 2018.

14 In addition, construction was unable to be  
15 undertaken on numerous non rain days following rain days  
16 due to the site being too wet to work. These weather  
17 delays took place during utility and site work, as well as  
18 framing, which meant that additional time was required to  
19 recapture the construction progress for the development  
20 that was lost as a result of the foregoing delays.

21 Per the contractor, construction was moved to a  
22 six-day work week schedule to make up for the lost time  
23 associated with severe weather, but the number of lost  
24 workdays in September and October of 2018 nonetheless led  
25 to significant delays in site and utility work. Per the

1 architect, the total construction schedule to date has  
2 totaled 98 rain days over three months within twelve  
3 months of the construction schedule. This high frequency  
4 of rain is well above the historical data for this region  
5 of Texas, accounting for a significant construction delay  
6 and the construction team could not have planned for.

7 The construction status reports do not include  
8 detailed information regarding the building site  
9 conditions, but they indicate weather as a limiting factor  
10 beginning with the December 2019 report. Staff did not  
11 consider other issues identified by the request as those  
12 issues, in staff's opinion, do not meet the threshold for  
13 force majeure events.

14 Staff recommends the request for treatment of  
15 Mistletoe Station under an application of the force  
16 majeure rule be approved, with the 2017 QAP and Uniform  
17 Multifamily Rules and the 2019 program calendar applicable  
18 to the development.

19 MR. GOODWIN: Any questions?

20 (No response.)

21 MR. GOODWIN: Do I hear a motion to accept  
22 staff's recommendation?

23 MS. BINGHAM ESCAREÑO: Move to accept staff's  
24 recommendation.

25 MS. RESÉNDIZ: Second.

1 MR. GOODWIN: Okay. Any further discussion?

2 (No response.)

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

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Okay.

8 MS. HOLLOWAY: I believe this is the last one.

9 MR. GOODWIN: 17295?

10 MS. HOLLOWAY: 17295 Legacy Trails of Decatur  
11 received an award of 9 percent credits in the amount of  
12 \$597,599 on July 27. The development proposed the new  
13 construction of 70 units for an elderly population in  
14 Decatur. The carryover allocation agreement, as with the  
15 other developments, included a certification from the  
16 development owner that each building will be placed in  
17 service by December 31 of 2019.

18 On August 21 of 2019, the Department received  
19 from the development owner a request to extend the  
20 placement in service deadline under the force majeure  
21 rules citing changes in laws, rules or regulations, and  
22 significant and unusual rainfall as the basis for the  
23 request. The request also indicated that a shutdown of  
24 the federal government from December 22 of 2018 through  
25 January 25 of 2019 affected the construction schedule.



1           On October 2 of 2019, the Development owner  
2 sent a second letter, dated October 1, that did not  
3 mention changes in laws, rules or regulations or the  
4 government shutdown, but instead focused on significant  
5 and unusual rainfall with the same exhibits included in  
6 the first request.

7           Under the force majeure rule, the Board may  
8 approve execution of a current program year carryover  
9 allocation agreement for the returned credits only if the  
10 credits were returned as a result of force majeure events  
11 that occurred after the start of construction and before  
12 the issuance of Forms 8609. Force majeure events are the  
13 following sudden and unforeseen circumstances outside the  
14 control of the development owner -- and then there's a  
15 list -- and then further, force majeure events must make  
16 construction activity impossible or materially impede its  
17 progress.

18           Under changes in laws, rules and regulations in  
19 their request, the development owner states that the  
20 possibility of tax reform in late 2017 resulted in a  
21 freeze of the equity markets until it could be determined  
22 how investors would accurately predict their return on  
23 LIHTC investments. The development owner sought an  
24 investor from October 2017 to June 2018 when they secured  
25 an offer for a price per credit of 88 cents which was less

1 than the 90 cents indicated in the application. The  
2 result for the development owner was that additional  
3 financing was required.

4 Per the request, an application for USDA 538  
5 financing was made in August of 2018 and closing was set  
6 for December 2018, but when the federal government shut  
7 down delaying closing until March 26 of 2019. Per the  
8 development owner, the shutdown resulted in a loss of  
9 approximately 60 days of the construction period.

10 In their request regarding significant and  
11 unusual rainfall, the development owner states that  
12 between March 20 of 2019 and July 28 of 2019, the area  
13 received over 16 inches of rain. In addition to the rain  
14 days, there were another 71 workdays lost due to rain,  
15 causing the site to be unworkable.

16 The Asset Management rules require that all  
17 developments submit a construction status report  
18 quarterly. The first report was due on October 10 of  
19 2018, and the owner requested an extension to January 10  
20 of 2019. The second request to extend the deadline to  
21 April 10 of 2019 was granted.

22 The loan agreement indicates that the loan was  
23 closed on March 26 of 2019 with a completion date of  
24 February 18, 2021. Review of the reports indicate that  
25 the contractor agreement was signed on February 11 of

1 2019, which is indicated as the date of commencement of  
2 the work. The status report dated May 28 of 2019  
3 indicates a project start date of March 20 and a  
4 completion date of January 10, 2020. No information  
5 regarding construction delays are provided.

6 The report from a June 26 site visit notes  
7 construction 11 percent complete with no major or unusual  
8 construction problems observed or reported. It also says,  
9 "Per the graph of project progress, the project is  
10 approximately one to one and a half months behind schedule  
11 based on typical building trends."

12 Staff has determined that the development owner  
13 has not provided sufficient evidence that the development  
14 has been affected by sudden and unforeseen circumstances  
15 outside the control of the development owner, as required  
16 by the rule. Regarding significant and unusual rainfall,  
17 the development owner did not provide evidence that the  
18 delay was a direct result of the weather, as is required  
19 by the rule.

20 And as I mentioned earlier, the loan agreement  
21 indicates that the loan was closed on March 26 of 2019.  
22 This is 607 days, or more than 20 months after the award  
23 which came with the development period requiring  
24 completion at the end of 2019. Only one application we  
25 know of had a later closing date and that's the one that

1 we'll be taking up next month. Had the financing closed  
2 timely, it is probable that construction would have been  
3 at a point of completion where rains in April and May of  
4 2019 would not have had the same effect.

5           Regarding changes in laws, rules or  
6 regulations, the request generally describes the  
7 uncertainty around potential tax law changes but it does  
8 not name a changed law, rule or regulation that directly  
9 resulted in the delays prior to closing. It was widely  
10 known and discussed in 2017 that changes in tax law were  
11 imminent and would likely affect the housing tax credit  
12 market. In fact, at the Board meeting of March 23, 2017,  
13 the Board approved a rule waiver that allowed deals  
14 awarded credits in 2016 to return the credits without  
15 penalty if they found that they could not get the equity  
16 pricing required to make them feasible. So as a 2017  
17 applicant, the development owner would have been aware of  
18 these circumstances.

19           Per the request, the development owner  
20 understood that the price for credits would be lower than  
21 expected as early as the fall of 2017 at which time they  
22 could have returned the credits without penalty. They  
23 also did not apply for the USDA 538 financing until August  
24 of 2018. This is a months long process that is usually  
25 started prior to the submission of the tax credit

1 application in order to ensure closing of the loan in time  
2 to start construction timely. The request includes no  
3 evidence that but for the shutdown of the federal  
4 government, the USDA loan would have closed in December  
5 2018, allowing the timely completion of the construction.

6 The rule requires that the development owner  
7 must prove that reasonable steps were taken to minimize or  
8 mitigate any delay or damages, that the development owner  
9 substantially fulfilled all obligations not impeded by the  
10 event, including timely closing of all financing and the  
11 start of construction. Staff does not believe that the  
12 development owner has met this requirement. The  
13 development is delayed due to the development owner's  
14 failure to apply for and close financing in a timely  
15 manner.

16 Staff believes that the precipitating events  
17 and supporting documentation described in the request fail  
18 to meet the requirements for force majeure events, and  
19 recommends that the request for treatment of Legacy Trails  
20 of Decatur under an application of force majeure rule be  
21 denied.

22 I would note that the owner has brought a  
23 letter today that Beau has taken a look at.

24 MR. GOODWIN: I think we would be on the fly  
25 making some determinations based on that letter that we're

1 not able to substantiate, so the letter is not going to be  
2 entered into the record.

3 Isn't that what we decided, Beau?

4 MR. ECCLES: They can certainly talk about it.

5 I had previously said that I was concerned that there  
6 were underwriting concerns. I've checked around on that.

7 It doesn't raise underwriting concerns but it is  
8 something that is being presented to you the day of. They  
9 can certainly discuss it.

10 MR. GOODWIN: You can discuss it when you bring  
11 it up but we're not going to distribute it.

12 Any questions for Marni?

13 MR. VASQUEZ: I have a question, Marni. So  
14 there are two aspects of the request for force majeure:  
15 one is the changes in laws, rules or regulations, the  
16 other is the unusual rainfall.

17 MS. HOLLOWAY: Correct.

18 MR. VASQUEZ: So we're addressing each of those  
19 separately, and either one of them could get -- in  
20 general, not specifically, but either one of these could  
21 be grounds for granting the force majeure.

22 MS. HOLLOWAY: Changes in laws, rules or  
23 regulations is one of the grounds for granting force  
24 majeure. We did not see in this request that there was a  
25 change in a law, rule or regulation.

1 MR. VASQUEZ: Okay, right. But just in  
2 general. So these are two separate attempts of throwing  
3 things against the wall to see if they stick.

4 MS. HOLLOWAY: Yes.

5 MR. VASQUEZ: On the changes in laws, rules or  
6 regulations, did not every other applicant in this time  
7 period have to go through the same government shutdown and  
8 pricing change and such?

9 MS. HOLLOWAY: Yes, sir.

10 MR. VASQUEZ: Did anyone else have this same  
11 request saying that this was a force majeure?

12 MS. HOLLOWAY: I believe that the one that  
13 we'll take up in November discusses some of these  
14 questions, but these are the only two we've received.

15 MR. VASQUEZ: Okay. So what, the other 60, or  
16 how many do we issue each year?

17 MS. HOLLOWAY: Sixty-five.

18 MR. VASQUEZ: Did not have this problem?

19 MS. HOLLOWAY: Correct.

20 MR. VASQUEZ: Okay. Thank you.

21 MR. GOODWIN: And did I also understand you,  
22 Marni, to say that in our rules it states that the changes  
23 of laws have to happen between the time they start  
24 construction and in-service date?

25 MS. HOLLOWAY: The rule states that the force

1 majeure event has to occur after the start of construction  
2 and that the development owner must have done everything  
3 they could to minimize and mitigate the impact, and timely  
4 closed their financing.

5 MR. GOODWIN: Okay. And do I also understand  
6 that this project started so late, with or without force  
7 majeure could have probably never been finished by the in-  
8 service date?

9 MS. HOLLOWAY: Their loan agreement would seem  
10 to indicate that, that they closed knowing that they were  
11 not going to make that placed in service deadline.

12 MR. GOODWIN: Okay. And their loan agreement  
13 was to deliver in 2020 but didn't I hear you say something  
14 about 2021, or was that a misstatement?

15 MS. HOLLOWAY: No, I don't believe. If I did  
16 mention 2021, I misspoke.

17 MR. GOODWIN: I could have misunderstood.

18 MS. HOLLOWAY: I was talking so fast.

19 MR. GOODWIN: That's all right. I wanted to  
20 make sure I understood correctly. Because the in-service  
21 date is supposed to be December 31 of this year, right,  
22 2019?

23 MS. HOLLOWAY: Yes. The completion date on the  
24 loan agreement says closing date means March 26, 2019,  
25 completion date means February 28, 2021.



1 MR. GOODWIN: 2021.

2 MS. HOLLOWAY: Yes.

3 MR. WILKINSON: Is that a typo in our Board  
4 book?

5 MS. HOLLOWAY: This is the loan agreement, and  
6 the loan agreement is not included in the Board book. No.  
7 The Board book does say March 26, 2019 with a completion  
8 date of February 28, 2021.

9 MR. GOODWIN: Okay. And for force majeure  
10 reasons, what do our rules allow for how far we can go out  
11 for completion?

12 MS. HOLLOWAY: Under the force majeure rules,  
13 the owner could return their credits now and get a 2019  
14 carryover agreement which would take them out to the end  
15 of 2021.

16 MR. GOODWIN: Okay. So we could do that.

17 MS. HOLLOWAY: Yes.

18 MR. GOODWIN: Any other questions for Marni?

19 (No response.)

20 MR. GOODWIN: Obviously we have people here  
21 that want to speak about this issue, so we'll take a  
22 motion to hear comments before we make a motion whether to  
23 accept staff's recommendation or not.

24 MS. BINGHAM ESCAREÑO: So moved.

25 MR. GOODWIN: Second?

1 MS. THOMASON: Second.

2 MR. GOODWIN: Moved and seconded. All in favor  
3 say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Just remember, please keep your  
6 comments to three minutes.

7 MS. MYRICK: Yes.

8 Good morning, Board. My name is Lora Myrick,  
9 and I'm with BETCO Consulting, and I am the consultant on  
10 this transaction.

11 I am the one who prepared the initial request  
12 back in August 21, somewhere in there, and requested the  
13 force majeure and outlined the changes in tax code or the  
14 tax policy that was being -- that impacted the development  
15 or the financing structure, and I also included the  
16 discussion regarding -- oh, my gosh, I go blank, sorry --  
17 the two issues, of course, were the tax reform that was  
18 going on at the time and then the government shutdown.  
19 That is what I did include in our request when I first  
20 submitted this to TDHCA. I did also include the rain, the  
21 71 days that did impact the construction of the  
22 development as well.

23 It was not an attempt to throw up something to  
24 make it stick on a wall. What I think I wanted to do was  
25 to provide context to staff and to everyone that was not

1 familiar with the transaction and to give all detail and  
2 information on it. I in no way meant to shift the focus  
3 away from the rain, which was my focus. It was 71 days of  
4 rain and so I wanted to make sure that while that was  
5 included in the request, again, I wanted to give context  
6 to what the actual situation was for this transaction.

