TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

September 2, 2021
9:04 a.m.

MEMBERS:

LEO VASQUEZ, III, Chair
BRANDON BATCH, Member
PAUL A. BRADEN, Member
KENNY MARCHANT, Member
AJAY THOMAS, Member
SHARON THOMASON, Member (absent)

BOBBY WILKINSON, Executive Director

I N D E X

21623 The Flats at White Rock Dallas
21624 Potter's House at Primrose Dallas
21625 Primrose at Sequoia Park Denton
21626 Rosemont at Pecan Creek Denton
21627 River Trails Apartments San Antonio

COMMUNITY AFFAIRS

e) Presentation, discussion, and possible action on the Section 8 Program 2022 Streamlined Annual Public Housing Agency Plan for the Housing Choice Voucher Program

SINGLE FAMILY & HOMELESS PROGRAMS

f) Presentation, discussion and possible action on the appointment of Colonia Resident Advisory Committee members

g) Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Cameron County and Val Verde County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant Funding

h) Presentation, discussion, and possible action on a proposed amendment to a Colonia Self-Help Center Program Contract with Maverick County in accordance with 10 TAC Chapter 25, the Colonia Self-Help Center Program Rule

I) Presentation, discussion, and possible action on proposed amendments to the 2022- 2023 Texas Housing Trust Fund Biennial Plan and authorization to enter into a capacity building agreement with Habitat for Humanity Texas, Inc.

j) Presentation, discussion, and possible action authorizing extension to Neighborhood Stabilization Program 1 contract for City of Port Arthur

RULES

k) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC), and an order directing their publication for public comment in the Texas Register

l) Presentation, discussion, and possible action on an order proposing the repeal, and proposed new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their publication for public comment in the Texas Register

m) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing its publication for public comment in the Texas Register

n) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication for public comment in the Texas Register

o) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an order proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication for public comment in the Texas Register

p) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order proposing new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the Texas Register

q) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule, and an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Rule, and directing their publication for public comment in the Texas Register

r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication for public comment in the Texas Register

s) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order proposing new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for public comment in the Texas Register

SECTION 8

t) Presentation, discussion, and possible action ratifying staff's action to submit one or more Registrations of Interest to the U.S. Department of Housing and Urban Development a request for additional Veterans Affairs Supportive Housing vouchers within Kerr, Bandera, Medina, Fort Bend and Galveston counties, and if successfully awarded by HUD, authority to make those additional vouchers available through a competition as project-based vouchers

MULTIFAMILY FINANCE

u) Presentation, discussion, and possible action to amend the 2021-1 and 2021-3 Multifamily Direct Loan Notice of Funding Availability

v) Presentation, Discussion, and Possible Action on a waiver of 10 TAC §13.8(b) and other impacted Administrative rules related to floating NHTF units for Vernon Pioneer Crossing in Vernon and approval to submit, as needed, to the U.S. Department of Housing and Urban Development an amendment to the Department's Consolidated Plan/Action Plan

w) Presentation, Discussion, and Possible Action on waivers relating to 10 TAC §13.3, related to ineligibility of Adaptive Reuse, and 10 TAC §11.1(d)(1), related to Adaptive Reuse treatment as new construction for Commons at St. Anthony's in Amarillo for National Housing Trust Fund purposes, and approval to submit, as needed, to the U.S. Department of Housing and Development an amendment to the Department's Consolidated Plan/Action Plan

x) Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive 84

P R O C E E D I N G S

MR. VASQUEZ: I'd like to call to order the in-person meeting of the Texas Department of Housing and Community Affairs Governing Board.

I'm so happy to see everyone's face, albeit masked many of you, which, again, masks are not required or mandated, but they are encouraged. So again, welcome, everyone.

It is now 9:05, September 2, 2021. We are officially called to order.

We'll start out with the roll, and we have Mr. Marchant.

MR. MARCHANT: And I'm here, Mr. Chairman.

MR. VASQUEZ: Mr. Batch?

MR. BATCH: Here.

MR. VASQUEZ: Mr. Braden?

MR. BRADEN: Here.

MR. VASQUEZ: Mr. Thomas, Ajay.

MR. THOMAS: Here.

MR. VASQUEZ: I'm skipping, Ms. Thomason has asked for an excused absence, so we will note that as she's not here, but we do have a quorum present.

And we will start with the pledge of allegiance led by the executive director.

(The Pledge of Allegiance and the Texas

Allegiance were recited.)

MR. VASQUEZ: We do have one resolution to be read into the record by Mr. Lyttle, recognizing October 2021 as National Energy Awareness Month.

Mr. Lyttle.

MR. LYTTLE: Michael Lyttle, TDHCA staff reading the resolution into the record.

"Whereas, the U.S. Department of Energy has designated October 2021 as National Energy Awareness Month;

"Whereas, the Weatherization assistance Program, the nation's largest residential energy efficiency program, was established by the U.S. Department of Energy in 1976 to make homes more energy efficient, safer and healthier for those with low and moderate incomes;

"Whereas, the Texas Department of Housing and Community Affairs administers a Weatherization Assistance Program funded with both U.S. Department of Energy funds and Low Income Home Energy Assistance Program funds, which is operated by a network of private nonprofits and local government entities;

"Whereas, the Texas Weatherization Assistance Program has introduced millions of dollars into communities to improve thousands of homes, thereby helping Texans, including elderly, disabled, or families with young children, conserve energy and reduce utility costs;

"Whereas, the Program conducts computerized energy audits and uses advanced diagnostic technology, investing as much as $11,000 in a home and providing an array of improvements that include weather stripping of doors and windows; patching cracks and holes; insulating walls, floors, and attics; replacing doors, windows, refrigerators, and water heaters; and repairing heating and cooling systems; and

"Whereas, weatherization efforts contribute to the state's economic, social, and environmental progress by creating jobs; prompting the purchase of goods and services; improving housing; stabilizing neighborhoods; reducing emissions; and decreasing the risk of fires;

"Now, therefore, it is hereby resolved, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate October 2021, as Energy Awareness Month in Texas."

MR. VASQUEZ: Great. Thank you, Mr. Lyttle.

Does anyone have a motion to adopt the resolution?

MR. BRADEN: So moved.

MR. BATCH: Second.

MR. VASQUEZ: Motion made by Mr. Braden, seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, the resolution is adopted.

Just so everyone knows kind of the timing of things, we will be having a short executive session today which we'll do up front.

We'll go through the consent agenda first. Right now we've been notified of a request to remove item (x) from the consent agenda and move it to the action agenda, and so we'll take that up at the end of the action agenda at the end of the day.

Are there any other items that a Board member or member of the public would like to see moved from the consent agenda and moved to the action agenda?

(No response.)

MR. VASQUEZ: Okay. Hearing none, do I have a motion to accept the consent agenda with the exception of item (x)?

MR. BRADEN: Mr. Chair, I move the Board approve items 1 and 2 except for item (x), which is moved to regular, as described and presented in the respective Board action request.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Braden. Is there a second?

MR. THOMAS: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Thomas. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Okay. Now that we've got everyone situated and settled, we will go into an executive session. Should be very short, so bear with us.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time, pursuant to Texas Government Code Section 551.071, to seek and receive the legal advice of its attorney or to discuss pending or contemplated litigation. The closed session will be held in the conference room at the back of this hearing room.

It is still September 2, 2021, and the time is 9:11. We will adjourn for a few minutes. Thanks.

(Whereupon, at 9:11 a.m., the meeting was recessed, to reconvene this same day, Thursday, September 2, 2021, following conclusion of the executive session.)

MR. VASQUEZ: It is 10:01 a.m. The Board has exited executive session, and we are returning to the regular agenda, and moving on to action items, the first of which is the executive director's report.

Mr. Wilkinson.

MR. WILKINSON: Thank you, Chairman.

MR. VASQUEZ: I apologize for it not being as short of an executive session as I thought, but when you have multiple lawyers in the room, that's what happens.

Again, we are back from executive session at 10:01. During the executive session the Board did not adopt any policy, position, resolution, rule, regulation, or take any formal action or vote on any item. Let the record reflect.

MR. WILKINSON: Thank you, Chairman.

First off, I'd like to mention that we have some folks leaving us from the Department. Alena Morgan, our 9 percent administrator, has gotten an exciting opportunity in a Europe master's program. Elena Peinado, who has served this Department for a very long time in government affairs, has a well-deserved retirement. Also Glynis, and Lucy Trevino as well.

And one of our top directors, Marni Holloway, has a well-deserved retirement. Her last day was August 31, something about she couldn't come to this meeting because she loses 6,000 hours of sick time, or I don't know how it works. And she served us well for many years when I was across the street and now.

Marni, want to give us a little speech?

MS. HOLLOWAY: Good morning, Chairman Vasquez, members of the Board. Marni Holloway, not representing any applicant, application or government agency.

(General laughter.)

MS. HOLLOWAY: I am honored to have served at TDHCA for twelve years, with six years in the stabilization program and for another six in Multifamily Finance -- I was just two weeks short of six years in the Multifamily Finance Division.

Again, it's been a huge honor to work with all of you, to work with the folks in this room, but ultimately more than anything, to work with the Multifamily Finance staff. They were many days the reason that I showed up, and I will miss them all dearly.

But I'm going off to new and exciting things and I start my new job with TDA Consulting on the 13th, and I get to go be the expert in other places where people are less likely to argue with me.

(General laughter.)

MS. HOLLOWAY: I wish you all well. I'm here today; with my departure timing not being really good, I figured I would show up and if there's anywhere I'm needed, I'm happy to help.

MR. WILKINSON: Thank you, Marni.

MR. VASQUEZ: Thank you, Marni.

(Applause.)

MR. WILKINSON: So for context, six years as the Multifamily director is a long time; it's a pressure cooker. EDs don't tend to last that long here either.

Anyway, on that note, Texas Rent Relief, still one of the larger newer things we're doing. We're about to cross over $750 million expended, serving over 122,000 Texas households. We'll do a press release probably Tuesday, so we don't get lost in the weekend.

We're going to meet our 65 percent expenditure deadline by September 30. Most states won't, they're pretty nervous, so we're well ahead. We're number one in dollars and number two in percentage out the door through the July Treasury data. I think we're about 60 percent or so at the moment, and we'll be well over 65 percent by the end of September.

Staff is still working hard to try to improve the program, and even at the individual level we want everyone to have a good experience. It's a scary thing for people to be facing eviction, and we have the money; it's just getting it out in time.

Homeowner Assistance Fund is going to be a new project for us, headed up by Monica Galuski, director of Bond Finance. We're continuing to staff up. It's going to be $842 million for mortgage assistance and we're refining our plan.

After several extensions, Treasury identified an August 20 plan deadline; however, we've not yet submitted our plan. Just a few weeks ago Treasury published program templates which contained guidance that in some instances created the need for us to do additional research; in other instances it contradicted original guidance and would have directly and negatively impacted the primary program TDHCA is implementing, the reinstatement program. As such, we submitted on August 18 our intent to submit the HAF plan by September 30.

We plan to publish for public comment September 3 through 15 in English and Spanish our new revised plan, and we anticipate having our vendors on board by September 17.

We also have a number of positions posted in this area so we're currently reviewing and interviewing candidates, so if know someone who knows a little bit about mortgages and running programs, please have them apply.

Also new to us, we're going to have a new Colonia Self-Help Center. House Bill 2893, by Representative Abel Herrero, passed during the regular session earlier this year. We created a new Colonia Self-Help Center in Nueces County. This will be the eighth center operating in Texas. Existing ones are in Cameron, Willacy, El Paso, Hidalgo, Maverick, Starr, Val Verde, and Webb counties.

As soon as the regular session ended, our staff began this important work with local officials in Nueces County. In fact, we had an item on our consent agenda, 1(f), which adds a new member from Nueces County to our Colonia Resident Advisory Committee.

Each of the Colonia Self-Help Centers focus on five separate Colonias to receive on-site technical assistance to low and very low income individuals and families in a variety of ways, including housing, community development activities, infrastructure improvements, outreach and education.

The centers are operated by a local nonprofit organization, local community action agency, or a local housing authority that has demonstrated the ability to carry out the appropriate functions.

On Multifamily Finance changes, as I mentioned, Marni and Alena are leaving us, so we have some gaps to fill there. Homer is going to be the deputy executive director that's going to oversee this division while Brooke is busy with other things from the pandemic like Texas Rent Relief. They're currently interviewing the open director position because, as you know, Marni's last day was

Tuesday.

Nine percent round. Brooke is going to have a report in a few minutes about an error where we didn't meet our statutory 20 percent rural set-aside. It was a ministerial error, spreadsheet problem, and we've rectified it by making the awards to the appropriate rural applications. That also involves taking back some awards from three urban deals. There's also lots of late appeals and scoring notices went out late.

With a new administrator, remote staff, things, just other problems, I put all the all agency on rent relief for a week, so we're determined to have a much cleaner, smoother round next time, and I think you'll see some positive changes.

I have a note from legal that the Legal Department is still discussing with HUD some of the language on its contract riders that TDHCA or the borrower must sign for certain HUD funding sources. We've already let folks who are planning on closing in August and September know that with a few exceptions we are only allowed to use our old HUD contract riders which have been negotiated to address issues that conflicted with Texas law until the end of August.

The matter is under review by the HUD Fort Worth office currently. We thought it best to let the Board and the public know that we are still trying to work with HUD on this language.

Mr. Chairman, that's all my prepared remarks. If any members have any questions about the Department in general, I'll be happy to entertain them.

MR. VASQUEZ: Any questions for Mr. Wilkinson?

(No response.)

MR. VASQUEZ: If not, thank you for your report.

Let's move on to item 4 on the agenda, report regarding the 2021 Competitive Housing Tax Credit awards, and Ms. Boston is going to present.

MS. BOSTON: Thank you. Chair Vasquez, Board members, I am Brooke Boston. Item 4(a) provides a report to you regarding the 2021 competitive housing tax credit cycle.

As you know, at the July 22 Board meeting you approved a list of applications recommended for final commitments of housing tax credits from the 2021 competitive housing tax credit ceiling.

That action included a condition that awards were subject to completion of any other reviews required to ensure compliance with the applicable rules and requirements of the Competitive Housing Tax Credit Program.

Since that time staff identified that there were two types of ministerial errors that impacted a number of the applications that had been recommended for award. Those errors related to achieving two statutory requirements: the at-risk set-aside and the rural allocation. The errors did not involve the evaluation, scoring or underwriting of the applications themselves. I'll talk you through each of those issues.

For the at-risk set-aside, our statute requires that not less than 15 percent of the credits made available in a year go to at-risk developments. In the awards made by the Board on July 22, that required minimum had not been met.

To make sure that the requirement is met, one more application in the at-risk set-aside needed to be added to the award list in order to reach the required 15 percent. As you'll see in your Board materials, that development is project number 21312 Savannah Park of Keene, with an award of $392,000.

Relating to the rural allocation, the second issue, our statute requires that at least 20 percent of the credits made available are allocated to applications in rural areas. The spreadsheet that supported the awards you made in July had an error in it that caused the rural and urban designations of several applications in the at-risk set-aside to inadvertently be changed.

The designation of at-risk deals matters because while the at-risk application compete in their own set-aside that I just described, they are still each attributed to being urban or rural for purposes of calculating whether the 20 percent has been achieved.

The error made the calculation reflect that a higher total credit amount had been achieved for rural than was accurate. This error was then carried throughout the remaining collapse steps that we took, which resulted in an insufficient credit total being approved.

The consequence of the error is that the July award list included three urban applications who should not have received credits, and their credits now need to be redistributed to rural allocations.

Those urban applications that will not receive the 2021 credits are Parker Apartments in Region 7, Cypress Creek Temple in Region 8, and San Angelo Terrace in Region 12. Commitment notices from the 2021 credit ceiling are not able to be issued to those three applications, although they will be retained on the 2021 waiting list.

To ensure the correct volume of rural applications is awarded and the statutory requirement achieved, three other applications have been added to the award list to reach the required rural 20 percent. Those three are Marshall Crossing in Region 4, Providence on Park in Region 5, and Eagles Gate Apartments in Region 11.

A few more things: I would note that of the four new awards that will be issued a commitment notice, only after reviews and underwriting have been performed and any conditions satisfied.

I would also note that this is a report item, this is not an action item, this item was just for us to relate to you what had occurred and the changes we've made in the list to adhere to statute; however, we have added on the agenda separately, as item 10(d) in your book, a place for you guys to take action on the deals that have been negatively affected, if that's something you would like to do.

And with that, I'm happy to answer any questions.

MR. VASQUEZ: Great. Thank you, Brooke.

Does anyone have any questions on this report item, again, keeping in mind we will have another action item Board action request, item 10(d), which we will probably take out of order just for consistency?

(No response.)

MR. VASQUEZ: Okay. Hearing none, thank you for the report.

Do I see you want to chime in on this?

SPEAKER FROM AUDIENCE: Yes.

MR. VASQUEZ: Actually, I think it's probably going to be more appropriate when we do 10(d)?

SPEAKER FROM AUDIENCE: Are you doing that now?

MR. VASQUEZ: No, and we'll get to it, it's not going to be towards the end.

SPEAKER FROM AUDIENCE: We think there is an error in the report, though.

MS. BOSTON: I would just say the report is an attachment to 10(d), not to the action item.

MR. VASQUEZ: So would now be the appropriate time if there's an error? Okay, it's an error in the report, not any action that we may or may not take?

SPEAKER FROM AUDIENCE: Well, the report impacts the next item.

MR. VASQUEZ: Let's go ahead and do an official comment here, please. Come to the podium.

Again, for everyone who may be speaking today, remember we'll give you three minutes, there will be a little timer, you'll hear the buzzer. When you come in, please sign in, there should be a book up there, and let us know who you are and who you represent.

And if you're going to maintain your mask, that's fine, just speak up extra so we can hear you, or take it off.

MS. SNEDDEN: I'll take it off. I feel like I'm difficult to understand as it is without a mask on.

My name is Michelle Snedden. I'm with the Shackelford Law Firm, and I'm here on behalf of the Woodcrest application that's in at-risk.

What we want to talk about today is something that Brooke just brought up adding a USDA deal to satisfy the at-risk set-aside. We think that's a misinterpretation of statute and that actually USDA deals over and above the USDA set-aside are incorrectly being funded with at-risk funds.

As everybody knows, statute requires that the Department set aside 15 percent of funds for at-risk. At-risk is a defined term in the statute. The only caveat to this 15 percent is the 5 percent USDA set-aside, and the statute in that regard -- it's, I believe, 2306.111(d)(2) says: The Department shall allocate 5 percent of housing credits to USDA -- I'm paraphrasing -- any funds allocated to developments under this subsection -- the subsection, again, says 5 percent -- that involve rehab must come from funds from the at-risk set-aside. We all agree with that, and there are six deals on the list that satisfy that 5 percent. The QAP also says up to 5 percent of the credits associated with the at-risk set-aside may be used for rehab USDA deals. That's been satisfied.

Our concern is that there's another four USDA deals that are being funded from at-risk dollars over the 5 percent. With respect to Brooke -- and I called other people yesterday -- I think the way staff is interpreting the rule I just read out, this 5 percent rule, is that if there are other USDA deals, even if they never checked the at-risk box, they're not at-risk as defined in statute, and they come over and above that now, I guess because they're competitive on a point basis, more competitive than an at-risk deal, that they should be funded and considered at-risk.

And my understanding is -- and plenty of people in this room have been doing this longer than me -- is that this has never really happened before, and the reason why it's coming up this year is because there are more USDA deals that score higher than some of the at-risk, but we don't think that complies with statute. Because essentially what you're saying is this 15 percent set-aside for at-risk, it doesn't really mean anything because let's go to the extreme next year, you could have way more USDA deals that come in, score more competitively than at-risk, and that whole 15 percent set-aside is allocated to USDA deals that are not at-risk under the statute, and none of the at-risk deals get funded under the set-aside.

So we think it's not applying the statute correctly, and we ask that you guys look at that.

MR. VASQUEZ: Okay. I believe I understand.

MS. SNEDDEN: Happy to answer any questions.

MR. VASQUEZ: Brooke, do you want to, or Beau?

MR. ECCLES: Just to clarify, you believe that the wording of the QAP is out of step with statute?

MS. SNEDDEN: No. The statute says 5 percent, and then the QAP says up to 5 percent, so I think, you know, we've heard say that perhaps that 5 percent doesn't really apply and new USDA deals over and above the 5 percent can be funded ahead of at-risk. That's what we disagree with based on statute.

MR. ECCLES: Because it feels like this is definitely something that you should be contributing to next year's QAP and discussing how this could be clarified if you believe that there is a tension between the QAP and the statute.

MS. SNEDDEN: I actually don't think there is a disagreement between the two.

MR. VASQUEZ: Let me just ask and someone can answer. Can't an application be both USDA and at-risk, or does it have to be one or the other?

MS. BOSTON: Yes, a deal can be both. And what staff had been basing our application of the QAP on is a portion of the USDA set-aside language in the QAP that specifically says that if an application in the USDA set-aside involves rehab, it will be attributed to and come from the at-risk development set-aside.

So I'm not disputing that there may be a way of looking at it that one could think that maybe the QAP needs to be better aligned with statute, but I do feel like our staff recommendation followed the QAP pretty thoroughly.

One other comment would just be the statute says 5 percent exactly, and first, deals never come out exactly, so in the QAP in one place we say at least a certain portion of the ceiling needs to be used for USDA, which would be where we're saying it's okay to have gone above because it said at least. Separately in the QAP and in the statute -- well, excuse me -- in the QAP it says up to 5 percent can be given priority, and in that case that's where we're taking those first regardless of score, so that first 5 percent we believe have the priority. And then in excess of the 5 percent we're counting them within the at-risk set-aside and letting them go beyond 5 percent because it had said at least.

So we feel like we're following the QAP, so I think those points, but if someone feels like the QAP is inconsistent, that may be a fix we can look at.

MR. VASQUEZ: Definitely sounds like some clarity is needed on that.

Okay.

MS. SNEDDEN: Just to clarify, so just I

understand what Brooke is saying, so under the QAP -- and again, I don't think there is a disconnect between statute and the QAP -- the language that Brooke is talking about that says up to 5 percent associated with this set-aside, which is the at-risk, maybe given priority to rehab developments under the USDA set-aside. So I don't see that as an additional 5 percent.

The USDA set-aside is 5 percent, and this language specifically references that section of statute that says 5 percent, so this is not an additional 5 percent.

MR. WILKINSON: She wasn't claiming it was an additional 5 percent.

MS. SNEDDEN: Okay, okay. That's fine then.

But I think overall there's a 5 percent set-aside. I agree sometimes it goes over that because, you know, you can't part from the deal, everybody knows that. But again, to allow more USDA deals to be funded --

MR. WILKINSON: And under your interpretation wouldn't that violate statute?

MS. SNEDDEN: Say that again. Sorry.

MR. WILKINSON: Because aren't you hanging your hat on 5 percent exactly in statute?

MR. VASQUEZ: It's got to be at least 5 percent is what it means.

MR. WILKINSON: Well, that's not what it says in statute. Right? So I thought that was the argument.

MS. SNEDDEN: To say that you can't go over 5 percent? No. By going over is not violating, and those first six deals on that log right there it tells you, I forget the exact dollar amount. It actually says that that's the set-aside amount and those six deals meet that amount, but then these other ones are in addition to and they're not at-risk deals but they're taking those funds away.

MR. VASQUEZ: Again, I think we understand your concerns, and I think this should be incorporated, maybe tweaking some language in this round of the QAP. I don't believe anything that you're presenting here -- again, thank you for presenting it, but it's not going to change anything -- the Board is not going to add it to discussion from this past round that we just did, nor, unless something extraordinary is said, I don't think it's going to be considered under 10(d) either. So someone correct me if I'm wrong; I think this is more of a discussion for the QAP.

MR. WILKINSON: Please comment on the QAP, and maybe we need to tweak the rule.

MS. SNEDDEN: Thank you.

MR. VASQUEZ: Thanks, Michelle.

MS. FINE: Tracey Fine, National Church Residences, and I was listening to what you were saying.

MR. VASQUEZ: Be sure to sign in, Tracey.

MS. FINE: But just to drive the point down a little bit further, in our handy old QAP manual it says in bold and in red: "Selections for at-risk and USDA are independent of each other. Only select both if both apply. You can be at-risk without being USDA, and the opposite is true. Only select what is true for your application. Note: Set-asides may not be changed from pre-application to application."

When we submit in the pre-application there is a check box, USDA and at-risk, you can check one or the other or both. The same is true when you submit an application. If you are to change your set-aside from USDA to at-risk, you would lose your pre-application points, and that's six points. So it is saying that they are not the same, that they are separate and distinct set-asides.

The other point I want to make is that the USDA deals have an advantage in scoring. It is not fair when we are competing USDA against at-risk. USDA deals even that are not rural, such as Katy, Texas, places that maybe were rural 25 years ago but are not today, are scored as rural. What that means is they get automatic CRP points, revitalization points.

So deals in Houston and San Antonio and all these other places, if they're lucky enough to fall in these really defined boundaries of CRP, they get it, but most of the time that's not true.

So we are on an uneven playing field because USDA is scored separately, and that is because they have their own and distinct set-aside and they play their own little game. So I wanted to point that out too.

MR. VASQUEZ: Thanks, Tracey.

MR. WILKINSON: Please comment on the QAP and we'll be happy to entertain some changes.

MR. VASQUEZ: Definitely. Thanks for the comments.

Okay. Where are we, 4(b)? Yes, 4(b) Quarterly report relating to staff-issued determination notices for 2021 Non-Competitive 4 Percent Housing Tax Credit applications.

Ms. Morales.

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

In April of 2021 the Board adopted a policy that allowed a more streamlined approach to the review process associated with 4 percent housing tax credit applications where the Department's only role was in evaluating the 4 percent tax credits, so the Department was not serving as the bond issuer and the application did not include a request for Multifamily Direct Loan funds.

Specifically, the Board approved a series of waivers relating to staff's evaluation of program and underwriting requirements. The underwriting waivers were specific to the reasonableness of certain costs represented in an application so staff is not independently verifying the reasonableness of those costs.

On the program side, the waivers allowed for the administrative issuance of the determination notice which promoted flexibility in responding to the needs of an application in a timely manner that is not bound by the Board calendar.

Part of the adoption of this streamlined process included a report item to be provided to the Board on a quarterly basis detailing the number of determination notices issued, along with a brief description of those projects.

The adoption of this policy came at the right time, as we were slammed with probably the most applications that would have been slated for a single Board meeting than we've ever had. Although we have the typical volume of 9 percent applications to work through concurrently, any delays on our end on getting those determination notices issued did not result in a 30-day delay as it would have without the streamline, but rather a few days or a week.

Since implementation of the policies, staff has administratively issued 17 determination notices that would have otherwise been presented to the Board for consideration. These applications are reflected in the exhibit under this agenda item.

The wow factor here, that I never miss an opportunity to highlight, is what this means big picture for the 4 percent program. These 17 applications represent 3,564 total units and $30.6 million in annual 4 percent tax credits.

The big picture is that to date for 2021 we are sitting at approximately 12,500 affordable units under the 4 percent program. These are deals that are currently under review, have already been approved, and those that have already closed.

We started off the year busy with the bond lottery, we held steady over the summer, and we will have a busy fall. There are currently 14 applications for which bond reservations have been issued but tax credit applications have not yet been submitted.

I will be bringing another report to you in December to reflect the activity over the next quarter, as well as what we have produced for the 2021 calendar year.

Staff recommends that you accept the report.

MR. VASQUEZ: Great. Thank you, Teresa.

Do any Board members have comments or questions for Ms. Morales?

(No response.)

MR. VASQUEZ: If not, thank you for the report, and we look forward to continued streamlining and efficiency.

Moving right along to item 5 in the agenda: Presentation, discussion, and possible action on Resolution No. 22-002, authorizing modifications to single-family home ownership programs, and approving amending program documents and program guidelines, authorizing the execution of documents and instruments relating to the foregoing, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject; and possible waiver of 10 TAC Section 27.4(a) and 10 TAC Section 28.4(a).

Ms. Galuski.

MS. GALUSKI: Good morning, Mr. Chairman, members of the Board, staff. I'm Monica Galuski, director of Bond Finance.

It's been some time since the Department has made significant or fundamental changes to the financing options that we offer through our homeownership programs.

The last significant change was in 2016, when we moved to Idaho HFA as our master servicer, changing our financing structure from receipt of up-front payment for servicing to the receipt of ongoing excess servicing fees.

We added a warehouse line with Federal Home Loan Bank to purchase and hold the loans until pooled, which gave us warehouse revenues. These changes allowed the Department to reduce its mortgage rates and increased loans financed from $225 million in 2015 to $2.4 billion in 2020. We expect to finance approximately $2 billion in 2021, a decrease from last year's volume and a break in our steady upward trend.

Homeownership has worked closely with the Department's participating lenders to analyze the decrease in demand, and Bond Finance has worked closely with Homeownership to explore ways to improve the financing alternatives we offer to low and moderate income homebuyers. This item proposes two structural changes: the addition of a forgivable loan option, and an increase to the income limits for our taxable mortgage program.

I'll start with the addition of the forgivable second loan. Since TDHCA introduced its taxable mortgage program in late 2012, the Department has provided down payment and closing cost assistance in the form of a 30-year, non-amortizing, zero percent interest second mortgage that is due on sale, refinance or repayment of the first. At various times since then, staff has evaluated this repayable second loan structure versus grant of forgivable loans offered through other statewide programs.

In those comparisons, staff concluded that the repayable loan structure was the best option we could offer to homebuyers. The rate spread and the resulting monthly lower mortgage rate with the repayable second mortgage versus a forgivable loan with a higher mortgage rate provided savings significant enough to overcome the need to repay that second loan.

Spreads were half a point to five-eighths of a point in mortgage rate and the savings made it worth it for a homebuyer to take that and still use those savings to eventually repay their second and then actually be better off economically in the long run.

However, since March of 2020 the market has experienced a period of sustained low interest rates. The absolute low level of rates has caused a compression in the mortgage-backed securities market, impacting the mortgage rates that the Department can offer and reducing the spread in rates between a repayable second loan structure and a forgivable loan structure.

Lenders have provided feedback there's not enough savings there, there's not enough spread to entice or continue to serve homebuyers. Homebuyers want the forgivable loan option that's going to allow them to refinance or sell their home in four or five years without having to repay the second, and based on current market conditions and that compression in the market, we can't offer a low enough mortgage rate with a repayable second to say definitively that's a better option. Right now it's a wash, and in a lot of cases the forgivable option is better economically for them.

As a result, lenders have been moving more and more of their loans to other programs that offer that forgivable loan option. That's why we're seeing the decrease in our volume. It's not a decrease in actual borrower demand, it's a decrease in demand for our program.

Staff is recommending the addition of a forgivable loan structure as a financing alternative, providing homebuyers with a full menu of options from which to choose the financing method that best meets their financial needs.

Currently with the repayable loan structure, the Department funds approximately seven points of down payment assistance and lender compensation for each loan. For a $2 billion year that means we fund $140 million in down payment assistance and lender compensation. Of that, approximately 120- to $127 million of that 140- is funded with either MBS or bond premium, so the premium we receive on the sale of mortgage-backed securities for our taxable program and bond premium we receive when we sell tax-exempt bonds. The remaining $13- to $20 million is an indenture investment in the ongoing excess servicing fees and the repayment of down assistance in the future. All related warehouse and other revenues are also paid to the indenture.

Pricing for a forgivable loan is slightly different. First, mortgage-backed security pricing is slightly worse when you're doing a forgivable second than it is when you have a repayable second.

Mortgage-backed securities investors assume that our portfolio will prepay faster with a forgivable mortgage loan versus a repayable second, which is probably true or will be true. The combination of the slightly less aggressive mortgage-backed securities pricing plus the lack of repayment of the second loan means we need more funds on the table.

An increase in the mortgage rate by an eighth to three-eighths increases the mortgage-backed securities premium that we receive by approximately two points, effectively replacing the need for the repayment of the second loan.

Adding the forgivable option is good for homebuyers and good for the Department. It allows us to improve our program and to continue to fulfill our statutory purposes and directives. If and when rates increase and the market compression is no longer a factor, the benefit may shift more in the direction of the repayable second loan.

With TDHCA offering both financing alternatives, a borrower can, irrespective of market conditions, choose the option that works best for their particular financial needs and circumstances.

As detailed in your Board item, staff is requesting a waiver of 10 TAC 27.4(a) and 10 TAC 28.4(a) which relate to the First-Time Homebuyer Program and the Taxable Mortgage Program, respectively, and require that borrowers receiving down payment assistance must repay or a portion of the assistance no later than upon repayment of the associated first mortgage, whether due to the sale of the property, refinance, or otherwise.