7           It was not my intention to move the focus away  
8 from the rainfall that has impacted the development  
9 schedule. I think that in talking to our construction  
10 folks that had we been able to do away with that rain,  
11 we'd be a lot closer to that. I think I just wanted to  
12 come up and talk about that request and how I did not mean  
13 to pull that focus away from the rain but I did want to  
14 provide context.

15           There are other folks here, the financing  
16 partners are here to talk about their commitment to this  
17 development and I will leave that to them.

18           And I think that's under three minutes.

19           MR. GOODWIN: Any questions?

20           (No response.)

21           MR. GOODWIN: Next.

22           MS. MYRICK: Thank you.

23           MR. LONG: Good morning, Board members and  
24 Chairman. My name is Bob Long, I'm with Hillside  
25 Development and I represent the owner and one of the co-

1 developers of this transaction.

2           Before I jump into some notes I had  
3 specifically, I kind of wanted to talk a little bit about  
4 the financing and the loan structure because it seems like  
5 you had questions about that. Those loan dates, as far as  
6 the completion of January or February, it's very typical  
7 in a transaction that you certificate of occupancy, or CO,  
8 your building 90 days or so before you actually convert  
9 your perm loan, so where you see those dates of January of  
10 February 2020, it was fully our anticipation that we would  
11 have CO'd every building in that development between  
12 October and December of 2019.

13           So don't let those dates throw you off as far  
14 as, well, you knew you were going to complete in January  
15 or December. Like no. We had a plan to build and  
16 complete October through December, and those dates are  
17 merely conversion factors where you send in your architect  
18 certifications and your Cos and surveys and everything you  
19 need to tie up the logistics for those loans to convert  
20 from a construction status to a permanent status. So  
21 that's really just a timing and logistical issue there  
22 with that delay. So I just wanted to kind of throw that  
23 out there first.

24           And one other note I'll make. You mentioned  
25 these 60-some other deals that would have dealt with this.

1       They did but they didn't all involve federal finance, so  
2       if they weren't a USDA type product that was impacted by  
3       the shutdown, they wouldn't have had this issue that we  
4       had, so those deals that went through a more conventional,  
5       traditional, even TDHCA finance process wouldn't have had  
6       to deal with the same delays that we had to deal with. So  
7       I just wanted to throw that out there right off the bat.

8               The three points I wanted to talk about was  
9       kind of the experience of the development team here, the  
10       plan we had in place and how we were going to be  
11       successful without the rain delays. And I'll have my  
12       counterparts and the construction experts talk about the  
13       rain here, which is the key component, and also kind of  
14       the outcomes and the decisions and what we're doing here.

15               First off, as the development team is  
16       concerned, I have 20 years experience in the finance and  
17       development of properties. Our team has done 45 projects  
18       or more, many of them here in Texas. This is the first  
19       time I've ever been in front of a board asking for this  
20       type of relief, so I hope you'll see that that's not a  
21       pattern with us. We know how to get these deals done, we  
22       know how to get them done timely, and had it not been for  
23       the rain in this case, we would have made it again. And  
24       I'll let some of our other partners kind of talk about  
25       that.

1           This deal, quite frankly, has been a tough one,  
2 I'm not going to lie. Some deals are easy. You know,  
3 when you do hundreds of deals over 20 years, some deals,  
4 as I hope you guys can understand as former developers  
5 yourself, some deals go easy and close quickly, some deals  
6 you're fighting tooth and nail every step of the way to  
7 overcome obstacles, and that's what we were doing here.  
8 So we literally had our two years of work into this  
9 project and we felt like it was the right thing to do to  
10 be a good partner for TDHCA to provide affordable housing  
11 to the citizens of Decatur and the State of Texas, so we  
12 really have felt good about the deal up until the rain  
13 came.

14           Which kind of brings me to my next point, our  
15 plan. We did have a plan in place to close and get this  
16 project to completion with buildings starting delivery in  
17 October, like I said. As the owner and guarantor, we  
18 never would have closed on the transaction if we didn't  
19 think that was realistic. We certainly would have never  
20 relied on a bailout of any kind or anything from TDHCA.  
21 We take ownership in the fact that we were confident we  
22 could complete.

23           The letter I submitted from Bellwether that  
24 you're not distributing -- and I can understand and  
25 appreciate -- it was more just meant to document they're

1 our lender in the deal, their support for the deal, their  
2 support for the relief from force majeure, and they also  
3 gave us a timeline that, hey, we did start this financing  
4 back in October -- or in August, rather, of 2018, and we  
5 submitted our rate lock agreement and were ready to close  
6 in December, and had that government shutdown not  
7 happened, we would have been closed and under  
8 construction.

9 Now, our equity partner is also here. He's  
10 going to discuss some things too from the timeline. Those  
11 parties, the equity and debt providers had third party  
12 construction reviewers that reviewed our construction  
13 timeline, our plans, our scope, everything we were going  
14 to do. They all certified that they could deliver by  
15 December to put these buildings in service or else our  
16 equity and debt providers wouldn't have closed on our  
17 transaction alongside us. So there was a whole group of  
18 professionals involved making a very educated, experienced  
19 decision that this project could succeed.

20 MR. GOODWIN: Let's see if we have any  
21 questions. Do we have any questions?

22 MR. LONG: I just have one last thing I'll get  
23 to and then I'll wrap up.

24 My time is up. I spent some time answering  
25 questions early on, so if you'll please just give me one

1 more minute, I'll stop.

2 The options on the Board. Option A is easy, if  
3 you guys can grant us the force majeure, we're so close,  
4 the buildings can get done, we can provide the housing  
5 needed for the City of Decatur. No cost to the state,  
6 everything is easy, we take on all the burden and we're  
7 there.

8 Option B, you know, we have \$5- to \$7 million,  
9 somewhere in that range in this deal right now. Our  
10 capital investment partners and debt partners would pull  
11 out, we wouldn't have the funds to complete the project,  
12 and we would leave the citizens of Decatur with a half  
13 built construction development, which we don't think is in  
14 the mission of TDHCA to provide affordable housing to its  
15 constituents.

16 We're committed to this, our financing partners  
17 are committed to this, and we would hope that you would  
18 see that option A is the best path forward for this  
19 project, and quite frankly, I'll leave on the note that I  
20 hope to never be here again asking you for this relief, as  
21 I never have before.

22 MR. GOODWIN: Any other questions?

23 MR. VASQUEZ: I have a question for Marni,  
24 actually.

25 Setting aside the shutdown and everything, the



1 government shutdown, focusing just on the rain.

2 MS. HOLLOWAY: Yes.

3 MR. VASQUEZ: Tell me the differences between  
4 this development and the request for force majeure versus  
5 the other four that we've just approved. Is it just that  
6 the timeline is extended further than the others?

7 MS. HOLLOWAY: The difference would be the  
8 delay in closing the financing.

9 MR. WILKINSON: Way down the line, what if they  
10 started construction two weeks ago when it rained last  
11 week?

12 MS. HOLLOWAY: And delays in closing the  
13 financing are not force majeure events under the rule.

14 MR. LONG: If I may just interject before I  
15 leave or just answer your question?

16 MR. VASQUEZ: Sure.

17 MR. LONG: The other projects that were  
18 approved did close timely and they were still here asking  
19 for the force majeure relief, so I don't think there was  
20 any guarantee that had we don't that we wouldn't be here  
21 anyway. It seems like they were.

22 But thank you for your time. I really  
23 appreciate it.

24 MR. GOODWIN: Any other comments? Any  
25 questions?

1 (No response.)

2 MR. GOODWIN: Who else is going to speak?

3 MR. BOTTS: Chairman, members of the Board, my  
4 name is Hunter Botts. I'm a vice president of  
5 acquisitions for Affordable Housing Partners. We are a  
6 wholly owned subsidiary of Berkshire Hathaway, so we are a  
7 direct investor, we're not a syndicator, we control the  
8 investment of our own money.

9 When the closing was delayed by the government  
10 shutdown and the USDA couldn't close the loan in December,  
11 the general contractor went back and did a very well  
12 reasoned restructure of what the construction schedule was  
13 going to be, and as Bob mentioned, Bellwether as the  
14 lender got comfortable with that. Our construction  
15 services group, our senior vice president has been  
16 involved in the construction of over 2,000 affordable  
17 housing communities across the country. We routinely can  
18 get comfortable with a garden style type apartment  
19 complex, which this was, and 70 units on a nine-month  
20 construction schedule, so by closing in March that still  
21 gave a full nine months to be able to get CO'd by the end  
22 of December.

23 So we were able to get comfortable with it, as  
24 Bob mentioned, the lender got comfortable with it, there  
25 were a lot of professional eyes on this deal that even

1 with that delay we felt it could get done.

2 I'm before you today saying that we're still  
3 committed to investing our equity in this transaction to  
4 get the development completed, bring some much needed  
5 affordable seniors housing to Decatur. I think from our  
6 market study review, there are other affordable housing  
7 communities in Decatur and there are market rate senior  
8 housing in Decatur but there was not another affordable  
9 seniors development in Decatur.

10 So the housing is very much needed there in the  
11 city to meet that need, and we stand committed to continue  
12 our investment in the development on a go-forward basis.  
13 And as I mentioned, we control our own money so we're not  
14 beholdng to some third party outside investor in terms of  
15 our funds.

16 MR. GOODWIN: Any questions?

17 (No response.)

18 MR. GOODWIN: Thank you. Next.

19 MR. GARRETT: Mr. Chairman and Board, I'm Kelly  
20 Garrett. I've been here a few times over a bunch of other  
21 issues, never been on force majeure.

22 I'm part of the development team, I'm also part  
23 of the construction team, which is my background, I'm a  
24 sticks and bricks guy, I've got 30 years experience in  
25 that. And we chose to hire a general contractor that

1 actually has more experience than I do in this, he's got  
2 40 years experience and over 50,000 units, because we knew  
3 we were going to be up against a timeline.

4 But personally, I have built 70-unit deals in  
5 nine months on multiple occasions, four to be exact. Our  
6 construction schedule that we submitted showed CO'ing in  
7 December, so anyway, there's 71 rain days since we closed,  
8 and our consultant, maybe hindsight is 20/20, gave too  
9 much information, but as she said, she was laying out what  
10 happened to us, which being truthful and honest, that's  
11 the only way I know to be is tell the truth and live with  
12 the consequences. And so that's what we're here doing.  
13 We closed in March, we've had 71 rain days.

14 Some other deals, not to set a precedent, Beau,  
15 but you just approved one that had 58 rain days and they  
16 closed last July. When you close is really not the issue  
17 here, the issue is the rain, and that's the only reason  
18 that I'm sitting here.

19 Our general contractor is here if you have any  
20 questions of him, but I want to give you back some more  
21 time as Bob ran a little long with some much needed  
22 information. And if we had to do it all over again, all  
23 we'd be saying is rain, rain, rain because we have had 71  
24 rain days since March 20, and that has impacted us  
25 severely.

1 I'll answer any questions if you have any.

2 MR. GOODWIN: Any questions?

3 MS. BINGHAM ESCAREÑO: I don't really have a  
4 question but I would just have an observation on Lora's  
5 letter. I didn't really see it as too much detail. I  
6 think what Lora was trying to line out, if I'm  
7 understanding, is force majeure in and of itself wouldn't  
8 have necessarily worked, the rain as force majeure would  
9 not have worked in this argument without explaining the  
10 government shutdown and the cause -- I could be wrong --  
11 but the government shutdown and the cause for delay around  
12 that. You know what I mean? I don't know if that counts  
13 as a force majeure or if that's just a mitigating factor  
14 in why the rain ended up messing up this deal, but that's  
15 just my observation. I didn't really see it was let me  
16 just throw all of those in there and see. I think you  
17 were trying to tell a story.

18 First of all, it's complicated because of the  
19 changes. Right? And then there's the government shutdown  
20 that kind of messed things up, and then, so perfect storm,  
21 so to speak, then there's rain after that. Just my  
22 observation.

23 MR. GARRETT: Well, I can assure you, as was  
24 said earlier, if we had thought for any moment that we  
25 weren't going to make it when we started this deal, we

1 would not have started this deal because the devastation  
2 here, we're talking about millions of dollars and loss of  
3 affordable housing in Decatur, Texas. So I assure you we  
4 had no ill will or no ill intent to ask for a "bailout" as  
5 has been discussed. That's the last thing that I would  
6 want. I want to do what I say I'm going to do and that's,  
7 like I say, tell the truth and live with the consequences.

8 Thank y'all very much.

9 MR. SHACKELFORD: (Speaking from audience.) I'm  
10 actually going to forego saying anything, Mr. Chairman.

11 MR. GOODWIN: Really?

12 MR. SHACKELFORD: (Speaking from audience.) I  
13 think everything has been said. I know your penchant for  
14 not wanting to hear the same thing over.

15 MR. GOODWIN: Yes. Thank you, John.

16 MS. THOMASON: I have a question for Marni.

17 MR. GOODWIN: Yes.

18 MS. THOMASON: If the request had not mentioned  
19 the delays in closing, would it have still raised a red  
20 flag with staff if it was just rain?

21 MS. HOLLOWAY: Yes, yes. Part of our work  
22 going through these requests is going back through the  
23 construction status reports and looking at when closing  
24 happened and the construction contracts and the other  
25 information we have available to us.

1 MR. VASQUEZ: Marni, was there communication  
2 during the shutdown delay indicating, hey, we can't close  
3 because USDA people aren't there?