The waivers support the Department's legislatively directed purposes such as to develop policies and programs designed to increase the number of individuals and families of extremely low, very low and low income and families of moderate income that participate in the Housing Finance Division's programs.

The second proposed programmatic change --

MR. VASQUEZ: Since they're kind of two separate subject areas, let me pause there and ask if there's any questions on this part from the Board.

And actually I'll start out. Just to clarify, so for the Department for continued funding of these mortgage operations, it really makes no difference whether we have the repayable loan at the lower interest rate or the forgivable loan at the higher interest rate; we're still going to keep self-funding, self-perpetuating, it's just a matter of which the borrower wants.

MS. GALUSKI: That's correct.

MR. VASQUEZ: Either way we're still made whole.

MS. GALUSKI: We're economically sound either way. Correct.

MR. VASQUEZ: And then on the current low interest environment, it would tend to lean borrowers to the forgivable option, but if rates start going up some day -- which eventually they will -- it could shift it back to the repayable option at the relatively lower rate.

MS. GALUSKI: Correct. Prior to this compression, the rate differential was awesome, and that was very enticing to a lot of homebuyers.

MR. VASQUEZ: So adding this forgivable option just gives the borrowers one more option.

MS. GALUSKI: More choice, yes.

MR. VASQUEZ: Okay.

MR. MARCHANT: Forgive this question, because I'm sure everyone else knows the answer: What is the income level that would qualify for these loans?

MS. GALUSKI: So income level is also a part of this item, but currently the income levels that qualify for these loans are if you're a household of one to two people, 100 percent of area median income, and if you're three or more in your household, 115 percent of area median income, unless you are purchasing in a targeted area or have another exception under tax law.

MR. VASQUEZ: That's going to be adjusted during this next what you're about to say.

MS. GALUSKI: Right.

MR. VASQUEZ: Okay.

MR. MARCHANT: It's a percentage of the median.

MS. GALUSKI: It is.

MR. MARCHANT: For the region or SMSA?

MS. GALUSKI: It's for both. If it's just a county then it's going to be just that county, but if they're within an SMSA, it's based on SMSA.

MR. MARCHANT: So Dallas-Fort Worth would be broken up into several units?

MS. GALUSKI: So Dallas-Fort Worth would be currently for a household of one to two people, it would be a maximum income of $89,000, and a household of three or more would be $102,350.

MR. MARCHANT: And if they fell under that then they could apply for this program.

MS. GALUSKI: Correct.

MR. MARCHANT: And that's a trailing -- a tax return that trails, a trailing tax return?

MS. GALUSKI: Correct.

MR. MARCHANT: Okay. Thank you.

MR. VASQUEZ: Okay. Let's go on to the second section.

MS. GALUSKI: Okay. So now the second proposed programmatic change is an increase in income limits for the Department's taxable loans. Since inception of the taxable loan program, the Department has opted to use the same IRS income limits for tax-exempt loans, those that are bond-funded or have a mortgage credit certificate.

Over the past several years we've seen other state FHAs increase the income limits of their taxable loan programs in response to decreased affordability for homes in their states.

And we're all painfully aware of the growing affordability issue in Texas, evident in the lack of available inventory and the inability of borrowers to compete in this market. Median home prices continue to rise, and the ratio of home price to income continues to increase.

The Department has the statutory authority to assist an underserved population, those just beyond tax-exempt income limits set by the IRS, the missing middle.

Current rents make it difficult for potential homebuyers to save the funds necessary for their down payment or to save enough to reduce the principal balance on a mortgage loan to an affordable level, and for government or GSE-backed mortgage loans, down payment assistance must be provided through a governmental entity such as the Department.

We can assist these homebuyers with no negative effect to the program. In fact, expanding the homebuyer base will increase volume, which achieves greater economies of scale, improving program economics so that we can continue to improve our programs and to offer the best possible mortgage rates and financing options to moderate income homebuyers.

In addition, this change would income diversification to our portfolio, which is beneficial for program economics and cash flow stability and helps to offset, for lack of a better term, adverse selection by lower FICO homebuyers who are also typically lower income homebuyers.

The Department's program is the only program in the state that lends to a 620 FICO without penalizing the homebuyer through increased costs. This change, again, would apply only to taxable loans, not to bond loans or loans with a mortgage credit certificate as those income limits are set by the IRS.

Staff is recommending that the Department establish an income of 125 percent AMFI for homes purchased that are not in a targeted area and 140 percent of AMFI for homes that are in a targeted area.

Both proposed changes, the increase in income limits and the addition of forgivable mortgage loans as a financing alternative, are specifically designed to better serve low and moderate income homebuyers in the state. Homebuyers will have a menu of financing options from which they can choose the structure that best meets their individual circumstances.

Staff recommends approval of Resolution No. 22-002, and I'm available, again, for any questions.

MR. VASQUEZ: Great. Thank you, Monica.

Do any Board members have questions on this section of the item?

(No response.)

MR. VASQUEZ: Okay. If not, the chair will entertain a motion on item 5 of the agenda.

MR. THOMAS: Mr. Chairman, I move the Board adopt Resolution No. 22-002 regarding modifications to single-family homeownership programs, as well as the referenced waivers, as fully expressed in the Board action request for this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. MARCHANT: Second.

MR. BATCH: Second.

MR. VASQUEZ: Seconded by -- which one am I giving it to? Brandon was trying to chime in there. We'll give it to Mr. Marchant.

Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: I'm sorry. Are there comments?

SPEAKER FROM AUDIENCE: I did have a comment.

MR. VASQUEZ: Okay. Hold off on the vote.

Please introduce yourself and sign in.

MS. LATSHA: Good morning. I'm Jean Latsha with Pedcor Investments. I'm also president-elect of Texas Affiliation of Affordable Housing Providers. I'm not specifically here representing them, but I have talked with a lot of my colleagues at TAAHP and gotten, I would call it, a general consensus about what I'm about to talk about.

Regardless of the vote on the actual waivers regarding the single-family programs, I'm here to talk about the financing behind that program, which we all know is the tax-exempt bond financing, which, as Teresa Morales was talking about earlier, a big chunk of that goes to multifamily developers as well.

Currently I believe that there are about $670 million in volume cap reserved for the single-family programs that you're discussing here today, and also, at the same time, there is in line -- which were lottery applications for multifamily applications -- $186 million worth of applications representing six applicants.

Those applicants filed their applications back in October of last year so these are multifamily deals that probably can put a shovel in the ground right now if they can get their hands on any volume cap, but there's just not any volume cap left, and I'm here to beg for volume cap, basically.

I am not going to pretend to know exactly the mechanics of how the single-family programs work, how quickly you go from a bond reservation to bond closing to actually that translating into benefit for a homeowner.

I do know that closing deadlines for that 670-ish million is dollars is in March of 2022, and I'm pretty sure that sometime in between now and March of 2022 that TDHCA will have the opportunity to apply for more volume cap.

That's just not the case for those six lottery applications that are in line right now, we just have to wait for volume cap to come back to us. I'm looking at my own deal right now, and trying to throw four million bucks back in the pot, you know, there's two million, two million there, but there's a lot in line behind those lottery applications. Just to give you an idea, it's another $1.3 billion in multifamily applications that simply are just not -- they have no hope. Right? I mean, those lottery applications that have been baking since October of last year have very little hope right now.

So I'm just begging, regardless of how you decide on the waivers for the single-family programs. Thank you.

MR. VASQUEZ: Thank you, Jean. I'm not sure that was exactly on topic, but so noted.

Monica, do you want to say anything about that?

MS. GALUSKI: Other than the cap that we have is single-family cap given to us by the legislature for single-family purposes, and we've historically -- in the old days we used to go in for the general collapse on August 15. We don't do that anymore, we just use single-family cap for single-family.

And obviously, I think a bigger picture item here is we need to expand the words "affordable housing" to not mean just apartments. We are putting 14- to 15,000 homebuyers in homes every year, and so we have not wasted one dollar of volume cap ever. There is a strong demand for single-family volume cap, and while I'm sympathetic, the allocations and the flow is in 1372.

MR. VASQUEZ: And again, I have no doubt we're trying to get as much volume cap as we can for all of our programs, and I encourage the industry participants to speak to your legislators to help us get more, help us help you.

Okay. We have a motion on the floor by Mr. Thomas, seconded by Mr. Marchant on item 5, so I'll call for the vote. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Thank you, Monica.

MS. GALUSKI: Thank you.

MR. VASQUEZ: Moving on to item 6, Presentation, discussion, and possible action on program year 2021 emergency Solutions Grants Program awards.

Ms. Cantu.

MS. CANTU: Thank you, Chairman Vasquez. Thank you, Board members.

My name is Naomi Cantu, manager of Homeless programs at TDHCA. I'm speaking on item 6 on the agenda, which includes the program year 2021 awards for Emergency Solutions Grants, or ESG.

ESG is a federal funded program from HUD to assist people experiencing or at risk of homelessness quickly regain housing stability through street outreach, emergency shelter, rapid rehousing and homelessness prevention.

This item includes staff recommendation of 2021 ESG awards based on renewals for eligible applicants of our annual 2020 ESG funds. Our annual allocation for ESG for 2021 was about $9.3 million, which represented a small decrease from last year. The total awards recommended today are just over $8.9 million, with the remaining funds retained by the Department for administration.

For the 2021 ESG annual application process, invitations to apply were sent to all 52 subrecipients of 2020 ESG funds in June of this year. Fifty applications were received and two 2020 ESG annual subrecipients were not applying. Since we received slightly less in 2021 than we did in 2020, the funding for each award renewal is reduced by about 1 percent.

I'm happy to answer any questions you might have, and award logs are attached to this item in your Board book.

MR. VASQUEZ: Great. Thank you.

Do any Board members have questions for Ms. Cantu?

(No response.)

MR. VASQUEZ: And no speakers lined up, so the chair will entertain a motion on item 6 of the agenda.

MR. BATCH: Mr. Chairman, I move that the Board authorize the executive director and his designees to effectuate the recommending awarding of Emergency Solutions Grants Program funding, as fully expressed in the Board action request for this item.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Batch. Is there a second?

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MS. CANTU: Thank you.

MR. VASQUEZ: Thank you, Naomi.

Moving on to item 7, Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid Relieve and Economic Security Act, Texas Emergency Mortgage Assistance Program awards, and any timely filed appeals.

Mr. Betancourt.

MR. BETANCOURT: Good morning, Chairman Vasquez, Board members. I'm Rudy Betancourt, director of the CDBG CARES Program. I'll be covering agenda item 7 in your Board materials.

As you may recall, one of the uses of CDBG CARES funds, also known as CDBG CV, is to provide mortgage assistance through local subrecipients. When we released our first notice of funding availability, or NOFA, for that activity, we were able to achieve coverage in all but 31 of Texas's 254 counties. So on July 8 you gave us approval to make available $3 million in CDBG CARES in funding to try to attract subrecipients to participate in those remaining 31 counties so that we could have state coverage.

When we released the second notice of funding availability, we received nine applications. Of those nine applications my team has identified eight applicants which are being recommended for funding that I am pleased to say provide coverage in those remaining 31 counties.

The assistance will provide for up to five months of arrears and at least one month forward payment of the full amount of the monthly mortgage payments so that a qualified household can receive a total of up to six months of mortgage assistance.

The eight applicants will be funded with a total of $3 million in mortgage assistance and, combined with the awardees of the first NOFA, will provide coverage in all cities and counties throughout Texas.

All applications were reviewed and scored for the required threshold requirements. Scoring criteria included experience in mortgage assistance, CDBG, service delivery and fiscal controls. One applicant not recommended for an award was not recommended for an award because they were seeking to cover counties already being covered by another higher scoring applicant, and the program does not allow overlapping in coverage areas. That one applicant had an opportunity to appeal and elected not to do so.

Staff recommends approval of the applicants recommended for funding in your Board item in the amount of $3 million. And with that, I stand by for any questions.

MR. VASQUEZ: Thank you, Rudy.

Do any Board members have questions for Mr. Betancourt?

(No response.)

MR. VASQUEZ: Hearing none, the chair will entertain a motion on item 7 of the agenda.

MR. BRADEN: Mr. Chair, I move the Board authorize the executive director and his designees to effectuate the eight recommended awards for CDBG CARES mortgage assistance funding, and should funds under any CDBG CARES allocation contracts be returned or made available, that those funds be reallocated at the discretion of the executive director or designee to other contracts awarded under CDBG CARES, all as conditional and fully expressed in the Board action request for this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Braden. Is there a second?

MR. THOMAS: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Thomas. No commenters are lined up, so all those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MR. BETANCOURT: Thank you.

MR. VASQUEZ: Thank you, Rudy.

Moving on to item 8, Presentation, discussion, and possible action on an order proposing the repeal of 10

TAC Chapter 12 concerning the Multifamily Housing Revenue Bond rules and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the *Texas Register*.

Ms. Morales.

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

The Multifamily Housing Revenue Bond rules govern applications where the Department is serving as the bond issuer. The rule speaks to your general process of the bond issuance with an emphasis on the pre-application component that requires scoring in addition to threshold and some eligibility. The proposed changes primarily include modifications to existing scoring items and introduces a couple of new scoring items.

Looking ahead to the 2022 bond lottery that will be held in November of this year, the Department set-aside is expected to be at least three times over-subscribed. Although these proposed changes would not affect the prioritization of the 2022 lottery applicants, it would be applicable to those applying in 2023 should the market demand we are seeing now continue.

The new scoring items include points for applications that are on the Department's waiting list with the Bond Review Board at the time of the lottery for the upcoming year, and points relating to the bond amount financed, which is tied to the 50 percent test.

By way of background, the 50 percent test is the amount of tax-exempt bond proceeds relative to the development's aggregate basis, or land plus depreciable costs, and meeting this test is what federally qualifies a development for the 4 percent tax credit. Staff has proposed a tiered scoring item relating to the least amount financed that would still allow you to meet the 50 percent test with some cushion.

As for the waiting list point item, and using this year as an example, my set-aside was met out of the gate with lottery applications in January, and I had deals placed on the waiting list in February.

I've had deals added to the waiting list practically every month since then waiting for a bond reservation. These deals are having to compete with new applications submitted to secure a favorable position in the lottery. The question becomes whether an applicant who has had a property or tract of land under contract for almost a year should have to compete with someone who just put it under contract 30 days prior to the lottery.

As for the 50 percent test scoring item, every month where I've presented inducement resolutions before you to adopt, I've shared that the Department set-aside is not representative of what a statewide issuer could issue and allows TDHCA to only issue a handful, if that many, deals in a given year.

If there were an incentive for applicants to self-limit how much volume cap they really need for their deal, it might help the set-aside go a little bit further, at least until it gets changed in statute. Keep in mind that this would only affect the TDHCA set-aside, and if local issuers do not self-limit, then volume cap could be unnecessarily tied up for six months.

Other proposed changes include adding tiers to existing scoring items, such as tenant services and extended affordability and modifies the tiebreakers in the event applications within the same priority receive the same score.

Staff recommends the Board approve the proposed repeal and proposed new Chapter 12, Multifamily Housing Revenue Bond Rules for publication in the *Texas Register* for public comment, and requests one correction be made to the preamble noted in the Board write-up.

The public comment period dates are between September 17 and October 18, and staff requests that the public comment period for the Multifamily Bond Rules end on October 8 to mirror the public comment period proposed on the QAP under the next agenda item. The Multifamily Bond Rules and the QAP generally go hand in hand, and unfortunately, this change was not made before the package was posted.

This ends my presentation, I'm available for questions.

MR. VASQUEZ: Do any Board members have questions for Ms. Morales?

(No response.)

MR. VASQUEZ: Let me also remind everyone here in the audience that if you wish to speak on an item, please start kind of positioning yourselves when you see it coming up into these first couple of rows so we know who's going to be lined up to speak.

And seeing that there's no comments -- and again, this is for publication to the *Texas Register*, so it will give everyone opportunities to make comments there -- the chair will entertain a motion in item 8 of the agenda.

Mr. Batch.

MR. BATCH: Mr. Chairman, I move that the Board approve the proposed repeal and proposed new 10 TAC Chapter 12 rules concerning Multifamily Housing Revenue Bonds for publication in the *Texas Register* for public comment, as expressed in the Board action request on this item and as modified during the open discussion on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Batch. Is there a second?

MR. MARCHANT: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Okay. I'm going to make a slight change on the order just because this will flow a little bit better. We're going to take item 10(d) out of order to discuss here, because I think the next item after that 8(b) will be related, so just giving everyone a heads-up.

So 10(d), which we'll discuss now, is Presentation, discussion, and possible action relating to the use of 2022 credit ceiling to approve allocations of credits to 2021 competitive housing tax credit applicants negatively impacted by a Departmental ministerial error.

Ms. Boston, would you like to review some background on this?

MS. BOSTON: Certainly.

Chairman Vasquez, Board members, I'm Brooke Boston.

This item 10(d) relates to the report item I presented to you earlier, 4(a), where I described for you some changes staff had made to the final award list made in July to ensure adherence to statutory requirements.

I won't restate everything I said on that item, but I will recap to say at the end of the day there were three applications that were initially on the awarded list approved by the Board in July who are not being issued housing tax credits. I mentioned to you that we had a later item on which the Board could take action, and that is this item.

Those three affected applications are shown at the bottom of page 3 of 5 of your Board item and are Parker Apartments in Region 7, Cypress Creek Temple in Region 8, and San Angelo Terrace in Region 12.

This Board action item suggests that the Board could provide each of the three affected applications with an allocation of 2022 housing tax credit ceiling. To do so would total $4.3 million in credits.

Neither federal nor state statute prohibits such an action. The QAP does provide that the Board may not grant a waiver to provide forward commitments so this section of the QAP would require a waiver as noted in the recitals.

A few other things of note: Staff suggests that these awards be conditional only to the extent that if other 2021 credits become available in their respective regions or via the collapse, that we would instead reissue these as 2021 credits.

The applications will be attributed to their respective 2022 set-asides and sub-regions in order to meet the statutory set-aside and regional requirements applicable under the 2022 ceiling. All dates and deadlines in the 2022 QAP will apply to the applications, and the commitments will be included in calculating the $3 million per applicant cap.

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

MR. VASQUEZ: Do any Board members have questions for Ms. Boston at this time before we hear public comment?

(No response.)

MR. VASQUEZ: Thank you, Brooke.

I think on earlier comments I neglected to say let's vote on whether to hear public comment.

MR. BRADEN: I make a motion to hear public comment.

MR. BATCH: Second.

MR. VASQUEZ: Motion made by Mr. Braden, seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Hearing no objections, who wants to go first?

Oh, I'm sorry. Bear with us here one second. We actually do have a letter to be read into the record from a state legislator.

MR. LYTTLE: Michael Lyttle, TDHCA staff.

Mr. Chairman, we received this letter via email this morning right when the meeting started. It's addressed to the Board, it reads as follows:

MR. VASQUEZ: I'm sorry. Who is this from?

MR. LYTTLE: State Representative Eddie Rodriguez.

MR. VASQUEZ: Okay. Thank you.

MR. LYTTLE: Thank you, sir.

"Dear TDHCA Board, I was excited to learn that Foundation Communities was awarded tax credits at your July meeting to build the Parker Lane Apartments. This new community will not only provide critical affordable housing for 135 families in my district, but also a new learning center and services provided by Foundation Communities.

"Fourteen apartments are designed for parents and children who have been homeless. The site takes an old closed United Methodist Church and converts it into a beautiful new community. The church is excited to provide volunteers for the education and health programs on-site.

"I was shocked and dismayed to learn last week that the credits were suddenly being taken away for no fault of the developer. The Board already took an official action to invest in the Parker Lane Apartments. I respectfully urge you to please honor this commitment and find a way for the project to receive tax credits.

"I appreciate the efforts of staff and the Board to remedy the harm that would be caused by rescinding the official award of tax credits to this much needed project for my community and district. Thank you for finding a way forward to serve the families in District 51 at the Parker Lane Apartments.

"Sincerely, Eddie Rodriguez, State Representative, District 51."

MR. VASQUEZ: Thank you, Michael.

Now let's go ahead.

MR. SCHUELKE: Thank you.

My name is Brooks Schuelke, and I'm the district lay leader for the Capital District of the United Methodist Church, and I'm the chair of the church's strategy team, overseeing the 50-plus United Methodist Churches in the Austin area, and we are incredibly excited about this property at Parker Lane.

Closing a church is the hardest thing that we have to do, but closing that church has allowed us to develop this property and have an exciting project. We knew we wanted to do affordable housing on this eight acres of property just in almost Central Austin, and we interviewed a number of different partners that might help us get there. We were excited to choose Foundation Communities for several reasons.

First was their dedication to families. A number of the proposals that came to us were up front that to maximize profit they were going to have to have one-bedroom units to maximize the number of units. Foundation Communities was dedicated to getting families in Central Austin, and so most, if not all of these units are going to be two- and three-bedroom units which, as you can imagine, affordable housing for two- and three-bedroom unit families is critical.

The second thing is the wrap-around services that they offer. They do not simply build it and leave, but a critical component of that is that they do the same things that our churches are excited about. This project will have after-school programs for children, it will have summer programs, it will have feeding programs, and all of the things that we do, they're going to do not only for the property but for the neighboring community as well.

We're so excited about that that one of the critical parts of the deal -- and I think this is extremely unique -- is that the Church is retaining a presence in the property. They are dedicating space for us so that we can bring our volunteers to help work with their volunteers and maximize the leverage that we can get there.

And the third thing that we're excited about is that it's a long-term dedication. Some of the people that we talked to were very up front that their business model requires them to build it, fill it, and flip it.

Foundation Communities is committed to that neighborhood for the long term, and that was a critical part in us deciding to go forward with this.

I will add since we have done this there has been another thing that has really excited us and that is since word has leaked out about the project, we've started receiving calls from other churches, not just United Methodist in Austin, around the state and even from other parts of the country, asking us how they can use their underutilized resources and real estate to also provide affordable housing on their property and campuses, and that has been incredibly exciting to us. No longer are we talking about eight acres here in Austin, but I think this project is having a ripple effect across the state and elsewhere.

And so on behalf of the United Methodist Church, we would ask that you do everything you can to help support this project go forward. Thank you, and God bless.

MR. VASQUEZ: Thank you, Mr. Schuelke.

MS. WONG: Thank you. My name is Alicia Wong. I am a long-term resident leader of Foundation Communities here in Austin, and I guess I'm here to testify as to what that impact of having a Foundation Communities home does to a community and to an individual.

I am a highly educated professional who found herself divorced with a toddler and homeless because at that moment there was no one there to be able to support me.

I was led by my church to find Foundation Communities, and what they offer has been incredible. As others have specified, Foundation Communities wants to be the last owner of resort, and believe me, for someone who's had their vows broken, I can tell you that Foundation Communities is there for the long haul.

Not only is Foundation Communities an affordable housing, which means my paycheck goes further, it provides after-school care, and for those who don't have children who have to pay for after-school care, at the time that cost me $170, one-tenth of my take-home pay from an entry-level government salary, because I had to change careers.

But it's not just about the numbers, it's about the care that they offer. I'll give you an example. My daughter, it was raining, storming, they brought my daughter to the learning center, and I was worried, I was wondering how did you make it there, and I called her and she says, You know what, Mom, don't worry, Miss Rachel wrapped me up and dried me off, and I felt like a burrito of love. I mean, come on, who else provides that much care?

And it's just not after-school care, it isn't just the love, the individual attention, it's the positive peer pressure. They make sure they do their homework. Boy, for a single mom that's so good, I didn't have to do that. They give them after-school snacks, they make sure they get healthy exercises.

And if the learning centers are the ribcage of the heart of Foundation Communities, they also provide exercise classes, yoga, I don't know if you've heard of Zumba, but now we're doing that virtually -- which obviously I need to attend more. They also offer food pantries, they offer health and wellness, and a place for the community to gather.

Our community has changed, there's more diversity, there are many more languages that I cannot identify coming in, but this is a place once the children enter, the families grow, create communities and grow and thrive.

We also give English as a second language courses, and we build relationships with other entities. We built a relationship with AISD and offered the first pre-K classes housed in a Foundation Communities learning center. We built a relationship with TDS disability services and also on the property across the street was able to give help for people who are disabled, are blind.

For most of us -- and I apologize -- our dream is to be able to raise our children in a safe affordable house with dignity, and that's the other D that Foundation Communities gives us, and I really hope that this project doesn't become that old adage that a dream deferred is a dream denied. And thank you very much.

MR. VASQUEZ: Thank you.

MR. MOREAU: Walter Moreau, the executive director of Foundation Communities.

Thank you for all the support you've provided to help us build really beautiful housing and services that make a real difference.

For us, the Parker Apartments, as you heard from Brooks and Alicia, they're not just apartments. We're building a 10,000-square-foot learning center and a health center and a food pantry, excited to work with the Church.

When we got the award in July we were super excited. The award in July is official; it's final. We moved full steam ahead with the project. We've spent over half a million dollars on design, the site plan has been submitted, zoning is approved. Last week the Austin City Council approved a $4 million match award. We want to get this built. When we got the award last year for the Zilker and the Loretta apartments; we're framing now because we've got to get these done by the end of next year.

We support the staff decision and recommendation in your book today. It would right the harm and allow this project to get built. Hopefully there will be 2021 credits that fall out that can still fund this, but we know we can rely on the 2022 credits if that doesn't happen. We just hope you'll approve the staff recommendation.

Thank you.

MR. VASQUEZ: Thanks, Walter.

MR. BUMP: Good morning, Chair, Board members. My name is Casey Bump, and I'm the president of Bonner Carrington. We represent Cypress Creek at Temple, and we support the staff's recommendation.

We too, like the community before us, have been spending a lot of resources based on the decision at the July Board meeting, and we certainly understand that mistakes happen and that corrective action needs to be taken.

Our request is that out of the process that if you do find a way to use the 2022 credits, that we do not be penalized against the cap for next year for this particular mistake that occurred, and we, at the end of the day, really want to move forward with the community so we don't lose the resources that we've already put into it, and we're already looking for next year's communities as a way to continue delivering our products to the residents of Texas.

Thank you all for your time.

MS. MEYER: Good morning, Chairman, Board, my name is Robbye Meyer with Arx Advantage.

I'm going to be the odd man out here. I don't necessarily agree with the forward commitments for these developments because I don't truly believe they were harmed; however, I would suggest that if they are going to move forward as forward commitments that they do have the same penalty cap that additional credits would have that's later going to be discussed with the QAP discussion.

The additional credit people, their requests weren't their fault either, and I realize these guys, it wasn't their fault, it was a mistake, but they can choose to take the forward knowing that that cap is going to go against -- I mean, they're going to have penalty against their cap. But I would ask that you do that as well, just as you're suggesting to do that to anybody that asks for additional credits from the 2022 cap.

The only other thing that I ask is how this is going to be done as forward commitments when our QAP specifically prohibits it. I realize there's not -- our state statute doesn't prohibit it and Treasury regulations allow it. The Treasury regulations also require that there be provisions in your QAP to be able to do it. I just want to know how we're going to do it legally and make sure that it's done correctly.

That's my comments. Thank you.

MR. VASQUEZ: Thank you.

Ms. Rickenbacker.

MS. RICKENBACKER: Good morning. I think it's still morning. Donna Rickenbacker with Marque.

This agenda item is not about the quality of a project; Foundation Communities does great work. I agree with Robbye. I'm not sure how this Board can approve an agenda item today that grants a waiver request to forward commit credits based on the proposed changes to the '22 QAP rules that if the governor approves will not going into effect until December 1.

As it relates to harm, I heard what Walter said, they are spending money, but staff is correct in their write-up, the Board approved the '21 awards was conditioned upon a number of factors -- and I'm quoting this from staff -- that includes completion of any other reviews required to ensure compliance with the applicable rules and requirements of the Housing Tax Credit Program. These conditions were made clear to all the applicants.

Staff identified the error, they let them know. Furthermore, it does not appear that the San Angelo development has even been underwritten yet. So again, I'm not quite sure I fully appreciate the harm.

The harm is to those submitting '22 tax credit applications in 7, 8 and 12 where there will be clearly less credits available, especially when you are going to be taking up for consideration forward commitments to support the '19 and '20 deals.

If the Board approves this agenda item, another problem is the San Angelo applicant will receive a forward commitment of over $1.3 million. This amount exceeds the estimated amount available to Region 12 Urban in '22 by approximately 425-plus thousand dollars, circumventing the RAF and the collapse calculation.

If you all approve this agenda item -- I'm not quite sure I still understand how you can -- in connection with a waiver, then at a minimum I hope it counts against the '22 cap of these particular applicants. Thank you very much.

MS. ANDERSON: I'd be lying if I didn't say I was doing that so I could take my mask off for just a little bit.

Good morning. My name is Sarah Anderson, and it's a pleasure to actually be before you in person, as I've spoken at almost every Board meeting since several of you have been new, and it's nice to see you in person.

I am in favor of the forward commitment, and I'm not going to speak in specific details about any of the deals. What I was hoping was to get some clarification, because even though several of us are reading the language about how this is going to happen, none of us seem to agree.

When Ms. Boston was talking about how credits coming back from any deals from 2021 might come back to the Department, I couldn't tell whether or not those credits would go directly back to fund these or they would go back to their region and then when the collapse happened maybe credits came back.

I'm just trying to figure out exactly what happens. It seems to me that the least amount of harm would be any returned credits that were to come back from here forward would go first to fund one of these three deals so that we had less of an impact on 2020.

So I'm just hoping we can get some clarification on the record of exactly how the waterfall and the funding of these would happen as we went forward.

Thank you.

MR. VASQUEZ: Thanks, Sarah.

Let's hold our comments and responses after we get all the questions kind of lined out here.

MS. MARTIN: Hi, everyone. Audrey Martin with Purple Martin Real Estate.

I wanted to actually respond to Sarah's questions. I do think it's important that when we're talking about what happens with the waiting list returns that we know what's going to happen there. So I'm not speaking in opposition to these forwards.

I think that what we've set up is the ability -- the possibility, I guess, that these developments could receive 2021 credits if some come back. But I think that the way I read the item was that the credit returns would need to be in those same regions, because that is how the waiting list is supposed to function.

I didn't see that there was a proposal to shift how the waiting list is actually administered and I think that that's a good thing. I think we should see what happens through the normal waiting list process because if we don't then we're just going to harm a different set of 2021 deals.

So those are my comments. Thank you.

MR. VASQUEZ: Thanks, Audrey.

MS. MYRICK: It is still morning. Good morning, everyone. My name is Lora Myrick, and I am with the BETCO Consulting, and I'm going to sign before I forget.

I think my comments are along the same lines as the last two commenters; I would kind of like to understand how that works a little better. I believe that how that happens is that any credits that are going to come back will go to that region. If you can fully fund something there, it gets funded, if not, then you can't do anything with it and it goes into the collapse. So I think that that clarification will be very helpful to all of us; that was not in the write-up.

I think the other thing that I would just say on the harm is that there was harm, because there was 30-plus days that they thought they had an award and then to get a letter all of a sudden to say you didn't, that's a little tough, and I think that's a little tough for any developer to kind of get over. So I do agree with the forwards; I would like a little more clarification, just as the previous two speakers spoke about.

And those are my comments. Thank you very much.

MR. VASQUEZ: Thanks, Lora.

MR. KROCHTENGEL: Hi. Zachary Krochtengel. I'm representing the Temple application.

I think we're in kind of an interesting

situation in that we are actually already partially funded by 2021 credits. I believe there's about $700,000 in credits remaining, and when the national pool comes in we should probably be over a million out of the million-five in credits that are needed to fund our application.

In the interest of trying to alleviate the impact on 2022, we would obviously be very willing to work with the Department on HOME funds, National Housing Trust funds, soft funds that would possibly fill that gap so that none of our credits would need to come out of the 2022 application round and would preserve those credits for Region 8 Urban.

We are also -- obviously, being that we are partially funded, we would also look to see how to not have the funds that are coming from 2021 credits count against our cap in 2022.

So I know that there's a lot of people asking technical questions about what is going to count against the developer's cap for the year after. Being that we are partially funded and probably well more than halfway funded from 2021 credits, we would at least like to see that difference be what's counted against our development cap as opposed to the entire $1.5- allocation and that would be consistent with the excess funds that are being awarded to the 2020 and 2019 credits and how that amount is what's being counted against their 2022 cap and not the entire award, again, for the 2022 cap.

If you have any questions, I appreciate it. Thank you.

MR. VASQUEZ: Ms. Boston, do you have any further clarification?

MS. BOSTON: Yeah, definitely.

So I think as it relates to the question of how any returned credits will be applied, if credits come back from national pool, they will be added to address the next person on the waiting list in the collapse because national pool is regionless.

So as Mr. Krochtengel just mentioned, his deal is the next one who would be subject to getting those, and that would just go to attribute to his deal and hopefully get close to the $1.5-.