4 MS. HOLLOWAY: Not that I know of.

5 MR. GOODWIN: Needless to say, Marni, the  
6 heartburn was developed over how late the closing took  
7 place.

8 MS. HOLLOWAY: Yes.

9 MR. GOODWIN: Right. And that's what started  
10 the trigger that started the heartburn.

11 MS. HOLLOWAY: Yes. And frankly, more than  
12 that, the heartburn was a claim of changes in laws, rules  
13 and regulations when there really wasn't that we could  
14 see.

15 MR. GOODWIN: Bobby.

16 MR. WILKINSON: Force majeure is presenting  
17 problems to staff. Years ago it didn't exist and we had a  
18 development burn to the ground in 2014 and it was put in  
19 the QAP. Significant and unusual rainfall is subjective,  
20 and then a timely start also subjective. The gentleman  
21 here said that they could have got it done in nine months,  
22 no problem, if they hadn't had unusual rainfall. Staff is  
23 in a difficult position and I think we wanted to try to  
24 draw a line on force majeure. We see just increasing  
25 amounts of, hey, I got some sprinkles, I need six more

1 months. But they presented other evidence, pictures,  
2 whatnot, you've experienced it yourself.

3 MR. GOODWIN: And you can build a 70-unit  
4 project in nine months.

5 MR. WILKINSON: Right.

6 MR. GOODWIN: You couldn't build a 250-unit  
7 complex in nine months, but 70 units you could get done in  
8 nine months.

9 MR. WILKINSON: So maybe our timely start needs  
10 to be more explicit in future rules, something to think  
11 about for the future. You know, can you do it in six  
12 months? Maybe not. But you know, softening staff  
13 recommendation.

14 (General laughter.)

15 MR. GOODWIN: So do I hear a motion from a  
16 Board member as it relates to Legacy Trails of Decatur?  
17 Mr. Braden?

18 MR. BRADEN: I'll make a motion.

19 MR. GOODWIN: Okay.

20 MR. BRADEN: I'll make a motion to move to  
21 approve an extension for force majeure associated with  
22 rain delay.

23 MR. GOODWIN: A second?

24 MR. VASQUEZ: Second.

25 MR. GOODWIN: Okay. Any further discussion?



1 (No response.)

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

3 (A chorus of ayes.)

4 MR. GOODWIN: Opposed?

5 (No response.)

6 MR. GOODWIN: Okay. Moving on to item 8(b).

7 Thank you, John.

8 MS. HOLLOWAY: Item 8(b) is presentation,  
9 discussion, and possible action on a timely filed appeal  
10 of the expiration of a commitment of housing tax credits  
11 for application 19223 Bamboo Estates Apartments.

12 On August 16 of 2019, Department staff issued  
13 commitment notices for 2019 9 percent awardees. As in  
14 previous years, the notices were uploaded to each  
15 awardee's Serv-U folder. These are our FTP folders that  
16 we use to transfer documents -- and an email announcing  
17 the issuance and providing instructions for returning the  
18 commitment and related documents was sent to the first and  
19 second contact of each awardee.

20 The rule regarding commitments states that the  
21 commitment shall expire on the date specified therein  
22 which shall be 30 calendar days from the effective date,  
23 unless the development owner indicates acceptance by  
24 executing the commitment, paying the required fees, and  
25 satisfying any conditions. The rule also states that the

1 commitment expiration date may not be extended.

2 On September 16 of 2019, the day the commitment  
3 was due, a representative of the owner of Bamboo Estates  
4 contacted staff to provide information to satisfy a single  
5 underwriting condition that was to be cleared by the  
6 commitment deadline. The email of that conversation was  
7 sent at 4:22 in the afternoon on September 16, so on the  
8 deadline. There was no more communication with the owner  
9 until their appeal was received eight days later.

10 The appeal states: "We had all the intentions  
11 to submit all documents and comply with all the  
12 requirements of TDHCA. All documents, including the  
13 checks were ready to be submitted. Inadvertently, the  
14 documents were not uploaded to the TDHCA Serv-U on time  
15 and checks overnighted to TDHCA."

16 The appeal indicates that as of September 24  
17 all required documents were provided through the Serv-U  
18 account and that appropriate fees were submitted via  
19 overnight delivery. While not required by the rule, staff  
20 did review the late documents and determined that the  
21 application verification and compliance review form was  
22 not submitted and the Section 811 PRA program agreement  
23 also was not provided, although the appeal said that all  
24 documents were there. The correct fee payments were  
25 received on September 25 so nine days after the expiration

1 of the commitment. Allowing the late submission of the  
2 executed commitment documentation and fee payment would be  
3 tantamount to extending the commitment expiration date,  
4 which is specifically prohibited by the rule.

5 If the denial of the appeal is upheld, the  
6 credits in the amount of \$1,300,000 will first be made  
7 available in the subregion from which they were originally  
8 awarded, in this case Region 11 Rural. There is one  
9 application on the 2019 waiting list from that subregion  
10 which requests \$928,404. If the appeal is denied, staff  
11 would award the credits to 19028 Casitas Lantana, and the  
12 balance of the credits would go into the statewide  
13 collapse.

14 Because the development owner did not return  
15 the executed commitment and did not pay the required fees  
16 within 30 days from the effective date, as clearly  
17 required by the commitment notice and rule, the commitment  
18 expired, therefore, staff recommends denial of the appeal  
19 to reinstate the commitment for 19223 Bamboo Estates  
20 Apartments.

21 I'd be happy to take any questions.

22 MR. GOODWIN: Any questions for Marni?

23 (No response.)

24 MR. GOODWIN: Did you want to speak, sir?

25 MR. PHILIP: Yes.

1 MS. BINGHAM ESCAREÑO: Move to hear comments.

2 MS. THOMASON: Second.

3 MR. GOODWIN: Oh, I'm sorry. Motion to hear  
4 comments and a second. All in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. PHILIP: Mr. Chairman and Board members.

9 My name is Sunny Philip. I am appearing on behalf of the  
10 applicant, and we represent a nonprofit.

11 This particular application is proposed by this  
12 nonprofit for the first time, and there is no excuse that  
13 we missed the deadline. What happened was we received the  
14 email, printed all the documents, signed it and check  
15 ready and wanted to make sure that we submitted close to  
16 it. It was sitting on my desk and I goofed up and did not  
17 submit on time, and I did not realize that until received  
18 a letter from Marni stating that they had not received it.

19 We are working on three items. One of the  
20 commitment letter, the other one is there are some  
21 underwriting conditions that we needed to provide. We  
22 contacted in writing and provided that information. Then  
23 there is another email from TDHCA which requires us to  
24 fill out the carryover questionnaire, which has the EIN  
25 number on this form and signature box on all of them. So

1 basically the information supposed to be submitted with  
2 the underwriting -- with the commitment notice is exactly  
3 the same, so we have submitted that and then we had  
4 feedback and we submitted those in time. And since then  
5 we have uploaded the information on the Serv-U,  
6 overnighted the check, and there was two items we  
7 mentioned which is initiated by TDHCA.

8 The co-developer which is also a nonprofit  
9 volunteered one other development to participate in the  
10 811 program, and the other form is typically repeating  
11 what we submitted and stated in the application.

12 What we ask the Board is to consider a few  
13 other items. Again, this is a first project by a  
14 nonprofit, the plans and specs are 100 percent complete,  
15 and the lender has completed the underwriting, all the  
16 plans have been reviewed by the third party reviewer, and  
17 the concept meeting with HUD is done and there is a letter  
18 to that effect. The zoning is already in place, the  
19 equity provider is going through the underwriting.

20 A denial of this appeal is devastating for a  
21 new startup nonprofit, which we are trying to do. Okay?  
22 And we ask the Board to favorably consider authorizing the  
23 staff to accept the documentation and the fee submitted so  
24 that we can move forward and complete, and we will be able  
25 to finish the project on time also. And also, the

1 nonprofit which is the co-developer has developed four  
2 other developments and so we have the knowledge and the  
3 experience to work with.

4 Again, it is an oversight from my personal side  
5 and we ask that you allow the nonprofit to move forward.

6 MR. GOODWIN: Thank you for your candor and  
7 honesty.

8 MR. PHILIP: Thank you.

9 MR. GOODWIN: Any questions?

10 (No response.)

11 MR. GOODWIN: Anybody else want to speak to  
12 this? If not, I'll accept a motion. Oh, you want to  
13 speak. I'm sorry. Come on up.

14 MS. DOTSON: Good morning, Chairman and Board.  
15 My name is Chloe Dotson. I'm the director of real estate  
16 development for the Community Development Corporation of  
17 Brownsville. Our executive director, Charles Mitchell,  
18 apologizes, he could not be here today, he's actually out  
19 traveling, but he sends his very confident staff to speak  
20 with you this morning. I'm here today as the applicant  
21 for 19028 Casitas Lantana and to show our support for  
22 TDHCA staff recommendations to deny the appeal as outlined  
23 in your Board book.

24 We're asking that application 19228 be treated  
25 as any other applicant and is held to the strict

1 requirements and deadlines of the 9 percent LIHTC  
2 application process. All we ask is that all applicants  
3 should have to play by the same rules.

4 As of the deadline of September 16, the  
5 executed commitment letter and fee were not received by  
6 TDHCA staff. It was only eight days later that TDHCA  
7 staff received partial documents. According to the Texas  
8 State Code, it is prohibited by Section 10 to allow the  
9 extension of the commitment letter, and very simply we ask  
10 that all applicants be treated the same in fairness and  
11 that you consider the recommendation of the staff to deny  
12 the appeal.

13 MR. GOODWIN: Any questions?

14 MR. GOODWIN: Thank you.

15 If nobody else wants to speak, I'll entertain a  
16 motion.

17 MR. VASQUEZ: I have a question I guess to  
18 Beau. So do we even have the legal authority to make this  
19 kind of extension in this particular case.

20 MR. ECCLES: I would say the staff does not  
21 have the discretion. By rule, 10 TAC 10.402(a), the  
22 commitment expiration date may not be extended. That rule  
23 could be considered for waiver. I don't believe waiver  
24 has been requested, though. I think it was just brought  
25 that it was a sorry, I messed up.

1           The Board would have the ability to waive that  
2 particular no extension. That said, I'm not sure that  
3 it's been requested. It hasn't been justified as a  
4 waiver, and that's kind of where we are with this.

5           MS. THOMASON: Marni, you said your staff did  
6 review the late submission and there were still some  
7 deficiencies?

8           MS. HOLLOWAY: Yes. There were two documents  
9 missing from the late submission, the 811 agreement and  
10 the application verification form.

11           MR. GOODWIN: Mr. Braden.

12           MR. BRADEN: I'm willing to make a motion.

13           MR. GOODWIN: Okay.

14           MR. BRADEN: I make a motion that the appeal to  
15 reinstate the commitment for 19223 Bamboo Estates  
16 Apartments be denied in accordance with staff's  
17 recommendation.

18           MR. GOODWIN: And a second?

19           MS. RESÉNDIZ: Second.

20           MR. GOODWIN: Any further discussion or  
21 questions?

22           (No response.)

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

24           (A chorus of ayes.)

25           MR. GOODWIN: Opposed?



1 (No response.)

2 MR. GOODWIN: All right. Moving on to item  
3 8(c). Teresa.

4 MS. MORALES: Good morning. Teresa Morales,  
5 director of Multifamily Bonds.

6 Chairman Goodwin and members of the Board, item  
7 8(c) involves the award of approximately \$8 million in 4  
8 percent housing tax credits associated with five  
9 multifamily developments, all of which are new  
10 construction and located in or around the Austin area.

11 The writeup in your materials is different than  
12 it has been in months past and this is for three reasons:  
13 one, it provides more background on how the 4 percent  
14 program works in relation to the private activity bond  
15 program; two, to highlight the volume of applications that  
16 staff reviews to bring before you for consideration, which  
17 has historically been on consent; and three, while there's  
18 more to housing tax credits than just the 9 percent deals.

19 Sorry, Shay.

20 (General laughter.)

21 MS. MORALES: As a brief overview, the Texas  
22 Bond Review Board administers the private activity bond  
23 program for the state, and similar to the 9 percent  
24 program, where there is a ceiling amount of credits that  
25 can be allocated, there is a ceiling amount of bonds that

1 can be issued. Multifamily development has its own set-  
2 aside of bond volume cap that is available from January to  
3 August 15 each year. After this date everything collapses  
4 and reservations are issued on a first come, first served  
5 basis.

6 Looking back at 2018, the volume cap authority  
7 ultimately used exceeded the amount in the set-aside,  
8 meaning that there was demand year-round, particularly  
9 after the collapse in August. For 2019 there have been no  
10 signs of slowing down. Exhibit B for this item in your  
11 materials reflects the applications received to date.

12 To provide some context, the 9 percent awards  
13 that were made in July resulted in approximately 5,500  
14 units. On the 4 percent side, if you look at those  
15 applications that have closed on their financing and those  
16 already approved by the Board, we have created 6,200  
17 affordable units, and if you factor in those applications  
18 that are noted as active and still under review, the 4  
19 percent program is on track to produce just over 11,000  
20 units. Not only is this almost twice as much as the 9  
21 percent side, but it's almost twice as we produced last  
22 year at 6,300 units.

23 While there may be individuals who comment that  
24 the 4 percent credits will go unused and effectively  
25 wasted if not used for a particular transaction that may

1 be before you, these numbers suggest otherwise. If one  
2 deal does not get done, there is still demand and volume  
3 cap is still being used. The other thing to note is that  
4 it is not uncommon for a failed 9 percent application to  
5 make its way through the process as a 4 percent  
6 application.

7 The determination notices associated with these  
8 five applications total almost \$8 million in 4 percent  
9 housing tax credits and the creation of a little over  
10 1,100 units. Details surrounding each are noted in your  
11 materials, and staff recommends approval.

12 MR. GOODWIN: Any questions for Teresa?

13 (No response.)