Any other credits that may come back, if they're coming back from a deal that would go back to the region and set-aside in which that deal was originally funded, and then that's how we would apply it to the waiting list. We would not be applying it to one of these three developments.

MR. VASQUEZ: Unless it came from that region.

MS. BOSTON: Right, unless it came from one of those three regions. Thank you for the clarification. So

I think that's the answer to that portion of it.

I think the question of how does it apply to their next year's cap is really a policy question for the Board. The Board write-up we had recommended does have that it would apply to the cap. Obviously heard some comment that it should only maybe partially be, someone else said it should be at the penalty rate of 1.5 for each dollar.

I would note that that language in the statute, I think, leaves you some flexibility because the statute language is that -- let me find it before I say it wrong -- does say that the cap is for a single application round, so the round occurred this year so I think you could apply it to next round. I think you could also feel like you apply it to this round.

Beau, I'm not sure he agrees. And I think I addressed what the comments were, but let me know if you want me to say anything else.

MR. ECCLES: Well, my only point would be that we had some folks who were told they had awards and then told they didn't have awards, and then we brought in people who were told they didn't have awards and then they did have awards, so they're getting '21 credits.

Clearly the caps would apply in '21 there. So in order to just say the '21 round, that's the cap because they're '21 credits, I think that that would then certainly suggest that if forward commitments were given in the '22 credit round, that the caps would be '22 caps.

MS. BOSTON: Sure. I don't disagree with that, and that was why it is written that way in the staff recommendation.

MR. VASQUEZ: Okay. Do any Board members have questions for Ms. Boston or Mr. Eccles or Mr. Wilkinson, or is there anything they want to add?

MR. BRADEN: I guess I had a couple of questions. So in connection with this item, and recognizing there are extraordinary circumstances associated with this, we're being asked to waive a rule that says it cannot be waived, so it's a rule so I assume we still could do that, but I would like confirmation from our general counsel that this is okay.

MR. ECCLES: It certainly looks strange, I will give you that. I'll start by saying just the direct answer: Yes, I believe the Board does have the authority to do that.

The Board, like all executive boards, is a creature of statute. The Board has to comply with statute so that when the ministerial error was discovered that we had come unlocked with statute and the percentages that had to be given to certain set-asides, for instance, we had no choice but to make sure that those awards came into line with statute.

However, in doing so we create a significant tension with 2306.6724 where in (f) it says, "The Board shall issue final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31."

Well, there are some folks who, like Foundation Communities, were told by July 31 that a commitment was being made to them. The only way to get to reconcile those is to give them a commitment, and the only place it could come from is from a subsequent tax credit allocation round, so it goes to '22, which then leaves us with the don't waive the forward commitment rule.

It is a rule and though it says no waiver, that doesn't place it outside the limits of the ability for the Board to waive its rule under certain circumstances. Staff has assured me that the error that occurred that resulted in this was neither foreseeable nor preventable, and God help me, I hope it doesn't recur, and that leaves us with does it best serve or better serve the policies for TDHCA as recited in statute.

And then we get to that very conflict: Does it resolve the issue that the Board said by the end of July that certain developments would get an allocation of tax credits, does it better serve that? I think it's the only thing that does serve it.

So under that analysis, yes, the Board does have the authority to waive the waiver rule even though it says on its face the Board won't waive it, under these very highly -- I know you're not supposed to say very unique but I'm going to say it here, these very unique circumstances.

This is not open season on forward commitments, that is not my opinion. This is under these incredibly limited circumstances it could be allowed and I see the Board's authority to do so.

MR. BRADEN: Thank you.

MR. VASQUEZ: Thank you for that clarification, Mr. Eccles.

Do Board members have other questions on this?

(No response.)

MR. VASQUEZ: So as it stands now, the way this request is written up, so the good news for these three applicants would be that we would get them the credits that we told them they had. The bad news, if there is bad news, the way it's written right now is that this would count against their 2022 cap.

MS. BOSTON: Correct. I think the bad news would be both for the specific developers that it counts against their next year cap, and for the regions in which these deals are located, as was pointed out, it may in some of these regions totally eat up the '22 credit allocation.

MR. VASQUEZ: Assuming the credits don't expand from the federal allocation.

MS. BOSTON: Correct.

MR. VASQUEZ: So while understanding that hampers or that might not make these applicants completely happy, it's a much, much, much better situation than not getting any credits this year at all on these deals.

MS. BOSTON: And those folks are on notice of that now well in advance of '22.

MR. VASQUEZ: Any other questions from the Board?

(No response.)

MR. VASQUEZ: If not, the chair would entertain a motion on item 10(d) on the agenda.

MR. BRADEN: Mr. Chair, I'm willing to make a motion. I move the Board grant the proposed limited waiver of 10 TAC 11.207(3) regarding forward commitments and the conditions in 2022 commitments expressed in the Board action request in this item be granted.

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

MR. MARCHANT: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

I've just been advised that we will also now take out of order from the consent agenda item (x), and we will address that now. So this is Presentation, discussion, and possible action on request for return and reallocation of tax credits under 10 TAC Section 11.6(5) related to credit returns resulting from force majeure events for applications awarded competitive 9 percent housing tax credits in prior application rounds.

MS. GAMBLE: Hello, Mr. Chair.

MR. VASQUEZ: And Ms. Boston is not presenting this.

MS. GAMBLE: Mr. Chair, other members of the Board, Mr. Wilkinson, Mr. Eccles, my name is Sharon Gamble, and I'm presenting item 1(x), Presentation, discussion, and possible action in requests for return and reallocation of tax credits under 10 TAC Section 11.6(5) related to credit returns resulting from force majeure events for applications awarded in the 2020 housing tax credit round.

Awards of competitive credits to the developments listed on this item were approved by the Board in July of 2020. Staff executed carryover allocation agreements with the development owners that included a certification from the development owner that documentation for the 10 percent test would be submitted by July 1, 2021, which was subsequently extended until September 30, 2021, and in order to satisfy the requirements of Section 42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31 of 2022.

The Department received requests from certain development owners to extend the placement-in-service deadline under the provisions of 10 TAC Section 11.6(5) related to credit returns resulting from force majeure events, and in some cases staff determined that an extension of the 10 percent test deadline was appropriate under these circumstances for those deals that need an extension.

Section 11.6(5) of the QAP related to credits returned resulting from force majeure events allows a development owner to return issued credits within three years of award and have those credits reallocated to the development outside of the usual regional allocation system if all of the requirements of this subsection are met.

Pursuant to 10 TAC 11.6(5), the Department's Governing Board may approve the execution of a current program year carryover allocation agreement regarding the returned credits with the development owner that returns such credits only if the credits were returned -- and this is from the rule -- the credits were returned as a result of force majeure events that occurred before issuance of Forms 8609.

Force majeure events are those under the following sudden unforeseen circumstances outside the control of the development owner: acts of God, such as fire, tornado, flooding, significant and unusual rainfall or sub-freezing temperatures; or loss of the access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures or materials and labor shortage.

If a force majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force majeure events must make construction activity impossible or materially impede its progress. Emphasis is added in that section.

The president declared a national disaster for the COVID-19 pandemic and declared a statewide disaster for

Texas for Winter Storm Uri which affected the state in February of 2021.

In one case among these, development completion was also affected by changes in laws, rules and regulations. Development owners have communicated to staff and to this Board how the two presidentially declared disasters have resulted in delays in local municipalities' processing and delivery of financial contracts, of supplier failures, material shortages, all have led to price increases and labor shortages.

Staff has determined that there is sufficient evidence of sudden and unforeseen circumstances outside the control of the development owners as described in 10 TAC Section 11.6(5) for the Department to treat the listed developments under an application of the force majeure rule.

If the Board grants the request to consider these force majeure events, the development owners will return the awarded credits, an execution of a 2021 carryover allocation agreement will result in a new award and a new placed in service of December 1, 2022 for the developments, with a new 10 percent deadline of July 1, 2022 for those who need such an extension.

The 2021 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the developments for the purposes of the force majeure event.

If the Board denies any of the requests regarding the force majeure events, the date by which the development must be placed in service will remain December 31, 2022. Because the development owner has anticipated not meeting the placed in service deadline, the credits are expected to be returned.

If the development owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded pursuant to 10 TAC 11.6(2) related to returned credits.

If there are pending applications on the 2021 waiting list from the relevant subregion, the next application would be awarded, assuming there are enough credits to make the award.

If there are not enough credits in a subregion to make an award, the credits will go to the statewide collapse and contribute to the next award.

Staff recommends the Board approve the extended 10 percent test deadline and the request for treatment under an application of the force majeure rule for the listed developments, and I can answer any questions that the Board may have at this time.

MR. VASQUEZ: So if we deny this, this could solve our prior issue. Right? Just kidding, relax, relax.

(General laughter.)

MR. VASQUEZ: Okay. Do any Board members have questions for Ms. Gamble on this?

(No response.)

MR. VASQUEZ: Okay. We do have some public comment. And Beau, I'm just applying we agreed to hear public comment vote to everything. Okay?

MS. BAST: Good morning. Cynthia Bast of Locke Lord.

We represent 20204 Heritage Senior Residences, along with 20344 Merritt Sunset, along with some other of the requesters on this agenda item. We appreciate staff's recommendation for this force majeure relief; we believe this is a pretty standard force majeure relief.

I want to give you just a little bit of color on this situation, though. We don't typically take a 2020 deal and seek force majeure relief in 2021. We usually seek force majeure relief as we're getting closer to the end of the placement in service and something has gone awry. This is obviously because of the increased construction costs, the effect of the pandemic, et cetera.

So we have applicants that are kind of two different situations. Some of them have gone ahead and closed, but with all of these struggles their lenders have said, okay, we know you're not going to complete in time so as a condition to your next draw, or something like that, you're going to have to get a force majeure approval now.

The other ones that we have are ones that are still struggling with the numbers, frankly, not to say that the ones that have closed aren't still struggling with the numbers, and so many of these have been forced by their lenders or investors to go ahead and request the force majeure relief now, we were encouraged to do that.

But now we have this recommendation, as in agenda 8(b), that for the 2022 QAP there be some allowance for supplemental credits for deals that need them because of these construction cost problems, and we don't want a situation where if we get the force majeure relief today then they're prohibited from seeking the relief under the 2022 QAP that's going to be discussed in item 8(b).

So our request to you is please approve staff's recommendation but perhaps with the caveat that these particular applicants are not prohibited from coming back for the supplemental credits, if they are qualified for them, just the same as everybody else.

MR. VASQUEZ: Thank you, Cynthia.

MS. BAST: Thank you.

MR. VASQUEZ: Just to clarify, these aren't mutually exclusive, are they? I'm getting head shakes they're not.

Ms. Boston.

MS. BOSTON: Brooke Boston.

They're not mutually exclusive; however, I do think it's a good point that it might be smart for us to clarify that in the QAP revisions to make sure that it's clear that they aren't excluded.

MR. VASQUEZ: Sounds reasonable.

Next, please.

MS. HICKS: Jennifer Hicks with True Casa Consulting. I'm the consultant on 20042 Commons at St. Anthony.

I just actually want to piggyback on everything Cynthia said. Specific to the National Housing Trust Fund dollars, this application pursued those dollars, is moving through that process, everything looks good, but National Housing Trust Fund can be hairy and so the same request would be that if something that we can't foresee now made this project ineligible for the National Housing Trust Fund dollars that there would be an allowance for these projects to then come in for the supplemental credits and the force majeure treatment under the supplemental credit language that's being proposed, so the same situation.

Thank you.

MR. VASQUEZ: Okay, thanks.

MS. MEYER: Good morning, Chairman, Board. My name is Robbye Meyer.

My comments are specific to one application, 20205 Ella Grand. This application is unique from the others on the agenda item. The request letter for force majeure states that Ella Grand was first on the waiting list for Region 6, and in January of '21 TDHCA received a returned credit from a terminated application from a 2020 awardee and issued a formal award of 2020 credits to the Ella Grand in February of 2021.

The state housing credit ceiling is calculated on a calendar year basis, and each allocation of ceiling concludes on December 31 of that year and is reported to the IRS in February of the following year.

Treasury regulations are very specific as to what comprises a state housing credit ceiling: one is unused credits that were carried forward from the preceding year, the population component, returned credits in the credit year, and national pool.

In order for the Ella Grand application to have received a 2020 award there had to have been a 2020 carryover binding agreement or an 8609 document executed by TDHCA. If that's true, then TDHCA forward-committed funds from 2021 to the Ella Grand. The applicant's explanation of the sequence of events in the request letter clearly indicates that forward commitment action.

Statute does not prohibit forward commitments, and Federal Treasury regulations do allow allocation in subsequent years; however, the allocating agency must adopt rules and regulations governing the awarding of such credits that exceed the aggregate ceiling.

TDHCA's QAP currently and previously specifically prohibits the issuance of forward commitments. The return in January should have been attributed to the state housing credit ceiling for 2021 calendar year and used by 2021 applicants. Some transparency needs to be shown here as to why those 2021 credits were used to award the 2020 application of Ella Grand and not made available for 2021 applicants.

Lastly, since actual 2021 credits were used to fulfill that Ella Grand application, it should already be a 2021 allocation and therefore force majeure should not be necessary.

Thank you.

MS. MYRICK: Good afternoon. I'm still Lora Myrick with BETCO Consulting.

I'd kind of like to piggyback a little bit off of those comments that Robbye Meyer just made. We were the applicant that returned the credits in January of 2021, this year, and our understanding was that it was going to go back to the subregion in which we were returning from, which was Urban 6, and so we were trying to get clarification of that.

We did ask the question, and at one point we did get a staff member to say yes, that's how the rule reads, that's what will happen. So it was a little hard for me to go back to a client who's called me and asked the question: How did our credits that came back in 2021 and should have been 2021 credits, how do they go to a 2020 deal? It was hard for me to explain that, and I still am having a hard time understanding it.

You know, we just went through a -- you just had a motion on a previous issue where there were some that did not agree with forwards, there were some that do agree with forwards, but the thing that we can all say is that it was in front of the Board, it was in front of the public, it was in front of the community, and we all had a chance to talk about it and understand what was happening.

In this transaction it didn't come before the Board; we didn't know anything about it. Only when we submitted our credits, a client calls me back and says: Why is a 2020 applicant wanting our return, doesn't that go back to 2021?

So I do agree with Robbye that there needs to be some transparency, and on an issue like this that's this important, it should come before the Board, it should come before the public, it should come before the community.

If there's something that we've missed and you are going to say yes, this is okay for us to do, then let's talk about it in an open forum.

Those are my comments. Thank you.

MS. RICKENBACKER: Hello again. Donna Rickenbacker. I'm going to need a police escort before this day is over with.

(General laughter.)

MS. RICKENBACKER: You know, there are 11 deals on this agenda item, 11 force majeure deals -- 20 force majeure deals, and I hope that staff has taken a close look at all of them and confirmed that they have met the prerequisites for seeking a force majeure action here.

I think this rule includes so many types of events that we're going to see more and more of these requests coming before the Board, and the rule was meant to apply to those that experienced significant and unforeseen events. Let's be very clear, we have all, every single one of our deals experienced COVID-related material delays and other problems with our developments, most of which the deals have closed.

I have closed my '18, '19 and '20 deals in Houston, Texas on time. I think there should be a closer look at these transactions and an understanding and making sure that these folks are getting deals closed in a timely manner, or give me a gold star, I don't know what to do -- I'll take a gold star irrespective of your decision-making here.

If this item does go forward, though, I do think there needs to be a recognition -- understand that Cynthia disagrees with this -- that they gave credits back, they effectively now have swapped for '21 credits here, and I personally do not think as a '21 award transaction they should be eligible to get a supplemental credit that at this point are made available solely to '19 and '20 transactions.

Thank you.

MS. SMITH: Good afternoon, Board. My name is JoEllen Smith; I'm with DMA Development. I'm here -- we are the developers of Ella Grand 20205, which was discussed earlier by a few folks.

I just wanted to point out, I think it had been said that we were a forward commitment, that we had somehow gotten credits from 2021, which I don't believe is the case.

I just wanted to let you all know that we had a 2020 contingent carryover allocation that we executed in December of 2020, and so then we subsequently were issued a tax credit commitment in February of 2021. So we have proceeded throughout this time, eight months spending significant dollars on our project to get it to be shovel-ready, which it is just about there.

So we are asking that we be treated along with the other several applicants asking for the force majeure consideration.

Thank you very much.

MS. ANDERSON: Good morning, Chairman, Board and Mr. Wilkinson. Terri Anderson, Anderson Development and Construction.