14 MR. GOODWIN: Did you want to speak, sir?

15 SPEAKER: Not yet.

16 MR. GOODWIN: Okay.

17 MR. VASQUEZ: So, Teresa, how much additional  
18 volume, unused cap do we have?

19 MS. MORALES: How much additional volume?

20 MR. VASQUEZ: This is \$8 million and we still  
21 have?

22 MS. MORALES: So that's \$8 million in 4 percent  
23 housing tax credits. From a bond volume cap perspective,  
24 that's where the competition, so to speak, lies and  
25 whether that volume cap is going to be ultimately

1 available.

2 To provide some context, in 2018 that ceiling  
3 amount that we have to work with up until August is about  
4 \$650 million. After August, everything that's unreserved  
5 becomes available. What was ultimately used for  
6 multifamily was over \$700 million. So it's not in the  
7 context of the credits but more so on the bonds.

8 MR. WILKINSON: Across multiple issuers.

9 MS. MORALES: Correct.

10 MR. WILKINSON: Not just us.

11 MR. GOODWIN: Any additional questions?

12 (No response.)

13 MR. GOODWIN: If not, I'll entertain a motion  
14 to accept staff's recommendation.

15 MR. BRADEN: So moved.

16 MR. GOODWIN: Second?

17 MR. VASQUEZ: Second.

18 MR. GOODWIN: Any further discussion?

19 (No response.)

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

21 (A chorus of ayes.)

22 MR. GOODWIN: Opposed?

23 (No response.)

24 MR. GOODWIN: Okay. 8(d).

25 MS. MORALES: 8(d) involves the award of

1 approximately \$1.7 million in 4 percent housing tax  
2 credits associated with two multifamily properties. These  
3 4 percent applications differ from the group that you just  
4 approved in that these have eligibility determinations  
5 that need to be made, and staff is recommending  
6 eligibility on each. If it pleases the Board, I can  
7 briefly summarize the issue applicable to each and then  
8 Board action can be taken on the item as a whole.

9           Govalle Terrace is a proposed new construction  
10 development in East Austin, and the site is to be located  
11 within 500 feet of an active railroad track, which  
12 constitutes an undesirable site feature under the QAP.  
13 The railroad in question is approximately 175 feet from  
14 the boundaries of the site; however, acceptable mitigation  
15 was provided in the form of a noise assessment that  
16 concluded that the development site meets HUD's acceptable  
17 standards and no sound mitigation would be required.

18           Wayman Manor proposes the rehabilitation of 160  
19 units in Temple. This application disclosed two  
20 neighborhood risk factors relating to the poverty rate of  
21 the census tract and school performance in the attendance  
22 zone. As for the poverty rate, the threshold in the rule  
23 is 40 percent and the subject census tract is at 49.9  
24 percent.

25           Acceptable mitigation provided by the applicant

1 indicated that Wayman Manor is in a targeted  
2 revitalization area designated by the city which has  
3 demolished many blighted buildings, made street  
4 renovations, and partnered in the construction of single-  
5 family homes with additional single-family development in  
6 the planning stages. Moreover, this census tract has seen  
7 a 5 percent in the median household over the past five  
8 years, and the neighborhood, including the development  
9 itself, provides for access to career opportunities and  
10 job placement services.

11 The middle school for Wayman Manor was cited as  
12 improvement required in 2018. The Department received a  
13 letter from the district coordinator of school improvement  
14 for Temple ISD who represented the strategies and  
15 assessments under the targeted improvement plan have  
16 produced data that has the school on track to receive an  
17 acceptable accountability rating.

18 Staff finds the information provided on each  
19 application to be acceptable mitigation and recommends the  
20 issuance of a determination notice for Govalle Terrace and  
21 Wayman Manor in the respective amounts as reflected in  
22 your materials.

23 MR. GOODWIN: Any questions for Teresa?

24 (No response.)

25 MR. GOODWIN: Is this what you wanted to speak

1 on?

2 SPEAKER: The next one.

3 MR. GOODWIN: Okay. I'll entertain a motion to  
4 accept staff's recommendation.

5 MS. RESÉNDIZ: So moved.

6 MR. GOODWIN: Second?

7 MS. THOMASON: Second.

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

9 Any further discussion?

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: All right. Now we're to 8(e).

16 MS. MORALES: Item 8(e) involves the  
17 determination of eligibility as it relates to school  
18 performance for the middle school in the attendance zone  
19 of the proposed Bridge at Canyon View.

20 Mendez Middle School, what I'll refer to as  
21 Mendez, has had consecutive Improvement Required ratings  
22 by TEA from 2014 to 2018. According to the rule, a school  
23 that has been Improvement Required for three consecutive  
24 years shall be unable to mitigate unless there is a clear  
25 trend indicating imminent compliance due to the potential

1 for school closure pursuant to Texas Education Code.  
2 Documentation has not been submitted to evidence this  
3 clear trend despite its five-year Improvement Required  
4 status.

5 In November of 2018, you considered this same  
6 school issue as it was associated with the Eastern Oaks  
7 direct loan application. That application differs from  
8 this one in that it involved the rehabilitation of  
9 existing units, whereas, the subject proposes the new  
10 construction of 215 units. That application was  
11 ultimately found eligible, with comments from the Board  
12 noted as: "If this were a new development with new units,  
13 then that would be a really serious consideration."

14 In reviewing the materials submitted as part of  
15 the Eastern Oaks application, staff became aware of Senate  
16 Bill 1882, which was adopted during the 2017 legislative  
17 session that allowed school districts to request a two-  
18 year reprieve on TEA accountability ratings if the  
19 district partners with a state-approved group to develop a  
20 turnaround plan for the campus. A letter dated July 2018  
21 from AISD superintendent, submitted with the Eastern Oaks  
22 application, indicated that Austin ISD approved a  
23 partnership with T-STEM to help with the accountability  
24 rating for Mendez.

25 The information in your materials, along with a



1 letter dated February 2019 from the director of Mendez,  
2 describes the T-STEM program but it does not indicate what  
3 progress the program has had on the school and its  
4 students specifically. The 2019 TEA ratings, which were  
5 released in August, resulted in an F rating which staff  
6 understands to be the first year under this T-STEM  
7 partnership. It is unclear to staff what action TEA will  
8 take if at the end of the second year under the T-STEM  
9 partnership Mendez has not achieved an accountability  
10 rating that's acceptable to TEA. Information has not been  
11 provided to staff that would speak to this.

12 If the school is closed, we have to consider  
13 what effect that could have on the other schools in the  
14 area and the fact that this development would be under  
15 construction.

16 Staff recommends that the Bridge at Canyon View  
17 be found ineligible.

18 MR. GOODWIN: Any questions?

19 (No response.)

20 MR. GOODWIN: You wanted to speak.

21 Do I hear a motion to entertain comments?

22 MS. BINGHAM ESCAREÑO: Move to hear comments.

23 MR. GOODWIN: Second?

24 MR. VASQUEZ: Second.

25 MR. GOODWIN: All in favor say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: Okay.

5 MR. BROWN: Good evening, Chairman and Board.  
6 My name is Jake Brown, and I represent the developer, LBG  
7 Development, on the project.

8 As Teresa just noted, the issue before you is  
9 Mendez middle school has failed to meet standard the last  
10 four years and received an F rating most recently. So I  
11 guess what I'll talk about first is how we're going combat  
12 it and then we've got some other speakers behind us that  
13 will touch on what they were doing with AISD to help  
14 improve the school.

15 So LBG has brought the project before you. So  
16 we've actually committed to a partnership with Rainbow  
17 Housing to provide a supportive services program at the  
18 property, so if you're not familiar with Rainbow Housing,  
19 it's a national nonprofit that provides supportive  
20 services to over 100 communities in twelve different  
21 states around the nation.

22 Their proposal to us and our proposal to you is  
23 a youth enrichment program that will be operated at the  
24 property by Rainbow Housing and the program will operate  
25 twenty hours a week for education and academic achievement

1 for the residents, the youth of the property. So this  
2 will include things like a homework power hour,  
3 educational activities, character building, leadership  
4 skills, et cetera. And so the academic concept portion of  
5 this program will be in direct partnership and  
6 coordination with AISD, specifically Mendez Middle School,  
7 so they're in line with the curriculum and what they're  
8 presenting and teaching the students at this after-school  
9 program.

10 The other thing that I would note is I think  
11 that we're all aware of the need for affordable housing  
12 across the state, not only the state but in the City of  
13 Austin. The City of Austin, in November of 2018, unveiled  
14 their strategic housing blueprint which basically noted  
15 that their mission over the next ten years would be a goal  
16 of adding 60,000 affordable units to the City of Austin.  
17 Now, we can debate whether or not that's achievable, but I  
18 think what is not up for debate is there is a serious need  
19 here in Austin for affordable housing.

20 And even more specifically, the city leaders  
21 and city council noted their desire to add 4,000 new  
22 affordable housing units along William Cannon Drive and  
23 Slaughter Lane. William Cannon Drive is where this  
24 property sits, just east of I-35.

25 Another couple of important notes and then I'll

1 finish up here and turn it over to our next speakers. Ten  
2 of the fourteen Austin schools that received an F rating  
3 in 2019 are located in qualified census tracts, and I know  
4 that there's a revamping of the policy and you guys are  
5 looking at different things and in this transition period  
6 and how we're going to interpret the TEA ratings, but I  
7 would ask you to also take that into consideration that  
8 basically as it stands right now if we're going to say  
9 that if you're going to receive an F rating then you're  
10 automatically ineligible going forward, well, then that's  
11 going to eliminate qualified census tracts all over the  
12 city. And again, I understand that there's going to be  
13 updates to the policy going forward, but I just wanted to  
14 make note of that.

15 Another thing that I'll note, this allocation  
16 is a traditional carryforward allocation so if the project  
17 is not deemed eligible, these bonds will go to waste and  
18 the project just won't happen and the bonds will be  
19 wasted.

20 Last note, this is a 4 percent deal so it's not  
21 a case of where if it was a 9 percent there might be  
22 somebody right behind us, a better quality project that  
23 would be eligible that could take our place. If these  
24 units aren't constructed, it's just going to go to waste  
25 and there won't be affordable housing.

1 I think we're all in alignment here. Our goal  
2 is to provide affordable housing, and I think that we're  
3 all in agreement that the City of Austin needs it. Thank  
4 you.

5 Any questions?

6 MR. GOODWIN: Any questions?

7 MS. RESÉNDIZ: Teresa, will you tell me how you  
8 interpret his going to waste comment?

9 MS. MORALES: So without getting too much into  
10 the weeds, there's two types of reservations that are  
11 associated with the bond volume cap. One is your non-  
12 traditional where it's tied to a project and applicants  
13 have five months to get through our process, their  
14 issuer's process, and get closed on the financing. The  
15 other avenue that applicants can take is they can pursue  
16 what's called traditional carryforward. The issuer  
17 requests that and it has not five months but three years.

18 Unfortunately, that type of reservation is project-  
19 specific, meaning of the applicant or the project does not  
20 move forward, the issuer cannot return that volume cap, it  
21 can't get reused, it's tied to this specific project.

22 That's one of the reasons why great care should  
23 be taken when issuers are requesting traditional  
24 carryforward because it cannot be reused.

25 For this particular application that

1 carryforward was received in 2016 and so it will expire  
2 December 31 of this year. As I understand it, this  
3 application was originally submitted I think 2016 or 2017  
4 as a part of a direct loan application that was withdrawn,  
5 and then it was resubmitted this year in January or  
6 February and it's been kind of lingering on since then.

7 MR. GOODWIN: You mentioned several other  
8 people were going to talk. I see one person. If you're  
9 going to speak, please come and sit in the first couple of  
10 rows, if you would.

11 MR. BROWN: Any other questions?

12 MR. GOODWIN: Any other questions?

13 (No response.)

14 MR. BROWN: Thank you guys.

15 MR. GOODWIN: Okay. Who wants to be next?

16 MR. SIMMONS: Good afternoon, members of the  
17 Board. My name is David Simmons, and I'm proud to serve  
18 as the executive director of the Texas STEM coalition.

19 As you are aware, the Texas STEM coalition was  
20 approved by AISD as a third party operator for Mendez  
21 Middle School. Our agreement was approved in June 2018,  
22 June 26, 2018, I believe, and school started about six  
23 weeks later, so with very limited planning, we began the  
24 process of revisioning Mendez Middle School.

25 We hired a new director, a principal from a

1 statewide search. She was faced with the challenge of  
2 hiring over 30 teachers within just a few weeks prior to  
3 school starting. Last year was very much a transitional  
4 year. In fact, the new 1882 campuses are being allowed a  
5 full year to prepare and plan for school turnaround, which  
6 is a great asset to have that we didn't have. That's not  
7 an excuse, it's just a reality. School turnaround, school  
8 transformation is a three to five year progress measure by  
9 most statistical research in that area. We are very  
10 confident that given the opportunity, given the resources  
11 that we will get Mendez off of the failing list. I can  
12 assure you that it is what we work on each and every day.

13 Ms. Rowley, who you'll meet in a minute, is our  
14 veteran school administrator, new principal director with  
15 a lot of experience in school turnaround. I personally  
16 have served as superintendent -- I'm a recovering  
17 superintendent, I like to say, and I had a chance to serve  
18 five unique different types of school districts around the  
19 state during my career and proud to say that no through my  
20 efforts but through teams we put together we've seen  
21 increases in each and every one of those districts.

22 So we know what to do. It's complex work, it's  
23 difficult work. Children from economically disadvantaged  
24 families have unique needs. We have also partnered with  
25 Communities in Schools to work on the emotional support,

1 the trauma interventions that many of our students need.  
2 I'm proud to say that we reviewed information yesterday at  
3 our board meeting. Discipline referrals at the campus are  
4 80 percent less today than they were a year ago on the  
5 campus.

6 So if you haven't been to Mendez Middle School  
7 lately, it's been totally transformed, we've restructured  
8 everything. It's taking time. We deliver our product, if  
9 you will, our delivery is through project-based learning.