I've been listening. I am not an interested party in the 2021 applications at all, and I just want to ensure that we maintain the integrity of the program based on the rules, and I would like to encourage that at least the rules for 2022 include a statement to ensure that any force majeure transactions will not actually impact the ineligibility of any 2022 developments from a proximity perspective, the two-year/one-mile rule, those sorts of things.

MS. ANDERSON: Again, Sarah Anderson. Just a quick statement.

You've heard a lot about the Ella issue, and I don't think anybody thinks that it had to do -- that the applicant did anything wrong. They got their credits, and anybody who received them would have been happy to have gotten them.

But it was irregular that the credits that were returned in 2021 went to a 2020 deal, and I think it's important that it's been brought forward. Hopefully this will never happen again, and I would never want to take those credits from them, but I would like to state that my deal was next in line and would have been the one that would have received those credits.

So I just want to put a face forward that you can know that somebody was harmed by this decision, but I don't think it was through the actions of the applicant, but again, I think we'd like to know what happened so that it doesn't happen again.

Thank you.

MS. HORAK-BROWN: Almost good afternoon, Chairman Vasquez and members of the Board. I'm Joy Horak-Brown, and I'm the president and CEO of New Hope Housing in Houston, Texas. We have developed and operate more supportive housing than anyone else in the state of Texas and we have done so only with your assistance.

We are about to close on 120 units of supportive housing for families in Southwest Houston. There will be a set-aside for families fleeing intimate violence, which has been on the rise alarmingly due to the pandemic. Interestingly, Southwest Houston is also where most of the

Afghan new Americans live and will be joined by others fleeing the war zone.

We have expended $2 million in design, legal, and earnest money on the land. We have a $13.2 million grant from the City of Houston GLO. We will be closing the end of September. We cannot close without this, period. There will be no units, there will be $2 million gone from this nonprofit's coffers, so we are very dependent on your decision today.

We are not here to talk about Ella Grand, we are not here to talk about additional credits, we are back to the topic on your agenda, which is this waiver, and I humbly ask that you grant it.

Thank you very much.

MR. VASQUEZ: Thank you.

Okay. Do we have one more coming up?

MS. CHAISSON: Good afternoon, Chairman Vasquez, members of the Texas Department of Housing and Community Affairs Board. My name is Avis Chaisson. I'm the director of real estate development with Palladium USA.

This is an unfortunate event, and it would lead to a little bit of a precedent of providing this waiver. We would have been impacted as one of the applicants that did submit an application in Region 6 in Houston, so we did want to be on record about this particular situation.

And I do want to echo Terri Anderson's comments about 2021 applications impacting 2022 going forward in terms of the two-mile/same-year rule.

Thank you.

MR. VASQUEZ: Thanks, Avis.

Okay, Ms. Boston or Gamble, or anyone like to add some clarifying statements from the Department? Ms. Gamble.

MS. GAMBLE: Yes. Sharon Gamble here for the staff.

Well, where to start. I don't know that we can know what's going to happen in the future. I think that it's -- I'm not exactly sure where to go with this.

MS. BOSTON: I think we were just thinking you'd have questions.

MR. VASQUEZ: Okay. The Board does have some questions.

MS. GAMBLE: I don't think we have anything to add.

MR. VASQUEZ: Okay. Well, stay up close. We'll start with Mr. Marchant and work our way down.

MR. MARCHANT: This definition of force majeure, how broad is that definition, and can any particular involve events that would fall in that, so not talking about the precedent but could any year? I mean, could we be confronted with this next year and the next year simply because the definition of force majeure is so broad?

MS. GAMBLE: We absolutely could, sir. It includes certain market forces that can trigger it, it includes weather related.

MR. MARCHANT: But who defines force majeure?

MS. GAMBLE: We did, and so we can change that definition at the direction of this Board if necessary.

MR. MARCHANT: So the term "force majeure" actually is not just unique to all these issues. I mean, it's going to be -- is this going to be the thing that we look at next year, maybe the interest rates spiked up, or there's a labor shortage? I mean --

MS. GAMBLE: I don't know if interest rates rising would be.

MR. MARCHANT: But I mean, it will be up to your department or you?

MR. WILKINSON: Mr. Marchant, it's in the QAP, and so the thing we're going to vote on in the next item --

MR. MARCHANT: It will be defined there.

MR. WILKINSON: Yes, it's in there and it's broad.

MR. MARCHANT: And cannot be defined differently at another time.

MR. WILKINSON: No. I mean, you could change it today for 2022.

MR. MARCHANT: Okay.

MS. GAMBLE: And what we would do, sir, for sure is that if there was something that did not fit neatly within what is currently defined in the QAP or would be at the time, we would bring those -- well, we would bring them to you anyway, but this Board would ultimately decide whether or not what the applicant submits to us to explain the situation qualified them for the force majeure.

MR. MARCHANT: That's a little bit of the problem that I don't want, personally.

MS. GAMBLE: Okay.

MR. MARCHANT: Thank you.

MS. GAMBLE: You're welcome, sir.

MR. VASQUEZ: Mr. Braden.

MR. BRADEN: So I had a couple of questions. First of all, somebody made some comment that there are these 11 applications in here, do they really qualify for force majeure. I assume staff has looked at that in comparison to the definition and you've confirmed that they do.

MS. GAMBLE: Yes.

MR. BRADEN: Okay. And then this whole question about Ella Grand being a forward delivery of credits, I mean, do you have more explanation how that worked?

MS. GAMBLE: Having not been here then, I think I'd defer to Beau to kind of talk through that.

MR. BRADEN: Or Bobby or Brooke.

MR. ECCLES: I have some notes on it, or let me give you the straight answers to those things. No, there's not a forward commitment. It was listed on the IRS Form 8610 as a 2020 credit.

The nutshell is that there was a Houston development that was going to get a big award, $15 million, of CDBG-DR, and the City of Houston said, No, you're not going to get it. So it looked like it was going to be infeasible.

MR. WILKINSON: They said: “Yes, you are,” and then they said: “No, you're not.”

MR. ECCLES: And this was in October, so that raises the question if they're missing a $15 million chunk they're going to be infeasible, and time keeps going by and the city is changing its mind, and then maybe it's going to go to a state agency to make the decision, or maybe it's not.

And then finally we're coming up on the end of the year and we still haven't made any sort of -- they haven't been forced to say whether they're going to be feasible or not, and at that point the affected application next says, look, we need to be in line to receive this when they seem to have exhausted all of their appeals to the City of Houston, but maybe they haven't because the process for CDBG-DR on the appeal is so fluid.

And lacking any kind of understanding of whether they were going to be feasible or not, because we didn't know if they were going to be even eligible for that award, a contingent carryover agreement was executed in December of 2020 saying: if an award in the subregion that's sufficient to cover it is returned before, I think, March to give enough time, then it's yours. It wasn't specific to that deal so that when another deal in the subregion returned in February, then it went to them.

Just for clarification purposes, on February 9, Richmond was terminated, but then Houston considered the second appeal of CDBG-DR funding, and then on March 30, 2021 the Department received confirmation that Richmond would be receiving the CDBG-DR funds from the City of Houston.

MR. BRADEN: So we looked at it, we examined it, we don't think -- the agency doesn't think it violated the rule when we entered into this carryover agreement at the time.

MR. ECCLES: That's correct.

MR. BRADEN: People might have different interpretations, but it's not like we missed it. We examined it, we made a determination that it was.

MR. ECCLES: Yes.

MR. BRADEN: Okay.

MR. ECCLES: But to be very clear, this was not a forward commitment. This was just the execution of a commitment based on the fact that Richmond, we couldn't tell whether or not it was going to fold because of lack of feasibility because of a process that was opaque and didn't really clarify -- or become clarified until March of the next year.

MR. BRADEN: Okay. And then I had one interesting, what somebody brought up, and whether it's technically accurate or not. So if we allow these force majeure for all these projects, I mean, do they become 2021 allocations then and therefore they aren't eligible for the Subchapter F under the QAP for the 2019 and 2020?

MR. ECCLES: I think that's an open question.

MS. BOSTON: Right. It's up to you. To clarify, as the draft QAP is currently written -- well, it's silent on that, so I think it would be a good thing for us to clarify whichever way you explain it.

MR. BRADEN: And how does that affect -- you know, you start pulling a string and it all comes apart.

MR. VASQUEZ: Are there any other questions from the Board or need for additional clarification?

(No response.)

MR. VASQUEZ: So this brings us to a motion on item (x) on the agenda, moved from consent to action.

MR. BRADEN: Mr. Chair, I'll make a motion to accept staff's recommendation with respect to the treatment of the developments listed under an application of force majeure, which means that it's approved, and that the Department may issue to each development owner a 2021 carryover agreement with the extended 10 percent deadline of July 1, 2022 and extended placement in service deadline of December 31, 2023, as set forth in the resolution presented on this.

MR. BATCH: I'll second, Mr. Chair.

MR. VASQUEZ: Motion made by Mr. Braden, seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Now we're on 8(b), so now we're going back to the regular order as listed on the agenda. Item 8(b) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan and a proposed New 10 TAC Chapter 11, and directing their publication for public comment in the *Texas Register*.

Ms. Boston, go ahead.

MS. BOSTON: Chairman Vasquez, Board members, I'm Brooke Boston.

Item 8(b) presents to you the draft 2022 QAP and rules. The draft rule will be published in the *Texas Register* for public comment from September 17, and we accept it through October 8, and subsequently return to the Board for final adoption.

A Rules Committee meeting was held on August 6 during which the committee members received comment from the public regarding potential changes. The QAP presented to you today incorporates the changes the Rules Committee instructed staff to bring forward for consideration, as well as other changes. Rather than taking you through section by section, I'm just going to hit on some of the biggest changes, and then I'll be happy to answer any questions.

So at the Rules Committee meeting, you directed staff to present you with a QAP that provided the ability to issue forward commitments of credits -- we're calling this supplemental allocations -- for 2019 and 2020 applications that had experienced cost increases.

We primarily do that through the addition of a new Subchapter F which starts on page 164 of your QAP. I will give you a few highlights on what the design for the supplemental credits includes.

From past experience, TDHCA has learned that giving one development two different allocations from different years can be very problematic for the property and for our Compliance and our Asset Management staff.

To mitigate that challenge and limit the burden on TDHCA staff, the draft QAP reflects that each development that receives a supplemental allocation will return their 2019 and 2020 credits through force majeure provisions and receive a new 2022 allocation that includes the original amount plus the supplemental increase.

To minimize other processes in statute or rules being triggered, requests for supplemental allocations are not considered to be new applications but are considered supplements to the original application. These are also not considered to be amendments.

Because each application has already been determined to meet threshold and scoring documentation in the year of their award, those items are considered satisfied for the 2022 credits. This includes notifications, submission of any local resolutions that were needed, all those things are done.

Five million is being allotted for these requests. That $5 million will be regionally allocated into subregions consistent with the methodology that we use in the QAP with one distinction being that for the subregion set-asides, which currently have a floor of $600,000, that obviously wouldn't be applicable, so we reduced that floor in our draft for comment to $40,000.

Requests will be allotted within each subregion and region using the applicant's final score from the year in which they received their original award. Staff will follow the same collapse methodology as a typical award cycle.

Board approval of these requests is tentatively planned to occur in April '22. Requests are limited to 15 percent of their original allocation amount. They're permitted to reflect revisions to the financing components only and to reaffirm certifications. Other application changes that would typically prompt an amendment process are not permitted and must be submitted separately as an amendment.

Requests will be evaluated by TDHCA underwriters who will determine the amount of supplemental credits that are allowed. Certain restrictions are placed on the requests preventing the applicants from increasing their developer fee or reducing how much developer fee is deferred.

So that's it in a nutshell for the supplements.

I would note that we don't presume we got it perfect but we think we got a good draft that the public can then comment on.

Separate from Subchapter F there are implications of those supplements on the next year's regular '22 cycle, and so we've also made revisions elsewhere in the QAP to address that.

So as Ms. Anderson had pointed out earlier, we address in the QAP how these new supplemental credits would affect housing de-concentration factors, including the two-mile senior test, the one-mile/three-year test, proximity of development sites, and the one award per census tract limitation. Those are on pages 24 through 26 of the QAP.

We also address how it affects their $3 million developer cap, and as had been discussed at the Rules Committee meeting, it reflects that $1.50 is attributed to their cap for every dollar of supplement that they receive, and that was to help discourage the use of the credits unless they're absolutely necessary.

And we also reflect how the supplements would affect the elderly maximums in some regions, how they affect the nonprofit, USDA and at-risk set-asides, and we note that any supplemental credits not requested, if there's some left over, that those will be added into the 2022 award process.

So that's a nutshell of the supplemental allocations.

I want to mention a few other high visibility things we changed in the QAP. We increased the per-application request up to $2 million. We moved several sections, so it looks meaty, but they were moved from our Asset Management rule, and so we didn't make significant changes; they just were moved from a different chapter of TAC.

Then in the scoring section of the QAP we added one point to enact HB 1558 which relates to proximity of a development site to veterans health care. Relating to proximity to urban core, that was removed, and in conjunction we increased the radius distances for proximity to jobs.

We think we took out a little bit of the "gotcha" of the CRP process, which is for the community revitalization plans. Again, we aren't sure we got that totally right, but we want to get comment on what we drafted.

Cost per square foot, we increased that by 5 percent, which is in keeping with the CPI increases we researched. We also added a three-point item for properties willing to design their properties as single-family freestanding units and offering the first right of refusal to tenants at the end of the compliance period.

Lastly, I have two revisions that staff is recommending to be included in the published draft that were not in your book.

The first is on page 113 of 168 at Section 11.204(13)(b). In this section we had addressed threshold requirements relating to organizational charts. We had added a sentence at the very end relating to investor group entities and some documentation, and then we had also specified that certain applicants with these types of entities could not apply for direct loan funds. We're proposing striking that again; we won't have it in there at all.

To explain this, developers were concerned about that; rightfully so. Currently we perform a case-by-case review when there is an investor group in the GP, and we will continue to still do it on a case-by-case basis instead of trying to make a blanket statement in the QAP.

The second item was a handout that I think you each have in front of you at your seat, and we've provided to the audience as well. This relates to sponsor characteristics.

Marni had held a focus group on this section and mentioned to you in the Rules Committee meeting that some changes had been identified, and those were inadvertently left out of the draft.

Those who had been instrumental in working on this pointed out to us as soon as we published, so I've provided the handout to you so that folks can look at it. We believe this reflects what was discussed both at the Rules Committee meeting and at the focus group that Marni hosted.

So I would say that while this looks like a lot of edits when you look at the handout, some of those are breaking out. In one section we had addressed HUBs and qualified nonprofits together, so partly we're just breaking it out but we're not making substantive changes to those components.

The real edit that is new is adding a new subparagraph under which nonprofits that are not qualified under state set-aside requirements could still compete to earn points.

State statute has a limitation that to qualify in the nonprofit set-aside, the majority of your board members, if you are in a rural deal, the majority of your members have to be in the state, and if you're in an urban deal they have to be within 90 miles of the development site, and so for larger national nonprofits that's created a problem and this addition would let them compete.

And so I think the only other thing would just be we can also, if you guys want Beau and I to work on any clarifications in the QAP relating to the USDA set-aside from the earlier item, and then I think a decision about whether or how you want the application of force majeure to be applied, whether they're eligible for the supplement or not, the point Ms. Bast brought up.

And that's it. Happy to answer any questions.

MR. VASQUEZ: Great. Thank you.

Do any Board members have questions at this point?

(No response.)

MR. VASQUEZ: If not, let's go straight to public comment.

Nathan.

MR. KELLEY: Nathan Kelley with Blazer. I also serve as the co-chair of TAAHP's QAP committee.

Chair Vasquez, members of the Board, and staff, I want to thank you all for working with us over the last few months to really come up with a solution to an issue that has been evident, at least in today's Board meeting as well as Board meetings prior, with respect to deals that have been substantially impacted by the pandemic and delays in being able to get supplies, materials, parts, labor, as well as cost increases associated with those.

Specifically I want to point out -- and this was born out of the Rules Committee -- we appreciate staff taking into consideration and proposing in this draft of the QAP the increase in the per-deal credit cap from $1.5- to $2 million. That along with an increase in the cost of development per square foot numbers by 5 percent, all of these things moving to help us in the development community and industry at large to solve this problem going forward. As we know, we're going to continue to live in this difficult environment for a little bit, and so we appreciate those steps taken now to help prevent the need for additional force majeure actions later on.