10 It is where students have a direct involvement in their  
11 own learning. They're required to participate, they  
12 produce projects, it's not just sit and get.

13 I would also like to say in my closing remarks  
14 that we follow a blueprint, we have autonomy to make many  
15 local decisions as an in-district charter. AISD is  
16 supportive but we also have a lot of autonomy to -- we  
17 have final hiring authority, I do as executive director,  
18 which gives us great discretion to get the right team on  
19 campus. Our preliminary benchmarks are showing progress  
20 towards the state goal.

21 And again, we believe, given the opportunity  
22 and the time, we're definitely going to turn Mendez  
23 around. This model has been proven effective in schools  
24 that T-STEM has been involved with in East Texas and given  
25 the opportunity, we feel we will be successful here.



1                   And I would like to, if I could, introduce Ms.  
2 Joanna Rowley.

3                   MR. GOODWIN: I want to first see if there's  
4 anybody who has questions for you.

5                   MR. SIMMONS: Yes, sir.

6                   MR. GOODWIN: Any questions?

7                   (No response.)

8                   MR. GOODWIN: Okay.

9                   MR. SIMMONS: Ms. Rowley. She's our new  
10 director.

11                   MR. GOODWIN: Great.

12                   MS. ROWLEY: Good morning, Board. Thanks for  
13 allowing us time to speak today.

14                   I am the director at Mendez Middle School, and  
15 just to give you a little bit of background about myself,  
16 this is my 27th year in education. Nine of those years I  
17 spent as a teacher, ten years as an administrator, and six  
18 years as an executive director, and this is my second year  
19 at Mendez Middle School. I do have school improvement  
20 experience in my background. I was a middle school  
21 principal in West Texas that was considered under-  
22 performing as well with culture and morale challenges.  
23 They were in extreme high need, high economically  
24 disadvantaged numbers. We actually, under my direction,  
25 reached Recognized academic standard after the first year

1 of implementation, and was one student shy from Exemplary  
2 status, which was the highest rating, within the second  
3 year while I was there.

4           Then I was asked to take over the district  
5 bilingual ESL program in the district, who was suffering  
6 twelve years both academically and language performance  
7 standards under the state and federal requirements there  
8 in the district. I was there as the director for six  
9 years and we did make that turn under the fourth year  
10 there. That was district-wide, though. So twelve years  
11 under state and federal low performance moved into  
12 Recognized standards in the fourth year there.

13           I do want to point out some great points of  
14 pride at Mendez Middle School. We do partner with  
15 Communities in Schools and UTeach which is the teacher  
16 preparation program at the University of Texas. We do  
17 have a project-based learning in every core subject, which  
18 is completely different to what students were used to  
19 learning there at Mendez that allows our students and our  
20 staff to hold each other accountable. We have an  
21 increased focus on standard-based teaching and learning,  
22 we have an increased focus on data-driven instruction.  
23 Teachers really look at that data on a daily basis to see  
24 where the individual student needs are.

25           Interventions are in place to provide

1 assistance to close the achievement gaps, and the UTeach  
2 instructional coaches who are housed there at Mendez  
3 provide teacher support in math and science specifically.

4 Our teachers meet on a weekly basis to undergo the data-  
5 driven decision-making for the students.

6 I do want to point out that our attendance is  
7 up as well as our enrollment there at Mendez since we took  
8 over. In 2017 and '18 the attendance rate was at 88  
9 percent, as of yesterday our attendance rate has an  
10 average of 94.02 percent, so we have seen an increase in  
11 attendance. The enrollment, we were projected at 575, we  
12 are today sitting at 617, so enrollment is up as well.

13 We do have social services that are provided by  
14 Communities in Schools. We have five Communities in  
15 Schools support members on our campus that provide  
16 restorative strategies in place, they also provide teacher  
17 training for our teachers, we have social-emotional  
18 learning strategies. I also hired a social-emotional  
19 learning and mindfulness coordinator on our campus to help  
20 deal with the traumatic situations that our children go  
21 through on a daily basis, and also past history of social-  
22 emotional situations that they've been in. This  
23 coordinator provides equitable student and teacher  
24 support, so not only does she help our students but CIS  
25 and our coordinator help our teachers as well. And then

1 we actually have two social-emotional learning and  
2 mindfulness suites that both students and teachers have  
3 access to on a daily basis.

4 MR. GOODWIN: Good. Any questions?

5 MR. VASQUEZ: Just a quick question. So what's  
6 the total enrollment capacity of the school?

7 MS. ROWLEY: Eleven hundred. They have seen a  
8 decline in enrollment due to the low performance and also  
9 all the charter schools that have opened up in the  
10 neighborhoods. But when we first took over we were  
11 projected at 548 and we finished the year last year at  
12 612; this year we were projected at 575 and we are now  
13 sitting at 617 in the beginning of October.

14 MR. GOODWIN: Any other questions?

15 MR. WILKINSON: Yes. Have you seen in  
16 benchmark assessments or whatever a clear trend indicating  
17 imminent compliance?

18 MS. ROWLEY: Yes, absolutely. Even with the  
19 STAAR scores last year we showed increased scores in all  
20 subject areas but specifically a very high improvement  
21 rate in social studies in the eighth grade level. Going  
22 into benchmarks right now, we've seen an increased rate in  
23 all students across all four subject areas.

24 MR. WILKINSON: And do you expect to have a  
25 better ranking for the year?

1 MS. ROWLEY: Absolutely, absolutely.

2 MR. WILKINSON: Thank you.

3 MR. GOODWIN: Any other questions?

4 (No response.)

5 MR. GOODWIN: Barry, did you want to speak?

6 MR. PALMER: Yes, unless you're going to make a  
7 motion to approve this deal.

8 MR. GOODWIN: How would I know that?

9 (General laughter.)

10 MR. PALMER: Barry Palmer with Coats Rose,  
11 representing the development team.

12 This is a partnership between LDG and the  
13 Austin Housing Authority to develop 215 new family units  
14 on William Cannon Drive. This is being financed, as said  
15 before, with 4 percent credits and bonds and these are  
16 bonds for this project that can't be re-utilized. So  
17 we're not asking for any other resources, 9 percent  
18 credits or any funding from the Department.

19 I'd like to point out we talk about the  
20 shortage of affordable housing in Austin, but to just kind  
21 of drive that home, the latest figures came out on the  
22 number of households that are rent-burdened in Austin and  
23 it's 49 percent of households here spend more than 30  
24 percent of their income on housing, and 23 percent are  
25 severely rent-burdened where they spend more than 50

1 percent of their income on housing. If you can imagine  
2 that, spending more than 50 percent of your income on  
3 housing. And here is an opportunity to deliver 215 units  
4 and make a dent in that.

5 And it's in a good neighborhood. There's no  
6 crime issues, it's not high poverty, there's not blight,  
7 the elementary school and the high school both have good  
8 ratings, it's just the Mendez Middle School that's been a  
9 problem. And you've heard the testimony here today of the  
10 partnership that's been put in place with T-STEM and the  
11 educators who have put a turnaround plan in place, and we  
12 think that it is very reasonable for the Board to conclude  
13 that by the time this development is constructed, which  
14 will be about two years, that Mendez Middle School will be  
15 performing at that time, and so that would allow the Board  
16 to allocate the credits to this project.

17 MR. GOODWIN: Any questions for Barry?

18 (No response.)

19 MR. GOODWIN: Thank you.

20 Teresa, I've got a question for you. You said  
21 this application has been hanging out in our system since  
22 2016 and we've heard a lot of people talk about, well,  
23 these bonds wouldn't be usable, but that doesn't mean any  
24 future bonds. If the Board decided to take a let's wait  
25 and see approach to this, this same project could possibly

1 come in front of this Board a year from now for future  
2 bonds to be developed as well. Right?

3 MS. MORALES: That's correct. There would be  
4 nothing that would preclude the applicant from pursuing a  
5 bond reservation in a subsequent program year. However, I  
6 would point out, as was previously mentioned by a member  
7 of the development team, that we do have the 2020 draft  
8 QAP out for public comment currently and there is a  
9 provision in that QAP that states if a development is in  
10 an attendance zone that has a 2019 F rating and a 2018  
11 Improvement Required rating, then there is no mitigation,  
12 that those projects would be ineligible.

13 MR. GOODWIN: So this project might have to  
14 wait till 2021 to see if the things that are being done  
15 there raise the level of the school.

16 MS. MORALES: Correct.

17 MR. GOODWIN: Okay. All right. Any other  
18 questions?

19 (No response.)

20 MR. GOODWIN: No other speakers. I will  
21 entertain a motion from a Board member who is so inclined.

22 MS. RESÉNDIZ: May I make a comment?

23 MR. GOODWIN: Sure.

24 MS. RESÉNDIZ: This is what makes it so  
25 difficult is the kids are the ones that are suffering if a

1 school closes, but yet understanding the need for  
2 affordable housing. What do y'all project would happen if  
3 the school closed?

4 MR. SIMMONS: First, I think it's important to  
5 note that school closure would ultimately be determined by  
6 the commissioner of education. He has total authority  
7 when it comes to school closures.

8 In our opinion -- and we have no plans of not  
9 meeting standard this year -- but I would hope that the  
10 commissioner and his staff would be able to come in and do  
11 a comprehensive audit of the improvement strategies that  
12 have been implemented, the growth that has occurred, the  
13 increased population, the increased attendance rate, the  
14 reduced discipline, and factor all of that into  
15 considering some type of an extension. But if that school  
16 were to close, I think it would be certainly tragedy for  
17 the Dove Springs community in that that would displace  
18 600-something students and their families to relocating  
19 throughout the district.

20 And I think it's also important to note, that  
21 was mentioned earlier, school turnaround is a complex  
22 thing, and not to make excuses of what happened before we  
23 came onboard, but we really believe that with the  
24 discretion that we now have as a body over Mendez Middle  
25 School that we're able to do some of the things in terms



1 of providing unique student interventions, making sure we  
2 have teachers that want to be in that environment as  
3 opposed to being reassigned to that environment. It makes  
4 a huge difference when you have people on the same page  
5 buying into a new system.

6 So we firmly believe that we will get there.  
7 Should we not, I think the commissioner would be the  
8 ultimate decision-maker if we were to get a continuance.  
9 I can tell you that our agreement with Austin ISD was for  
10 five years. The two-year component that's been mentioned  
11 is directly related to the accountability and triggering  
12 that aspect of school closure. But should it come to  
13 that, which we certainly don't believe it will, we would  
14 like to think that the commissioner would look at the  
15 impact, look at what's best for kids, and consider an  
16 extension as well, but that's not our say.

17 MR. GOODWIN: Any other questions?

18 MR. SIMMONS: Ms. Rowley would like to add  
19 something.

20 MS. ROWLEY: To put it in perspective for your  
21 question, I have 617 students currently on our campus, we  
22 have three buses that come in and out daily, and those are  
23 only for special needs students, and so a good bulk of our  
24 kids are all within walking distance. Three buses is  
25 nothing compared to other campuses that have 20 to 30

1 buses coming in and out, so all of those kids would have  
2 to be bused to another campus.

3 MS. BINGHAM ESCAREÑO: Mr. Chair, I have a  
4 motion, and you know, this is tough and I really want to  
5 commend you all for everything that you're doing. I  
6 believe, unfortunately, it's a decision that I will make  
7 the motion accept staff's recommendation. I understand  
8 the path, I just believe that us placing 214 new units in  
9 a location where we have a school that has long of a  
10 struggling track record, that it is prudent to wait and  
11 hear good news. So I'll move staff's recommendation,  
12 regretfully.

13 MR. GOODWIN: Do I have a second?

14 (No response.)

15 MR. GOODWIN: Am I allowed to second it, Beau?

16 MR. ECCLES: Yes.

17 MR. GOODWIN: I'll second the motion.

18 Other Board member discussion?

19 (No response.)

20 MR. GOODWIN: Anybody else that wants to say  
21 anything?

22 (No response.)

23 MR. GOODWIN: If not, we will take -- I'm  
24 sorry. Did you have a comment you want to make?

25 MR. BRADEN: The only comment I would make,

1 these are 4 percent tax credits, they're not 9 percent,  
2 there's nobody waiting on it for those. These bonds will  
3 go away. And sure, you can get application for private  
4 activity bonds in the next round, but there's an  
5 opportunity here to add low income housing at really no  
6 cost to the agency and no lost opportunity to the agency  
7 if you allow them to do this program. And they've put  
8 forth some evidence that it's turning the school around,  
9 and even if the school doesn't quite get turned around in  
10 a timely manner, Austin still needs low income housing.  
11 So I'm going to vote against the motion.

12 MR. GOODWIN: I understand. My reason for  
13 seconding the motion was I agree with Leslie. This school  
14 has been in a terrible state for a number of years and  
15 this is a last ditch effort, in my opinion, in hiring this  
16 group to come in to try to improve it. The Austin  
17 Independent School District has been trying to improve it  
18 for many years before they came in, and I hope you're  
19 successful and I applaud you for what you're doing, but I  
20 just think that the prudent thing to do is to give it  
21 another year or two to wait and see if this takes place.

22 And a bit portion of my feelings too is that  
23 this school is at 50 percent of capacity. It holds 1100  
24 or 1200 people and it's got 600. That means there's 600  
25 of them that have found alternatives someplace else. So

1 that's the reason I'm in favor of staff's recommendation

2 Any other comments?

3 MS. THOMASON: Is the wait and see based on the  
4 2020 QAP would preclude this particular application from  
5 being considered?

6 MR. GOODWIN: No question about that, but then  
7 you've got 2021. They've been trying to build this since  
8 2016, here we are at 2019. So I think everybody just has  
9 to vote their conscience.