Also, appreciate the steps that have been taken in this draft to eliminate some of the -- or to simplify and eliminate some of the "gotcha" items that you as a Board have prided yourselves on for wanting to rid from this document, specifically simplifications of the concerted revitalization plans that Ms. Boston mentioned, as well as a number of other items.

And we look forward to continuing to participate in this process to hone this document into something that's workable for not only your agency but the industry as a whole, and appreciate that opportunity and thank staff for their diligent effort. Thank you.

MR. VASQUEZ: Great. Thank you, Mr. Kelley.

MR. BOWLING: Good afternoon, Mr. Chairman and members of the Board. My name is Bobby Bowling. I represent myself. I'm a developer and builder from El Paso.

I'm here to speak on specifically Subchapter F that's proposed in the 2022 QAP. I want to basically thank you all. I think it's a very well thought-out document. I want to start by thanking the Rules Committee, Mr. Vasquez, Mr. Braden, and Mr. Batch, that met with us on a long several-hour conversation.

I was in the Pacific time zone at that time, so it was at 6:00 a.m. where I was at, and I thought we had a very thoughtful and productive and just a very productive conversation with a lot of give-and-take and a lot of questions and answers, and I applaud you for allowing us to do that. We got a chance to speak some of us multiple times to explain this highly complex issue, and I really wanted to go out of my way to thank you all for that.

I also wanted to thank Luis Saenz and Katarina Gonzalez from the Governor's Office for helping steer us through this complex issue. And I want to thank Brooke and Mr. Wilkinson and the rest of TDHCA staff.

I pored through this Subchapter F yesterday. I think it's very well thought out. I think it contains everything that we had imagined in this negotiation with plenty of safeguards, importantly that there's a cap on the developer fee. It will not be raised through this process. It's the original developer fee that was proposed in 2020; it can't be raised. This is solely to address cost increases in this unprecedented disaster.

And then finally, I wanted to thank Congressman Marchant. I know this is not your first Board meeting, but you got called away from the last one before I got to speak, and you have been a tremendous friend to this tax credit industry in Congress. We need more allies like you. Like Chairman Vasquez said, we need help on the Hill to increase this program.

I really think this is the best housing program that the Federal Government has ever designed. With the limited government and the incredible safeguards that the private sector places, it's just a model for a government program.

Finally, and this is my last comment, with regard to the force majeure discussion that you all have had, I think there have been -- you know, I've been doing this since 1999, and there have been lots of instances where fires and hurricanes and issues like that have fallen under this force majeure, and I just want to say that there's been nothing in my lifetime that approaches what happened with COVID-19 in 2020 and through the beginning of this year.

With all of those other disasters there might have been a local problem and a local shutdown, but our nation was shut down. I mean, we couldn't hire, we couldn't buy products, we couldn't do anything.

So I just want you to keep that in mind that this is definitely -- and there is some subjectivity in the force majeure definition for sure, but I would submit to you that this COVID-19 disaster definitely meets the criteria in the force majeure in the QAP.

And with that, unless there's any questions for me, again I want to thank everybody for their hard work on this compromise.

MR. VASQUEZ: Great. Thank you, Mr. Bowling.

MS. ROEHM: Hi there. My name is Elizabeth Roehm. I'm an attorney with Texas Housers. I've spoken with you so many times via Zoom, so I'm really happy to see you all in person finally.

I'm speaking on just one suggested change in the draft today that I want to bring your attention to, and this is in Section 11.101(a)(3), in the neighborhood risk factors, and we're asking to please reinstate the mitigation requirements for low-performing schools, and this will be similar to what came up last year because the same change is being made this year that was made last year.

So to orient everyone, this is an area where the QAP incentivizes sites to build near medium or high performing schools, and where sites are near low performing schools, the developer must take some mitigation actions, and the 2022 QAP would again waive the mitigation requirements for all new developments near bad schools. And I apologize for my language of good schools and bad schools, but the wording is complicated, so I'll do that to simplify.

So there are a couple of reasons the mitigation requirements should remain. First, the mitigation requirements that exist are not onerous. The mitigation requirements merely ask that there be a plan showing that improvement is likely at the school, that the developer provide onsite space for a school or Head Start program to provide early childhood education or Pre-K, and that a tutoring type program and space be provided by the property if the school is still low performing years in the future. So these are not onerous requirements that could easily be complied with even during the pandemic.

Second, these decisions affect children over the long term, and that's what I really want you to focus on, is that the neighborhood risk factors are meant to place this housing in areas where children can thrive and where families can thrive, and the ballpark numbers, if you look into them, are that the risk factor and mitigation would only be triggered by the worst 10 percent of schools statewide. So the vast majority of schools in the state are achieving well above these ratings that trigger the mitigation requirements.

So alternatives to the current draft, I'd encourage you to -- at the very least, an easy remedy is just base the assessment of school performance on prior years.

I know TEA is again not doing new ratings this year, as they didn't last year, but we've looked into the numbers, and schools don't change vastly year to year how they're rated. They do on occasion and in those situations the mitigation requirements would be easy to fulfill. And if a school does rapidly improve, the QAP already includes that language to address that.

Even better, I'd like to suggest an alternate change, which is that rather than using mitigation, the QAP should just not allow building near these schools with really low ratings. There are so many places to build, these credits are competitive. I know that siting is difficult, but school quality is so important, and this is really looking at really, really poor performing schools.

So I'd encourage you to just revisit that and keep that in mind. I know a lot of people ask you for things that you can't do, and this is something that you can do, you can change these things within the QAP.

Thank you so much.

MR. VASQUEZ: Thanks, Elizabeth.

MS. MARTIN: Hi there. Audrey Martin again.

I just wanted to echo the comments from Nathan Kelley and Bobby Bowling. I'm really appreciative of a lot of the changes that we're seeing in the QAP this year. As always, we have an opportunity to make comments to tweak little things here and there, and I'm sure you'll see those comments in time for the next Board meeting.

One thing I did want to address specifically is in Subchapter F related to the supplemental credits. You know, Ms. Boston mentioned that these new supplemental credits. The deals that are awarded will have an impact on the de-concentration factors that are going to affect the new 2022 deals.

So things like new 2022 applications won't be able to locate within two miles of a deal that's receiving supplemental credits. There's a number of things like that, and for that reason it would be really helpful for folks in the development community to get an advanced look at who might have an interest in applying for these supplemental credits, as an idea.

It looks like the ability to apply for the supplemental credits will begin in January of 2022. It might be possible to implement a pretty simple process, maybe kind of a one-pager form where folks can weigh in much earlier, maybe a November 1 deadline; for example, to indicate interest in applying. And what that could do is assist the development community and not wasting time and money pursing sites that will be effectively locked out because of the de-concentration factor. So it doesn't make a lot of sense for us to pursue sites within two miles of a deal that's likely to get new credits and will automatically lock you out.

So just an idea for consideration. It wouldn't have to be complicated, again just kind of raise your hand and let the Department know that you might have an interest in coming forward with those applications and then maybe a list could be put out. It might be a little more effective for the 2022 round.

Thank you.

MS. SNEDDEN: Michelle Snedden with Shackelford.

I represent RealTex Development. This is really just kind of a clarification on the supplemental credits. Rick was trying to be here today, couldn't get here, so he's literally texting me his questions right now.

So he's a 2019 deal. They started construction, everything was going great, and then because of the increase in costs they've essentially come to a halt in construction. He's been holding off on submitting a force majeure to find out about the supplemental credits. The concern is in the proposed language that the supplemental credits would not get approved until is it May?

MS. BOSTON: April is what's in there right now.

MS. SNEDDEN: April. So the concern is he's essentially come to a halt right now in construction and there is, as most LPAs, an ability in the LPA for the investor to purchase additional credits, which is what would happen.

But is there any way to speed that process up for 2019 deals that are already in construction but have come to a halt because of the pandemic? Because essentially it's asking him to not do any construction -- unless he gets some relief, he can't continue construction between now and May, so it's really just a question of what's the best way forward for him to obviously not sit around for eight months and not be able to continue with construction.

MR. WILKINSON: Are we giving advice individually?

(General laughter.)

MS. SNEDDEN: That would be great.

MR. WILKINSON: A bridge loan?

MS. SNEDDEN: I think when I saw the language, when we saw the April date, we were wondering why that date -- is that kind of the latest date, and can it be approved before that?

MR. WILKINSON: We talked about the timing. Staff wanted something later and we pushed it up, but anyway, go ahead.

MS. BOSTON: Do you want me to answer stuff now?

MR. VASQUEZ: I guess in this case let's go ahead.

MS. BOSTON: I'll tell you the timing is really kind of the biggest problem of this whole thing. You know, Audrey's suggestion of kind of like a pre-app or raise your hand -- I mean, ideally these are things that we'd have ironed out and really know where these extra supplementals are before the end of the year.

The challenge for us is the QAP is not even adopted until November, and so kind of the authority to move forward isn't there until the adoption. That said, I do think, you know, Homer is totally on board with trying to do whatever we can under the presumed draft QAP to at least try and accelerate the submissions for that advance notice that Audrey mentioned.

The timing with the challenge, as well, is you're talking about someone turning in supplemental financial documents that are different from the original application and then our underwriting team having to determine, you know, what the acceptable amount is, and I don't think that's something we'll be able to knock out super fast since that's going to be layered at the same time as a lot of the 4 percent transactions are still being done.

So as Bobby said, we've gone back and forth about the timing. I think April is too late, but I don't know that operationally we can do it a whole lot faster. So I think what we could commit to today is that the QAP go out for comment, staff will continue to try and work through a design of what we could do that's faster and try and make sure that what we adopt and bring back to you, you know, is as aggressive as it can be within reality. Because we agree; I mean, it's a tough situation.

MR. VASQUEZ: This assumes we're going to get it done by that date, by the April date. Right?

MS. BOSTON: This is aspirational.

MR. VASQUEZ: Or is this saying that we have to wait? If it gets done earlier, we'll do our best to do it.

MS. BOSTON: Certainly we'd love to bring them faster. And what we could do -- and I'm sure the '20 deals might take exception to this, but we could prioritize that the '19s get reviewed first because they're older.

I don't know that overall that's what the audience would like, but I mean, we can look at ways to prioritize which ones get reviewed first and therefore we take them in batches for approval to you guys.

MR. VASQUEZ: I'm assuming that it's better to approve them all at once. But in the meantime we can get locked and loaded and aimed and ready to pull triggers as fast as we can, because we understand what the situation is.

MS. BOSTON: Yeah. And Homer and I can try and maybe get together with some of the applicants and developers in the '19 and '20 pool and do kind of an impromptu roundtable and see if we can just brainstorm on what ways we could actually get this done, and of course, include our Underwriting staff and the Multifamily staff to whatever extent it requires re-review.

MR. VASQUEZ: And it's good because the executive director has assured me that the organization is going to be much more efficient this next cycle.

MS. BOSTON: Yeah.

MR. VASQUEZ: Mr. Marchant has a question, please.

MR. MARCHANT: I was just wondering, a question of the developers. In order for you to go to your lenders to give you some kind of a bridge loan, what assurances do they need that you're going to get this supplemental funding?

Are they going to want the signed document laid on their desk before they'll issue a penny, or are they going to let you proceed with some kind of a bridge funding so you won't be just stopped once you get some kind of assurances?

MS. SNEDDEN: (inaudible - from audience).

MR. VASQUEZ: Okay. Sorry for those of you at home who couldn't hear that.

MR. BOWLING: Mr. Chairman, I could take a stab at answering that for the record for Mr. Marchant.

MR. BEARD: I also have a question as to timing as well. Michael Beard, BETCO Consulting.

A 2019 allocation would have to place in service by December 31, 2021, so unless you go through force majeure, the review process for this additional supplemental credits is almost an obsolete option for that deal unless they get force majeure, unless I'm missing something. So I just wanted to say that to put that out there.

MS. BOSTON: Just to clarify, I had mentioned this, but every one of these transactions who gets the supplemental allocations are getting force majeure treatment.

MR. VASQUEZ: Right.

MR. BEARD: So then they'll have more time so it kind of fixes that.

MR. VASQUEZ: The question is still the gap and waiting, we understand that that's an issue. Mr. Marchant, do you want Mr. Bowling.

MR. MARCHANT: (inaudible - microphone off.)

MR. BOWLING: Again, Bobby Bowling, Congressman Marchant.

I've had direct conversations with my investor and my lender with this proposed solution, and they are overjoyed that we have even a draft for TDHCA. So now it becomes an issue with me as a developer, do I want to take the risk that there is a chance that somehow this doesn't happen for my deal, I'm taking that risk and going forward.

I mean, I closed my deal last month after we had the Rules Committee meeting, and I'm taking the risk. I feel confident enough that, you know -- but it's on me for several million dollars on this risk if it doesn't happen. And so every developer has got to make that decision on their own. This is the best possible solution, though.

With the in-place 2021 restriction on forward commitments and all of those things, this was really the best we could hope for in Texas, and my syndicator and my lender understand that and they're happy that I'm going forward and that I'm going to pursue this.

But it's a case-by-case basis for developers whether they want to go forward with their deal and take this risk or just turn the credits back, and I'm telling you I think most of us are taking the risk. I definitely am.

MR. VASQUEZ: And I'm sorry I need to interrupt. For the thousands of people watching at home, maybe millions, and around the world as we broadcast worldwide, we are about to lose our feed time, so I encourage you to go to Twitter and follow Mr. Lyttle, who will be tweeting every exciting move of the Board. So I apologize for anyone watching, but apparently there's certain times that they give us.

Ms. Rickenbacker.

MS. RICKENBACKER: Donna Rickenbacker with Marque. I submitted some written comments to Brooke yesterday but they're really comments that tweak existing rule provisions, so I'm going to go forward instead of eating up my three minutes. I can provide those comments once the QAP is published.

With that said, with the minutes that I have left, and what will be clearly be unpopular comments, staff did their best to integrate supplemental housing tax credit language in the '22 QAP; however, the harsh reality is the trickle-down impact of the forward commitments and this is going to be very disruptive to the cycle and unfair to those who did not request a forward commitment. I also do not believe that the disincentive fee is impactful at all, especially with the credit cap increase to $2 million per deal.

In order to create certainty and some resemblance of level playing field, I am recommending that all forward commitment language be stricken from the '22 QAP and that we establish a stand-alone forward commitment round.

The maximum amount of supplemental credits available should be limited to the $5 million, which I think we've already got in the draft QAP, and come off the estimated '22 allocation amount that is available to service regions based on the RAF. It should be the Board's discretion as to which applicant receives a forward commitment and how much based on staff's recommendation.

As it relates to the disincentive fee of 1.50 for each tax credit amount funded, that's not a penalty, and it's just not going to make a difference, in my opinion. I also think we either need to increase what that penalty is or just don't allow them to compete for '22 credits.

If these supplemental awardees really have struggling deals impacted by COVID-related issues -- and there are that clearly are impacted, there's just no doubt in my mind that they are impacted; we have a '19 deal very much impacted -- then it just makes sense for them to step back, address the problems with their additional capital before considering future developments.

I'm certainly here for any questions, but those are kind of my thoughts and ideas. Otherwise, it's really going to be a disruptive cycle. Again, staff has done their best to integrate all of the supplemental commitment into the QAP rules but the trickle-down impact to things -- I mean, I read these rules about three times, but I'm sure there's going to be some other problems as it relates to these supplemental credits.

Thank you.

MR. VASQUEZ: Thank you, Ms. Rickenbacker.

MR. ECCLES: If I could ask just a quick clarification just so Ms. Rickenbacker's comments are clear. When you were talking about forward commitments in your comments there, you were actually talking about the supplemental commitments.

MS. RICKENBACKER: Yes, sir, I apologize. The supplemental commitments.

MR. ECCLES: Thank you.

MR. KROCHTENGEL: Zachary Krochtengel again.

I'm not going to comment on the supplemental at all.

There were two kind of points of clarification I wanted to discuss, the first being the added language about proximity to a military base and being found to be in violation of a joint land use study.

Being an applicant that was affected by that in 2019 when I disclosed it voluntarily, I would like to see that language changed to be if your site is covered by a joint land use study and then show the information that says you're not in violation of that, as opposed to having a determination on the applicant's side that they're not in violation of it and then having to disclose anything.

I think in light of transparency, if your site is covered by a joint land use study of a military base, you should have to disclose that, not come up with your own value proposition of whether you're in violation of that joint land study or not.

They're very vague. You can make an argument either way on probably almost every single one that maybe it could, maybe it couldn't. So I think that in an abundance of caution, if you're in a joint land use study area, I believe that you really should just disclose it and then show why that is a site that is applicable for housing.