10 MR. VASQUEZ: Mr. Chairman, I'm torn on this,  
11 however, as Mr. Braden just said, we know Austin does need  
12 more affordable housing, and there's a runaway. I mean,  
13 if we don't action now by granting the applicant's appeal,  
14 it's going to be another -- even if we grant it now, it's  
15 still, what, two years before it's even up, that people  
16 are living there, so if we wait another year or two, then  
17 it's going to be another two years after that before  
18 there's any affordable housing here.

19 I think the T-STEM presented a compelling  
20 argument. I think the supportive housing type of Rainbow  
21 programs on site make a difference. So while I've been  
22 part of the Rules Committee that set in place this future  
23 if you have an F and doesn't meet standards, then there is  
24 no mitigation, here I am breaking that even before it goes  
25 into place.

1           Again, I believe that they've already started  
2 and I think I'll vote against the motion as well.

3           MR. GOODWIN: Okay. Any other comments?

4           (No response.)

5           MR. GOODWIN: If not, we'll call for a vote on  
6 the motion.

7           MS. RESÉNDIZ: There will be a significant  
8 amount of data provided. Correct?

9           MR. GOODWIN: Those in favor of the motion say  
10 aye.

11           (Ayes: Chairman Goodwin, Vice Chairman Bingham  
12 Escareño.)

13           MR. GOODWIN: Opposed?

14           (Nays: Members Braden, Reséndiz, Thomason, and  
15 Vasquez.)

16           MR. GOODWIN: Okay. So the motion did not pass  
17 to support staff's recommendation.

18           Do we need a motion to grant the appeal?

19           MR. BRADEN: I'll make a motion that the site  
20 for Bridge at Canyon View be found eligible based on the  
21 evidence presented at today's meeting with respect to  
22 Mendez Middle School and the turnaround plan.

23           MR. GOODWIN: Second?

24           MR. VASQUEZ: Second.

25           MR. GOODWIN: Any other discussion needed?

1 (No response.)

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

3 (Ayes: Members Braden, Reséndiz, Thomason, and  
4 Vasquez.)

5 MR. GOODWIN: I'm sorry. Did you want to say  
6 something?

7 MS. MORALES: If I may -- and general counsel  
8 can tell me if this is not necessary -- but staff would  
9 request that the motion clarify or add some clarity that  
10 if the site is found eligible that that is tied to this  
11 2019 application and reservation, and that for some reason  
12 if they do not close by December 31, that if they submit  
13 next year, this determination of eligibility does not  
14 carry over.

15 MR. BRADEN: That makes sense.

16 MR. GOODWIN: Okay. You're amending your  
17 motion?

18 MR. BRADEN: I'm amending my motion to take  
19 that into account.

20 MR. GOODWIN: To take that into account. And  
21 you're clarified with that?

22 MR. VASQUEZ: Yes.

23 MR. GOODWIN: Those in favor say aye.

24 (Ayes: Members Braden, Reséndiz, Thomason, and  
25 Vasquez.)

1 MR. GOODWIN: Opposed?

2 (Nays: Chairman Goodwin and Vice Chairman  
3 Bingham Escareño.)

4 MR. GOODWIN: Okay. All right. We're moving  
5 on to item 8(f).

6 MS. MORALES: Item 8(f) involves the issuance  
7 of a determination notice of 4 percent credits and an  
8 award of direct loan funds from the 2019-1 NOFA for the  
9 Bridge at Loyola Lofts which proposes the new construction  
10 of 204 units on Loyola Lane here in Austin.

11 There is an eligibility concern relating to the  
12 middle school in the attendance zone, however, sufficient  
13 mitigation was submitted such that staff is recommending  
14 the site be considered eligible.

15 Staff recommends the issuance of a  
16 determination notice in the amount of \$1,475,411 and a  
17 direct loan award in the form of TCAP in the amount of \$4  
18 million.

19 And just as an ad lib, item 8(c) on this  
20 agenda, you did approve -- we were talking about the  
21 affordability in Austin -- you did approve 1,100 units of  
22 new construction here in Austin, and this is an additional  
23 204.

24 MR. GOODWIN: Okay. Plus the 200 that we just  
25 approved in 8(e).

1 MS. MORALES: Correct.

2 MR. GOODWIN: Austin is raking in the money  
3 today.

4 Do I hear a motion to approve staff's  
5 recommendation?

6 MS. BINGHAM ESCAREÑO: Move to approve staff's  
7 recommendation.

8 MR. GOODWIN: Second?

9 MR. BRADEN: Second.

10 MR. GOODWIN: It's been moved and seconded.  
11 Any discussion?

12 (No response.)

13 MR. GOODWIN: No one wants to speak to it. All  
14 those in favor say aye.

15 (A chorus of ayes.)

16 MR. GOODWIN: Opposed?

17 (No response.)

18 MR. GOODWIN: Are you done?

19 MS. MORALES: I'm done.

20 MR. GOODWIN: You're done. Good job, Teresa.  
21 8(g). You don't look like Andrew.

22 MS. HOLLOWAY: No, but I'm playing him on TV  
23 right now.

24 MR. GOODWIN: You're playing Andrew.

25 (General laughter.)



1 MS. HOLLOWAY: Andrew gets the next two, I'm  
2 going to take this one.

3 Marni Holloway, director of Multifamily  
4 Finance.

5 Item 8(g) is presentation, discussion, and  
6 possible action regarding a determination of eligibility  
7 under 10 TAC 13.5(d)(2) of the 2018 Multifamily Direct  
8 Loan Rule. This is for application 18509 El Sereno  
9 Apartments in Cibolo.

10 This application, El Sereno Apartments,  
11 received an award of \$1.5 million in 9 percent credits  
12 from the 2016 round. They proposed the new construction  
13 of 136 one and two bedroom apartments for an elderly  
14 population in Cibolo. As they were getting started, they  
15 encountered difficulties during plan review when the city  
16 changed their energy code requirements from 2016 code to  
17 2017. When construction started in July of 2017,  
18 Hurricane Harvey hit the coast shortly after, which  
19 resulted in Guadalupe County, which is the site of this  
20 development, being declared a public assistance county  
21 under the FEMA disaster declaration.

22 A public assistance county is different from an  
23 individual assistance county. Like Harris County was an  
24 individual assistance county. Public assistance counties  
25 are places that people who live in individual assistance

1 counties can go and take their assistance with them.

2 Additionally, the city closed access to  
3 Borgfeld Road, which was the only access to the site,  
4 during a repaving project around this time. In total,  
5 these unforeseen events resulted in over \$1 million in  
6 additional costs which the applicant has represented were  
7 paid for through advances made by the general partner.

8 On December 6 of 2018, the Board approved a  
9 change of ownership structure to bring a nonprofit into  
10 the ownership in order to qualify for a 50 percent  
11 property tax exemption, thereby helping to ensure the  
12 longtime feasibility of the development. The applicant  
13 has stated that while that has helped, it did not resolve  
14 the issue of ensuring the GP advances would be paid.

15 Our Real Estate Analysis staff has evaluated  
16 this new application and has found that the GP advances  
17 could be paid off within 15 years. If they are not paid  
18 off within that time for some reason, the amount remaining  
19 would be treated as capital contributions under the  
20 partnership agreement.

21 So despite our repeat requests for  
22 documentation as we've been working through this  
23 application, we have not received documentation of the  
24 bridge loan between the general partner and the  
25 development. They have represented to us that these

1 advances were a loan; we've received no documentation of  
2 that.

3 We also have not received documentation that  
4 the applicant will not be able to convert their  
5 construction financing to permanent financing until our  
6 loan proceeds have been used to cover that GP advance, so  
7 to pay off that GP advance. And we've asked for that  
8 documentation a number of times.

9 Most recently we received letters from both  
10 their lender and equity provider within the last couple of  
11 days. Those letters did not speak to an inability to  
12 convert. What they spoke to was the health of the sponsor  
13 of the development, and direct loan funds are not about  
14 the health of the sponsor, they're about the health of the  
15 development. They are now in lease-up stage and I believe  
16 actually are fully occupied.

17 For the reasons stated, staff recommends that  
18 the application 18509 be found ineligible in accordance  
19 with the Direct Loan Rule.

20 MR. GOODWIN: Any questions for Marni?

21 MR. VASQUEZ: So just to understand, they're  
22 asking for a loan from us to refund the extra money that  
23 the general partner had to put in.

24 MS. HOLLOWAY: Yes.

25 MR. GOODWIN: And do I further understand that

1 they've been requested numerous times to provide  
2 documentation about the source and use of those funds that  
3 our loan would be and they've not provided that?

4 MS. HOLLOWAY: It's not so much the source and  
5 use as documentation of some loan agreement, some note  
6 between the GP and the development to document that that  
7 was in fact a loan that needs to be paid off, and  
8 documentation from their lender and equity that they will  
9 not convert and they will not get their last equity  
10 payment unless we come in with this million dollars to  
11 repay the GP advance.

12 MR. GOODWIN: So even in light of these  
13 requests that the information has not been provided, they  
14 still wanted to leave this on the agenda today?

15 MS. HOLLOWAY: Yes.

16 MR. GOODWIN: Okay. And how long ago did we  
17 start requesting this information from them? Is it 30  
18 days, 60 days, or is it weeks?

19 MS. HOLLOWAY: No. Months, several months.

20 MR. GOODWIN: Several months.

21 MS. HOLLOWAY: Yes. And we have met in person  
22 and discussed these issues and made that request and still  
23 don't have them.

24 MR. GOODWIN: And those requests have been very  
25 specific as to what we were looking for and wanted?

1 MS. HOLLOWAY: Yes.

2 MR. GOODWIN: Any other questions from Board  
3 members?

4 (No response.)

5 MR. GOODWIN: I see that we have two people  
6 that want to speak. Right? So we'll entertain a motion  
7 to hear comments.

8 MR. BRADEN: So moved.

9 MR. GOODWIN: Second?

10 MR. VASQUEZ: Second.

11 MR. GOODWIN: All in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Okay. Cynthia, are you going to  
16 be first?

17 MS. BAST: Good morning. Cynthia Bast of Locke  
18 Lord, representing the applicant for this loan.

19 As you heard, the development did encounter  
20 extraordinary circumstances during the course of  
21 construction, and if you read the staff writeup, I believe  
22 they have acknowledged that the applicant did provide  
23 evidence of the adverse factors that were beyond its  
24 control.

25 So procedurally where we are is that you have a

1 development that was already awarded funding by TDHCA, the  
2 rules require that the Board find this applicant eligible  
3 for a multifamily direct loan, and Section 13.3(d)  
4 specifically allows for an award for this kind of  
5 circumstance. It says that "Funds may be used to assist  
6 distressed developments previously funded by the  
7 Department when approved by the Board."

8 So then you go on to Section 13.5(d)(2) which  
9 talks about how the Board determines that eligibility that  
10 is required, and there are three factors for eligibility.

11 The first is evidence of circumstances beyond the  
12 applicant's control which could not have been prevented by  
13 timely start of construction; the second is force majeure  
14 events; and the third is evidence that there are no  
15 further exceptional conditions existing that will delay or  
16 cause further cost increases. So those are the three  
17 criteria that the rules set forth. And I believe the  
18 applicant has provided evidence that it meets those  
19 criteria and that that has been, again, acknowledged by  
20 staff.

21 So if we've met that criteria under the rule,  
22 then we should be done. Right?

23 Well, there's another sentence in the rule, and  
24 I think this is partly what the staff is basing their  
25 recommendation on. The staff is asking for evidence that

1 not getting this loan would materially impair the ability  
2 of this housing, the feasibility. That's why they're  
3 asking would the lender, an investor, would they  
4 foreclose, would something not go forward with this  
5 housing if this loan is not made. So that standard  
6 derives from a sentence in the rule that says -- again,  
7 we're back to the eligibility criteria -- it says, "The  
8 Board may find other applicants eligible for good cause  
9 such as developments assisted by the Department that have  
10 encountered adverse factors beyond their control that  
11 could materially impair their ability to provide the  
12 affordable housing." And so they're saying there has not  
13 been adequate showing of the material impairment.

14 My point here -- and it is my last point -- is  
15 that this sentence doesn't say that an applicant is  
16 required to show this material impairment. It simply says  
17 that that is an example of good cause for which the Board  
18 may find an applicant eligible. And so if the applicant  
19 were required to show that its ability to provide the  
20 affordable housing is impaired, then this requirement  
21 would have been included in the criteria for your  
22 eligibility determination.

23 So the point we are making is that we believe  
24 under the rule this applicant is eligible, and you will  
25 hear from Mr. Mohanna who will give you more information

1 and background from the developer's perspective.

2 Thank you.

3 MR. GOODWIN: Thank you.

4 Any questions for Cynthia?

5 (No response.)

6 MR. MOHANNA: Mr. Chairman, members of the  
7 Board, my name is Moe Mohanna. We are the developer, the  
8 general partner, the guarantor, basically where the buck  
9 stops.

10 Staff has done an excellent job. We've been  
11 working with them since 2018 and making sure and digging  
12 into the very details of the cost increases and making  
13 sure that these cost increases were extraordinary and  
14 beyond our control, and they have verified that and so  
15 that's not an issue of contention.

16 We have taken every effort to offset that after  
17 blowing through the contingency, including admitting a  
18 CHDO, getting a property tax exemption, getting the  
19 reduction in operating expenses, trying to get a higher  
20 perm loan. We went and tried to get an AHP loan, however,  
21 our lender at that time was not sponsoring AHP  
22 applications during that year. We lost that option. We  
23 negotiated with the GC a reduction of about \$300,000 in  
24 their fee, again to bring costs. We're deferring our  
25 entire share of the fee completely, which staff has



1 mentioned available cash flow. Well, available cash flow  
2 can either go one way or another. So in addition to our  
3 share of the developer fee, which is the larger share with  
4 the nonprofit, that is being deferred to be paid out of  
5 cash flow. There is the funds that we provided that in  
6 theory then would be paid, so you can't have both be paid  
7 within the ten or fifteen year.

8           The issue is timing and the issue is how the  
9 industry works. The industry requires us, as a developer,  
10 general partner and guarantor, to provide a mechanic lien  
11 free completion guarantee to the lender/investor. The  
12 moment I show a construction cost increase, change order  
13 from the CHDO contractor, we are required to provide the  
14 funds necessary from our pocket in any form in order to  
15 make sure that the budget is balanced. Otherwise, we'd be  
16 in default. If I was to hold on providing that funding, I  
17 would put the project in serious jeopardy. The project  
18 was approaching its placed in service deadline at that  
19 time.

20           In order to be in a position to show, as  
21 they've requested, present a letter from our  
22 lender/investor that it is materially impaired, I would  
23 have to stop funding, stop the project, get a default  
24 notice, or even walk up with a foreclosure notice to say  
25 it's materially impaired. The reason we cannot provide

1 that letter because I'm required under the limited  
2 partnership agreement and my construction loan agreement  
3 to provide those funds, then we go and find sources for  
4 the funds, it's not the other way around. I can't tell my  
5 lender/investor I'm going to stop until I find the source  
6 and maybe that source will provide us an allocation.

7           Unfortunately, that's not how the industry  
8 works, and while the staff worked with us the way they  
9 believe the rules are written and interpreted, they say,  
10 No, you need to come to us before you spend it, you need  
11 to be in a situation that's going to be impaired, not step  
12 up and do your obligations and responsibility under those  
13 agreements.

14           These developments are made that you receive  
15 all the funding that is required so the project is  
16 financially feasible and sustainable for the life of the  
17 development. That's the beauty of the success of this  
18 program. We're in a situation that contingency has been  
19 used, we're in a situation that we've tried other  
20 alternatives to increase perm loan funding, we've been hit  
21 with adjusters because of delays that we've had in order  
22 to address this, we've deferred our entire fee, and yet  
23 there is still a significant gap that has to be in a  
24 permanent position.

25           We've come to you as a lender of last resort.

1 We've exhausted all possible options. The request for the  
2 letter, we're the source, we're the guarantor, we're the  
3 general partner, we're the lender. It's an internal loan  
4 that we had to provide. I'd be more than glad to provide  
5 a loan to the guarantor myself to the partnership, general  
6 partner, myself. It's a document because we play all  
7 those roles in the partnership, but that document exists  
8 internally. Something from the lender? They're never  
9 going to give us that, they will hold us to our guarantee  
10 first.

11 Thank you.

12 MR. GOODWIN: Any questions?

13 (No response.)

14 MR. GOODWIN: Did I understand you to say there  
15 is a loan document between you and the ownership entity?

16 MR. MOHANNA: Yes, sir, internally.

17 MR. GOODWIN: And isn't that what we've  
18 requested and not been provided?

19 MR. MOHANNA: That was requested, I believe, in  
20 our meeting we had with Marni and Andrew. I thought it  
21 was in August, I didn't think it was months ago. But I'd  
22 be more than glad. It's an internal document, it's not a  
23 formal document because I have to bring it down from my  
24 corporate level to the general partner level to the  
25 partnership level. More than glad to provide that

1 document.

2 MR. GOODWIN: And the covenants of your other  
3 financing do not preclude that type of arrangement?

4 MR. MOHANNA: They require it.

5 MR. GOODWIN: They require it.

6 MR. MOHANNA: In order to step up and honor my  
7 guarantee under my limited partnership agreement to  
8 provide a mechanic lien free completion guarantee and on  
9 the construction loan agreement, they say you as the  
10 guarantor, as the developer, as the general partner will  
11 provide whatever funds are needed to achieve that  
12 completion in a timely manner.

13 MR. GOODWIN: Right. If I understand -- I  
14 guess I'm lost here, I'm also a little simple-minded --

15 MR. MOHANNA: That make two of us.

16 MR. GOODWIN: -- if this is what was requested  
17 for months and it exists, why have you not provided it  
18 before today? Why would you sit here today and say I will  
19 provide it, if we've requested it, and that is the  
20 document we talk about that we requested.

21 MS. HOLLOWAY: Yes, we did request that loan  
22 document.

23 MR. GOODWIN: And if you say it exists, why  
24 wouldn't you have provided it beforehand?

25 MR. MOHANNA: That is definitely my error. I

1 mean, it's a one-page internal document.

2 MR. GOODWIN: Sure.

3 MR. MOHANNA: We have not provided it before  
4 because it's an internal document, but I can make that  
5 available.

6 And I apologize. I think the crux of the  
7 matter was not that document. The crux of the matter was  
8 despite the criteria that Ms. Bast showed in front of you  
9 today, the crux of the matter was show me a document that  
10 the development or the completion of these affordable  
11 units would be materially impaired. Presented with that  
12 request, which is impossible for me to produce --

13 MR. GOODWIN: You thought you'd be in default.

14 MR. MOHANNA: -- exactly, I thought we were  
15 dead in the water. That was the crux of the matter. If  
16 today you are telling me --

17 MR. GOODWIN: A catch-22. And I'm not telling  
18 you, I'm just asking you.

19 MR. MOHANNA: I apologize. If today I'm being  
20 informed that no, it's that internal document that I need  
21 to show that the guarantor/general partner provided this  
22 loan, that's what we need to provide, I would have pulled  
23 that out, written it and signed it right there. But the  
24 crux of the matter that was said is your case is dead in  
25 the water because you have an event of foreclosure, this

1 project stopped. That was what we thought was the issue,  
2 not this document, so I apologize if I misunderstood what  
3 the issue is.

4 MR. GOODWIN: Other questions?

5 MR. VASQUEZ: I have some questions. I'm  
6 confused about the math and the understanding. So we're  
7 asking for a direct loan request of \$1,140,000. Right?

8 MR. MOHANNA: Yes.

9 MR. VASQUEZ: And then I see, I think in your  
10 letter, talking about construction budget modified three  
11 times for total of \$1,329,000, and then saying this \$1.14  
12 million loan reduces the gap to \$779,000.

13 What extra money has been put in? What's the  
14 total need change in the cost of the project, and then I  
15 see something like the lender -- which I think is Bank of  
16 America?

17 MR. MOHANNA: Yes.

18 MR. VASQUEZ: Said they'll do another \$900,000.  
19 You said that's GC, or the GC will reduce their fee by  
20 \$425-.

21 MR. MOHANNA: I appreciate your confusion, and  
22 I'll tell you why. TDHCA really has been very diligent in  
23 understanding all the possible outcomes and scenarios, so  
24 we do not have a commitment from the lender for the  
25 increased loan amount because that's going to come in at

1 perm loan conversion. But they want us to show all the  
2 best cases to make sure that whatever gap we're asking for  
3 is the maximum gap. So we showed multiple scenarios. We  
4 showed a scenario before we did the CHDO introduction and  
5 the increase in the perm loan, we showed after the  
6 introduction with a potential increase in the perm loan.

7 So if I may answer your question in this way.  
8 The CHDO has been admitted, we have anticipated an  
9 increase in the perm loan, we have used up our  
10 construction contingency, we will be deferring --  
11 Highridge Costa will be deferring its entire share, which  
12 is the majority, of the developer fee. After that there's  
13 still a \$1.3 million gap. That documentation has been  
14 provided to TDHCA.

15 So I know the scenarios are confusing, but if  
16 today you asked me if you get an increased perm loan, if  
17 you defer your entire developer fee, if you have the  
18 reduction from the GC, what are the funds that you would  
19 still have to put in in order to close on the perm loan,  
20 they are about \$1.3 million, they're above the \$1.1-.

21 MR. VASQUEZ: Okay. I think it would help your  
22 case, at least from my perspective, to understand you're  
23 not asking us to cover all these costs.

24 MR. MOHANNA: Absolutely not.

25 MR. VASQUEZ: There is another million dollars

1 on top of this that is being deferred?

2 MR. MOHANNA: At least a million of our  
3 developer fee is being deferred, there is still money that  
4 we are going to put in. The \$1.1- just reduces the paying  
5 of the money above and beyond any deferred developer fee  
6 and above and beyond any increased perm loan amount.

7 MR. VASQUEZ: Again, that's really important  
8 information for us to understand the full picture.

9 MR. MOHANNA: Absolutely. These were  
10 scenarios, because if you come and ask me today, great,  
11 I'm going to give you this money, you're going to be in  
12 that good position, do you have the commitment for the  
13 increased perm loan, the answer is no. If the lender  
14 doesn't give us the increased perm loan commitment, then  
15 no, we're talking that we'll be out even more money than  
16 we're talking about today, us out the money. So this by  
17 no means is addressing all the costs.

18 MR. VASQUEZ: In that case, if you don't get  
19 the increased perm loan, you as the developer are prepared  
20 if necessary.

21 MR. MOHANNA: We've put the money up already.  
22 It's not a question of what happens. So if there's any  
23 question in anyone's mind what happens if the perm lender  
24 doesn't give you that money, is this project in jeopardy,  
25 the answer is no. How can I guarantee that? Because the



1 money required to balance the loan today is already in.  
2 So the party that will not be paid is us.

3 MR. VASQUEZ: All right.

4 MR. GOODWIN: Other questions?

5 MR. WILKINSON: I think Megan has some comments  
6 for us.

7 MR. GOODWIN: Megan.

8 MS. SYLVESTER: Megan Sylvester, federal  
9 compliance counsel.

10 Just a quick point of clarification. Today's  
11 action is not approving a loan or approving an award for a  
12 loan, today's actions just to determine whether they have  
13 met their burden of eligibility under the Direct Loan Rule  
14 and the NOFA. If you were to grant this, then next month  
15 you'll hear from underwriting and program about whether  
16 they may meet the eligibility criteria listed in the rule  
17 and the NOFA to be paid for these specific costs. But  
18 that's not what the question is today.

19 MR. GOODWIN: So repeat that, would you, Megan?

20 MS. SYLVESTER: Sure.

21 MR. GOODWIN: I thought I understood but now  
22 I'd like to hear it again.

23 MS. SYLVESTER: So today it's just did they  
24 describe circumstances and did they provide sufficient  
25 documentation to be an eligible applicant. Next time, if

1 you grant the motion today that they did meet that burden,  
2 next time you'll hear from the program staff and  
3 underwriting about whether the costs that they are  
4 actually asking to be reimbursed for are eligible under  
5 the competitive NOFA that they applied under that the  
6 Direct Loan Rule.

7 MR. GOODWIN: Okay. I think I understand.

8 Any questions for Megan before she leaves?

9 (No response.)

10 MR. GOODWIN: Thank you.

11 MS. HOLLOWAY: If I may?

12 MR. GOODWIN: Sure.

13 MS. HOLLOWAY: Real Estate Analysis has  
14 produced a report that says in its conclusion: "As  
15 submitted, the increase in development costs and  
16 corresponding revisions to capital structure do not affect  
17 the feasibility conclusion. Applicant general partner  
18 advance has been presented to the Department as a loan  
19 that will be paid out from cash flow. If the direct loan  
20 funds are not awarded, debt coverage would be 1.42  
21 percent. The underwriter would assume an increase in the  
22 primary debt by \$270,000. This would require a deferral  
23 of 80 percent of the developer fee which could be repaid  
24 within eleven years of operation. Per the 2018-1 NOFA --  
25 this is the 2018 NOFA that the application was submitted -

1 - awards to refinance or of supplemental financing will  
2 not exceed an amount necessary to replace lost funding or  
3 maintain original anticipated levels of feasibility, as  
4 determined by staff."

5 MR. GOODWIN: But again, that would be  
6 determined in next month's meeting.

7 MS. HOLLOWAY: Yes, but I think it shores up  
8 that they haven't proven that they need the money, that  
9 their ability to provide the housing has been materially  
10 impaired.

11 MR. GOODWIN: Okay. Any comments or questions  
12 from any Board members?

13 MR. VASQUEZ: Again, just to --

14 MR. GOODWIN: Another comment you wanted to  
15 make?

16 MR. MOHANNA: Just another comment.

17 MR. GOODWIN: Sure.

18 MR. MOHANNA: Just to be clear, this is the  
19 complexity of the system. I'm a simple developer and  
20 there's a timing of when the money comes in and the  
21 timing, I think, that this money needs to come in during  
22 construction and so on and so forth. In a perfect world I  
23 would ask, one, if we're deemed eligible because these  
24 expenditures have been made, this gap is there, we can  
25 prove it beyond a doubt. You'll have cost audits from

1 third party certified accountants to show all of the  
2 above.

3           If I were to put the rules the way I want them,  
4 I'd say don't put a dime in until perm loan conversion so  
5 that you're not putting in any more than you should put.  
6 We're not looking to have any portion of our deferred  
7 developer fee paid off, none. The numbers show that the  
8 entire fee has to be deferred and show that in addition  
9 there's over a million dollars that are needed. We have  
10 the math to show that. If there is a way that the state  
11 can wait until the perm loan conversion to see all the  
12 final sources, including the exact perm loan amount  
13 increase, to make sure that not a dollar is being put  
14 beyond what is needed, we would have no problem with that  
15 condition.

16           We're not looking to take any extra money. We  
17 don't see, even with this request, that we will be in a  
18 position that all of the money that we're putting in above  
19 and beyond the deferred developer fee will be repaid. We  
20 don't even see that in this equation, mathematically  
21 impossible.

22           To put the state in a position of comfort that  
23 that occurs and to put the state in a position that  
24 they're not putting a dollar more, if the rules allow -- I  
25 know the rules require doing all that -- we'd be at perm

1 conversion here it is, it is the money and the lender of  
2 last resorts. If it's a million one, or \$999- or  
3 \$700,000, we're okay with that. We're not looking for a  
4 certain amount. This is what we believe it's going to be.

5 If there's a chance it's going to be less, we'd be more  
6 than glad to take less. If there's a chance it goes away,  
7 which is impossible in today's math, I wish it would. I  
8 don't want to be here asking this, this is not what we do.

9 Thank you.

10 MR. GOODWIN: Okay. Any other questions,  
11 comments? Anybody ready to make a motion?

12 (No response.)

13 MR. GOODWIN: Beau, I've got a question for  
14 you. If we make this determination of eligibility, does  
15 that put us in any position next month, when we assume  
16 this would be coming back to us, that we've already  
17 presupposed that we should do this or have to do this?

18 MR. ECCLES: I think that what we're saying is  
19 this makes it so that the applicant is eligible to apply  
20 for the loan, but it does not --

21 MS. HOLLOWAY: As Megan said, this is not an  
22 award.

23 MR. ECCLES: Right.

24 MR. GOODWIN: It's just an eligibility.

25 MS. HOLLOWAY: Yes. They may be eligible to

1 receive the funds. It does not mean that they've proven a  
2 need, that they wouldn't be over-sourced. I mean, there  
3 isn't a precedent for what we would bring to you next  
4 month.

5 MR. GOODWIN: Okay.

6 MR. ECCLES: She used the P word.

7 (General laughter.)

8 MR. GOODWIN: People just cannot resist.

9 Mr. Braden.

10 MR. BRADEN: I'll make a motion. I'll make a  
11 motion that the application 18509 be found eligible.

12 MS. BINGHAM ESCAREÑO: Second.

13 MR. GOODWIN: Any further discussion? Any  
14 comments?

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

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Okay. Moving on to item 8(h).

20 MR. SINNOTT: Good morning. Andrew Sinnott,  
21 Multifamily Loan Programs administrator.

22 Item 8(h) is presentation, discussion, and  
23 possible action regarding an award of direct loan funds  
24 from the 2019-1 NOFA for Sierra Royale, application 19503.

25 This application, which previously received an

1 allocation of 9 percent tax credits in 2004, is proposing  
2 to refinance permanent debt which is approximately \$1.7  
3 million on a 76-unit multifamily development known as  
4 Sierra Royale in the City of Robstown, with direct loan  
5 funds under the preservation set-aside.

6 The development experienced significant  
7 property damage as a result of Hurricane Harvey in August  
8 2017, and subsequently received an award of approximately  
9 \$4.5 million in CDBG disaster recovery funds from the  
10 General Land Office for rehab and related soft costs.  
11 Despite refinance being the primary use of the requested  
12 direct loan funds because the CDBG DR are being used for  
13 rehab, the requirements of the preservation set-aside are  
14 being met since rehab is the primary activity in terms of  
15 the total development cost.

16 While this application does not meet the  
17 requirements of a workout development, since the  
18 Department does not have an existing loan on the property,  
19 it has many of the same attributes of a workout  
20 development that the Board approved earlier this year --  
21 and that was Legend Oaks, 18507 -- in that it has  
22 experienced spiking operating costs as a result of the  
23 municipality increasing its water rates. As a result, the  
24 DCR requirement of a max of 1.35 in year one is not being  
25 met, so we increased the interest rate on the direct loan,

1 they came in with a 2 percent interest rate request, we  
2 increased it up to what we thought was approximately a  
3 market interest rate of 5.5 percent. Even with that 5.5  
4 percent rate on our loan, the DCR in year one is 1.80.

5 Underwriting made adjustments to the financing  
6 structure as outlined in the Real Estate Analysis rules  
7 and is recommending approval for three reasons: first,  
8 the Department is the only lender; second, the Department  
9 is not trying to size the credit allocation which is the  
10 purpose of that max 1.35 DCR, so as the only lender on  
11 this deal, we're in an even better position with a higher  
12 DCR; and the Department is not limited by standards  
13 adopted in the Department's action plan to HUD because the  
14 preservation set-aside consists entirely of TCAP funds, so  
15 we're not using any of our federal funds.

16 Additionally, staff has limited developer fee  
17 in its underwriting, ensuring that the developer does not  
18 receive an unreasonable return.

19 Staff recommends the following actions. Moving  
20 forward with less than 20 percent owner contributed  
21 equity, as the CDBG disaster recovery funds could be  
22 considered equity since they're being awarded as a grant,  
23 so it's basically the equivalent of about a \$500,000 tax  
24 credit allocation, that \$4.5 million that they're getting.

25 Approving an award of \$1,849,736 in TCAP repayment funds,



1 structured as a first lien hard repayable loan, at a 5.5  
2 interest rate with a 30-year amortization and 20-year  
3 term. And finally, allowing the 5 percent match which is  
4 a little over \$92,000 for this deal, required by Section  
5 6(h) of the NOFA, to be provided with respect to another  
6 property, the Villas at Cedar Grove 19364, that the  
7 applicant has control over which will result in a HOME  
8 match LURA being placed on that property for one HOME  
9 match eligible unit.

10 Should the Board approve this award of direct  
11 loan funds, 25 of the 76 units will be restricted under  
12 the TCAP LURA with those 25 units having 14 additional  
13 years of affordability beyond the extended use period of  
14 the tax credit LURA that exists today.

15 With that, I'll answer any questions.

16 MS. BINGHAM ESCAREÑO: Very creative.

17 MR. GOODWIN: Very creative.

18 Any questions?

19 MR. VASQUEZ: Just to clarify, so we're taking  
20 out a permanent lender, a senior lender?

21 MR. SINNOTT: Correct. PNC.

22 MR. VASQUEZ: And we're taking over that.

23 MR. SINNOTT: There is an existing loan with  
24 PNC and it has a balloon note coming up I believe in 2021  
25 that we'll be taking out and that's at 6 percent.

1 MR. VASQUEZ: So we're giving them a better  
2 rate.

3 MR. SINNOTT: A little better rate. Yeah.

4 MR. GOODWIN: So do I hear a motion to approve  
5 staff's recommendation?

6 MR. VASQUEZ: I would move to approve staff's  
7 recommendation.

8 MR. GOODWIN: Second?

9 MS. BINGHAM ESCAREÑO: I'll second.

10 MR. GOODWIN: Okay. Any discussion?

11 (No response.)

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

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Okay. Andrew, are you going to  
17 do the last item?

18 MR. SINNOTT: The last item of the day.

19 Item 8(i) is presentation, discussion, and  
20 possible action on the fifth amendment to the 2019-1  
21 Direct Loan NOFA -- we just haven't done enough yet; we  
22 need one more.

23 This NOFA was originally approved with  
24 approximately \$34.5 million in HOME and HTF TCAP repayment  
25 funds and NSP-1 PI. It's since been amended several times

1 to respond to increasing demand in the general set-aside  
2 and decreased demand in the CHDO set-aside, and so that  
3 our 2019 allocation of NHTF could be made available. So  
4 after all these amendments that NOFA amount has increased  
5 from \$34.5 million to approximately \$67.6 million  
6 available.

7 We currently have two 4 percent housing tax  
8 credit layered priority 3 applications under the general  
9 set-aside requesting \$8 million total and only \$5,510,000  
10 available in TCAP RF and \$500,000 available in NSP-1 PI  
11 remaining under the general set-aside, resulting in a  
12 \$1.99 million gap between what's available and what's been  
13 requested.

14 To help fill this gap, staff is recommending  
15 that the \$1.5 million in TCAP repayment funds available  
16 and unrequested under the supportive housing soft  
17 repayment set-aside be reprogrammed to the general set-  
18 aside, and \$990,000 in TCAP repayment funds received in  
19 April in April and May 2019 be added to the general set-  
20 aside, thereby allowing the \$500,000 in NSP-1 PI to be  
21 released from the NOFA which will then be used for single-  
22 family activities. And this will also allow staff to move  
23 forward with a single fund source of TCAP rather than two  
24 fund sources of TCAP and NSP.

25 As a result of TCAP repayment funds no longer

1 being available under the supportive housing soft  
2 repayment set-aside, new construction will be the only  
3 eligible activity under that set-aside moving forward with  
4 NHTF being the old fund source available under that set-  
5 aside.

6 Staff also recommends changing the application  
7 submission deadline for the general CHDO and general  
8 preservation set-asides to 5:00 p.m. Austin local time,  
9 tomorrow, October 11, 2019, since we're fully subscribed  
10 under those set-asides, while allowing applications under  
11 the supportive housing soft repayment set-aside to  
12 continue to be received until 5:00 p.m. Austin local time  
13 on November 26, 2019.

14 MR. GOODWIN: Any questions for Andrew?

15 (No response.)

16 MR. GOODWIN: Do I hear a motion to accept  
17 staff's recommendation?

18 MR. BRADEN: So moved.

19 MR. GOODWIN: Any discussion?

20 (No response.)

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

22 (A chorus of ayes.)

23 MR. GOODWIN: Opposed?

24 (No response.)

25 MR. VASQUEZ: I second that one, by the way.

1 MR. GOODWIN: Oh, you did second it. Sorry. I  
2 knew you wanted to get out of here. It's 12:10. They're  
3 going to be pitching before long.

4 (General laughter.)

5 MR. GOODWIN: So we've hit the public comment  
6 section where we take input for future Board meetings, and  
7 we have two letters that Michael is going to read to us, a  
8 little quicker than he normally reads.

9 MR. LYTTLE: I don't know. As a Cleveland  
10 Indians fan, I'm not sure I want to help out a Houston  
11 Astros fan over there. I'm just disgruntled, don't mind  
12 me.

13 (General laughter.)

14 MR. LYTTLE: Two letters that need to be read  
15 into the record that we've been asked.

16 The first one here is from State Senator Kel  
17 Seliger to the Board. Both of these letters, by the way,  
18 involve the 2020 draft QAP.

19 "I applaud the effort of the Texas Department  
20 of Housing and Community Affairs to provide affordable  
21 statewide housing using a variety of tools, such as  
22 grants, local partnerships and tax credits. I am writing  
23 in regards to the housing tax credits that the agency  
24 provides on an annual basis.

25 "I am fortunate to represent the St. Anthony's

1 Hospital, located in Amarillo, which was once a storied  
2 institution. The hospital has recently formed into a  
3 nonprofit known as the St. Anthony's Legacy and  
4 Redevelopment Corporation which seeks to revitalize the  
5 property to accommodate over 100 senior housing units.  
6 While TDHCA considers many items in the selection criteria,  
7 it is my understanding that St. Anthony's efforts to  
8 secure 9 percent competitive housing tax credits for  
9 fiscal year 2019 were unsuccessful due only to Amarillo's  
10 population threshold being just under the minimum 200,000  
11 requirement based on the 2010 census data.

12 "As a result of being contacted by numerous  
13 constituents, I urge you to examine the population  
14 criteria and consider a change to the threshold which  
15 would allow competitive projects in the City of Amarillo  
16 an opportunity to earn the much needed tax credits in the  
17 future. I support his initiative and hope you will give  
18 it consideration.

19 "Thank you for your assistance.

20 "Sincerely, Kel Seliger."

21 The second letter is from State Representative  
22 Four Price. It reads:

23 "I am submitting this letter as my comments  
24 regarding the above referenced proposed rules.

25 Specifically, I respectfully request your consideration

1 that the proposed rule" -- and they're referencing the  
2 2020 QAP, 10 TAC Section 11.9(c)(7)(A), Proximity to Urban  
3 Core -- "be amended by reducing the population threshold  
4 to 190,000 as there are only two cities in Region 1 Urban,  
5 Amarillo and Lubbock. If this rule is not amended,  
6 Amarillo will continue to receive unequal treatment until  
7 the 2020 census numbers take effect. It is believed that  
8 Amarillo's current estimated population exceeds 200,000,  
9 however, this estimate will not become official until  
10 sometime in 2021.

11 "In February of this year I submitted a letter  
12 in support of application number 19232 The Commons at St.  
13 Anthony's, Amarillo, Potter County, Texas, for  
14 consideration of the 2019 competitive housing tax credit  
15 program, Region 1 Urban. In addition to my enthusiastic  
16 support, the project application received widespread  
17 community support, including from many local leaders, the  
18 Neighborhood Advisory Association and the Amarillo City  
19 Commission which passed a resolution in support.

20 "The proposed development sought to address the  
21 existing need for more affordable and quality senior  
22 housing in the City of Amarillo. The redevelopment of  
23 this tract of land and buildings, once utilized by a major  
24 hospital system, would significantly revitalize this  
25 portion of Amarillo. As this property has long been

1 unoccupied, many in the Greater Amarillo community,  
2 including myself, were very disappointed that the project  
3 was not awarded the tax credit funding as the senior  
4 housing development is the cornerstone for redeveloping  
5 this site.

6 "I am informed that the reason for the St.  
7 Anthony's project losing out on the award is due to  
8 Amarillo's official population number of 190,000 being  
9 below the urban core population threshold of 200,000.  
10 Thus, I am further informed that a project in Lubbock,  
11 which has a population of 200,000 and above, received the  
12 award. This disparate treatment based on a mere 10,000  
13 persons is neither reasonable nor equitable. The proposed  
14 rule seeks to keep, as part of the evaluation process, the  
15 arbitrary threshold in place.

16 "Again, I urge that the proposed rule be  
17 amended as aforementioned in this letter. If I can  
18 provide any other information or if you wish to speak with  
19 me, I would be pleased to do so.

20 "Sincerely, Four Price, State Representative."

21 MR. GOODWIN: Thank you.

22 Any other public comment for future Board  
23 meetings?

24 (No response.)

25 MR. GOODWIN: Hearing none, I'll entertain a



1 motion to adjourn.

2 MR. VASQUEZ: Move to adjourn.

3 MR. GOODWIN: Seconded. All in favor aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: We're adjourned.

6 (Whereupon, at 12:15 p.m., the meeting was  
7 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: October 10, 2019

I do hereby certify that the foregoing pages,  
numbers 1 through 202, 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.

DATE: October 17, 2019

\_\_\_\_\_  
(Transcriber)

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