The other scoring item that I really wanted to discuss was proximity to jobs. Every year I think that there's a push and a pull of a lot of people that would love to see flat scoring and everybody all ties and we all got to a tiebreaker, and the way the proximity to jobs is written currently, I think that that is exactly the case of what will happen.

Being in a municipality that's under 500,000, having a four-mile radius is extremely detrimental, and I went through every single city that is between 500,000 and 100,000 and I could not identify a site that would not score a perfect score on proximity to jobs, so it just dilutes that scoring item to be meaningless.

When you also look at cities that border a larger city, like Dallas or Houston, if you go to the city that's under 500,000 but on the border of Dallas, you're now measuring a four-mile radius into the city of Dallas to count city of Dallas jobs as well as city of Plano jobs.

And just to give you kind of some examples, I went and I looked Plano. Plano, I did a bunch of random points and looked at the amount of jobs, and the amount of jobs in a four-mile circle is 134,000. The threshold is 60,000. It really makes the threshold meaningless when every point that I could identify in Plano is going to be ten times over the threshold.

And I think that just the amount of area covered by a circle --

(Timer went off.)

MR. KROCHTENGEL: Do you mind if I finish just a little bit?

You know, a one-mile circle, 3.14 square miles, a two-mile circle is 12 square miles, when you get to a four-mile circle, that's 50 square miles. That actually covers more than the entire city of Richardson, which is a 100,000-person city, so you're not really measuring the same thing.

When you start talking about proximity to jobs and you start talking about a four-mile radius, I don't really know, the amount of jobs in a 50 square mile area around a development doesn't really bode well to say that that's a good development site, and then I think it really pushes us out to more fringe areas that are less developed because we've actually extended distances not eh opportunity index as well over the years.

It just creates a dichotomy of cities under 500,000 versus cities over 500,000, and it creates just a scoring item that becomes meaningless because everybody is going to get a perfect score and it doesn't really distinguish good development sites to bad.

I've sent all this data over to the Department. My proposal would be if you're going to change radiuses it would be one radius for all urban, one radius for all rural, and I personally propose a 1-1/2-mile radius, because that is actually -- instead of doubling the distance, that's more than doubling the amount of square miles you're measuring from your development site.

Because a two-mile radius, that's 12 square miles, that still is a tremendously large area in an urban setting where you're going to get -- if I took all of the urban applications from last year and used a two-mile radius with the same jobs threshold, 90 percent of them would have gotten a perfect score, and the other deals that did not get a perfect score didn't get one because they were in regions that just never reached that job threshold. So you're not actually penalizing those regions -- you see where I'm going.

MR. VASQUEZ: And I think staff is recognizing.

MR. WILKINSON: I would note that I think some of these numbers can be tweaked when it comes back from the Register, and we've had more people with the chance to comment. We can't introduce new things.

MS. BOSTON: Yes. I think we can revise the numbers. I also received a comment from Audrey Martin. Some people sent in comments ahead of time that's not necessarily part of their testimony here -- just giving you a heads up -- and she had almost also made the same comment.

So I think you could narrow the radius, you could increase the total jobs that you're requiring in a radius, and both of those would help offset the points that Mr. Krochtengel made.

MR. VASQUEZ: Correct me if I'm wrong. I mean, these types of comments are what we're looking for as we publish, and it counts as a tweak, not a whole new subject.

So I think after we receive the comments back from the industry and there's different perspectives on all of this, we can then incorporate those best ideas into the final draft.

MR. ECCLES: I'm going to agree with that, and I would also encourage, as we hear people emailing Brooke their thoughts for today's meeting, it's going out for public comment, please don't think you've made public comment by sending Brooke an email.

So when it comes out for public comment in the *Texas Register*, please get those thoughts together and submit them so they can be responded to in the process.

MS. MARTIN: Audrey Martin again. I just wanted to hop up and kind of add some other thoughts on the job discussion.

One thing I would say, I know that we do obviously have the chance to give public comment and there's some chance for tweaking. This is one of those scoring items that's incredibly impactful to what sites we pursue, so if there's an inclination to move in a certain direction, it is helpful for the development community to kind of hear about that now.

Anyway, I don't disagree with Zach that we're pulling in very large areas for job measurements right now. I think that there was a lot of discussion about easing up on such a tight area that we could look for, because sites were getting way too expensive and all of that.

You know, we are picking up a big radius, we could increase the job counts, we could just kind of pick a simple number, say increase the job counts by 50 percent from where they are right now, keep the radius as it is

The other idea I would say, I do think the four-mile radius does cause some problems in urban areas. Like Zach was talking about, you've got a little city right next to a big city and they have a different measure, so I do think we should probably just say urban is two miles, maybe we want to say urban and rural instead of having the population figure as the cutoff.

Those would be my comments.

MR. VASQUEZ: Thanks, Audrey.

MS. CHAISSON: Good afternoon, Chair and members of the Board. Avis Chaisson again, director of real estate development.

I too want to thank staff. I know it takes yeoman's amount of work to put together the draft QAP out for us to comment. I do want to be on record again about the supplemental applications and impact to 11.3 and the de-concentration factors, but I won't belabor the points as to why because I think they have been made.

The other thing I want to comment on is under 11.9, the selection criteria for the competitive housing tax credits. It is admirable about adding the proximity to jobs, obviously, siting housing near jobs is key for the residents of Texas and transit as well, so we do like that change.

One comment I do want to make is on concerted revitalization plan. We do love the changes to get the voucher out, but one of the significant changes that was made is to the scoring to give preference to CRPs that are in a QCT to get their seven points and with those that are without a QCT five points.

I think that would be detrimental especially if you're trying to site housing near jobs, because there are areas where significant job growth is occurring that might not be in a QCT, so we ask that you do not make that change and consider CRP points all the same at seven, especially since a lot of cities are revitalizing and they need housing in addition to attract jobs.

So we appreciate that and thank you for the time.

MR. VASQUEZ: Thank you.

MS. ANDERSON: Last time, I promise. Sarah Anderson with Anderson Consulting.

Just one comment. I'd like to go back to the school discussion, and I think that there was a general discussion at the rules meeting where we understood that we haven't had a new rating for the schools in two years. We've been sort of stuck with COVID and changing of the ratings schedule. Because of that, there was a discussion about one portion of the QAP that covers the schools and mitigation, and the discussion is that maybe we don't have to do mitigation.

The other part that we haven't addressed that I'd like to would be that there's another portion where it says if the previous year had an F and the year before you had a Needs Improvement that you are ineligible and there is no mitigation and there is nothing you can do about it. In theory, I don't have a problem with that.

What I do have a problem is that we are sitting here now two years later without any changes and not knowing whether or not a school has improved or not, and I would ask that solely for the 2022 round that we not have a poison pill for areas that we simply don't know if they've improved or not.

And so that rather than saying you cannot compete at all for those that they be treated the same as the ones that just are required to do mitigation, that solely being because of the very unusual circumstance of just not having new school ratings for two years and not being able to prove up whether or not they've improved.

So thank you.

MR. VASQUEZ: Brooke, do you have any wrap-up comments?

MS. BOSTON: Sure. I think there's a few issues that would be good for us to clarify, but obviously that's up to the Board, so I would like to maybe just recap those. If you want me to address any people's specific comments, I can do that as well.

The one thing I would mention in response to Ms. Rickenbacker's comment where she said she'd like to take the whole supplement out of the QAP and do it as a separate competition: I would note that our Treasury regulations require that our credit ceiling, the whole ceiling, has to be done through a QAP, and so there's no way to operationally or compliantly do it, if in fact we tried to take it out of the QAP, just as a formality.

I think a few other things on the table are, you know, do you want separate from what I've already read in what's in your Board book and the two clarifications I already read. I think, you know, do you want to direct Beau and I to work on any cleanup language to the USDA? If so, I think you need to direct us to do that.

I think if you want to specify the applicability of force majeure and closing deals that are closed on the supplemental.

And other than that, I'm happy to answer questions; I can talk about any of the commenters' issues, whatever you like.

MR. VASQUEZ: Do any Board members have more questions for Brooke or staff?

(No response.)

MR. WILKINSON: I think that the fixes that she's talking about now can be done when it comes from public comment, so they should have some time to draft.

MR. VASQUEZ: So those were the tweaks.

MS. BOSTON: So the only other two were the handout --

MR. WILKINSON: And those are incorporated, the USDA fix and the force majeure, plus any jobs radius or numbers changes.

MS. BOSTON: Okay. And I'm sure some of the developers would want me to say that the job thing, you know, they're looking for sites before the QAP is adopted, and so I think if we were going to -- if we're not going to change the radius or the numbers, which is what Zach's data -- what his explanation was, but I do think if we're going to narrow in the November version, sites that they might have thought were in are all of a sudden going to be out.

And I know it's based on a draft document, so I get it, but I think if there's any contemplation that we would want to narrow the radius or increase the numbers, even if you just wanted to give like a blanket 1.5 or whatever, at least that being in the draft at this point would help them.

MR. VASQUEZ: There's a number in there now.

MS. BOSTON: Yes.

MR. VASQUEZ: Again, let's see what the comments come in and see if there's a consensus that we arrive at 3.28 miles.

MS. BOSTON: All right.

MR. VASQUEZ: 3.14.

(General laughter.)

MR. VASQUEZ: Okay. Again, you all know, but let's reinforce to please provide your comments in response to the published draft. It is still a draft, and again, we're looking for the best ideas.

MR. KROCHTENGEL: One comment.

MR. VASQUEZ: One last comment from Mr. Krochtengel. He's keeping you all here, not me.

MR. KROCHTENGEL: I think it would be helpful to at least if we could get to a consensus that we're going to split it by urban and rural and remove at least the concept of a city under 499,000 and a city over 500,000, because that would really take that huge four-mile radius out of at least the urban kind of subregions, and I think that would be extremely helpful, because right now it is every city under 500,000, because every single site works.

I know that what Brooke is looking for is to help us. That would, I think, be a long way to helping us. Thank you.

MR. VASQUEZ: Everyone who agrees with him submit your comments, please.

So with that -- and remember, we still have some more items on the agenda here, but they shouldn't have this long a discussion -- so with that, the chair will entertain a motion regarding 8(b) on the agenda.

Mr. Braden.

MR. BRADEN: I move the Board approve the proposed repeal and proposed new 10 TAC Chapter 11 rules concerning the Housing Tax Credit Program Qualified Allocation Plan for publication in the *Texas Register* for public comment, as expressed in the Board action request on this item and as modified by the few changes that Brooke specifically presented today.

MR. BATCH: Second.

MR. VASQUEZ: Thank you.

Motion made by Mr. Braden, seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries. One step closer to that new QAP.

Moving on to item 8(c).

MS. BOSTON: Chair Vasquez, Board members, I'm Brooke Boston.

Item 8(c) proposes the adoption of 10 TAC Section 1.8, entitled Plan Requirements, Process, and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals, which staff just calls it the Camping Plan Rule.

As you'll recall, during the 87th Regular Legislative Session the Texas Legislature passed HB 1925, which took several actions. It established prohibitions on camping in public places, created a criminal offense in Texas Criminal Code prohibiting camping, and established a new Subchapter PP of Chapter 2306 of our Government Code, which provides that a political subdivision may not designate a property to be used by homeless individuals to camp unless TDHCA has approved a plan as further described by the Subchapter.

That bill went into effect yesterday on the 1st. Staff wanted to be sure that it was in place, so on July 8 you all approved a draft rule. We took that rule out for comment from July 23 to August 23, and we received comment from ten commenters.

Your Board item shows a thorough summary of the comments received as well as copies of the comments, and provides staff's reasoned response to those comments.

Staff made revisions in response to some of the comments, but not all. The primary change I wanted to point out to you is that we added clarification on page 16 of 20 in Subsection (b) relating to applicability that the camping plan requirements are not applicable to political subdivisions when they are subject to several specific exceptions that were noted in the bill. Those exceptions include recreational camping, camping in compliance with a beach access plan, and cases relating to emergency shelter during a disaster.

In Subsection (b) relating to the plan process, we added a clause that provides for reasonable accommodation can be requested from the Department.

In Subsection (e) as it relates to threshold requirements for plan submission, several revisions were made in response to the comments. Those include that we're now clarifying that mobile indigent services are an acceptable form of indigent services.

We add that proximate public transportation stops or stations needing a sidewalk could also now include "or an alternative pathway identified by the political subdivision" to add more flexibility in them being able to find sites.

We also added language that a camping site must provide basic human sanitation such as toilets, sinks and showers. And then we also removed a clause that had said transportation provided by a homeless service provider could not be considered public transportation, as there was concern that that would limit creative solutions to providing transportation.

In Subsection (f) as it relates to the actual criteria staff will use when we're evaluating the plans when they come in we also made some revisions responsive to comments.

We added that for health services and indigent services, both mobile and onsite services are allowable. We recognized that both the 90 percent goals used in health care, indigent services, and transportation were unrealistically high and recognized also that neither the political subdivisions nor TDHCA will be in a position to actually measure achievement of those percentages on a fluid population.

So to address both of those challenges in all three of those categories, health care, indigent services, and transportation, we've revised the percentage required from 90 down to 50 and we clarified that this is a goal for the political subdivision to commit to.

Also under the evaluation criteria relating to law enforcement resources, we clarified that the political subdivision can provide a specific plan for security in and around the property if they believe that is an appropriate level.

And lastly, we added a new Subsection (g) that provides that if TDHCA learns of information through a complaint or otherwise that a political subdivision is allowing camping in an area not under an approved plan, we will share that information and refer it to the Office of the Attorney General for enforcement.

And with that, I'm happy to answer any questions.

MR. VASQUEZ: You want to refer it to the Attorney General; you don't want to enforce it yourself?

MR. WILKINSON: So far. We don't have the powers yet.

(General laughter.)

MR. VASQUEZ: Thank you, Brooke.

Do we have anyone who wants to make a comment? Please.

MS. BRESNEN: Yes, sir. Thank you very much. My name is Steve Bresnen. I'm here on behalf of myself and my wife, Amy Bresnen. It's very good to see you again, Congressman. Welcome home.

Fully in support of the rule as amended. I'm not going to add anything else to that; I know the comment period is over.

My first involvement with state government was in 1981, and I've been stuck here ever since. In addition to having been inside for a long time, I've been a lobbyist since '96, represent all kinds of different clients. I've never been to this agency before, so this is a brand new experience for me.

While I have some expertise, or claim it anyway, I'm here strictly as a citizen today of Austin who's been experiencing some of the problems that y'all all know too much about.

This bill could not have been possible without the extraordinary talent of Katarina Gonzalez in the

Governor's Office. And Katarina, I hope you're listening, because she is incomparable in her skills.

I testified in the House on behalf of Representative Capriglione's bill and in the Senate for Senator Buckingham, and I felt a little bit like a fish out of water, because I don't think the state ought to be messing around with local governments in general too much, but there's a serious problem in the state, and the state had to do something, and I made it clear there that the right approach to it could help a lot, particularly here in Austin.

The work that you've done, Mr. Wilkinson, and your staff -- and I'm at a loss for the lady's name who participated in our discussion, but she certainly deserves a lot of credit as well -- y'all did an extraordinarily workman-like job.

You fit it in with the statute, complied with the statute, and the whole bill that has three parts in it that work together well, and your part is certainly going to work well.

We've been trying to educate people, mostly through Twitter, that you don't have enforcement authority, that you have denial or approval of these things, but I think somebody is looking to tell somebody what's going on in their neighborhood, and so I think you're going to get them. And maybe the most important thing you did was provide for that referral over to the AG's Office. If I'm aware of it, I'll be over at the AG's Office working on those things.

So I really appreciate the job y'all did. Where you had discretion I thought you did a great job of exercising it. The sanitation requirement is hugely important. Little things like don't require sidewalk, there's other safe ways for people to get there.

Anyway, I don't want to drag your meeting out except to see we will be here while the rules are implemented. If we can be of service to you in any way, it's lack of humility to speak on behalf of the people of Texas, so I'll just say my 3,500 Twitter followers and my wife's 6,500 Twitter followers thank you very much for what you've done. Appreciate it.

MR. VASQUEZ: Thank you, Mr. Bresnen.

Do any Board members have any more questions on this item 8(c)?

(No response.)

MR. VASQUEZ: If not, I'll entertain a motion. Would Mr. Thomas care to do this?

MR. THOMAS: Thank you, Mr. Chairman. I move the Board adopt the new 10 TAC 1.8 rule regarding the political subdivision plan requirements, process and approval criteria for properties designated for homeless individuals camping, as modified in response to public comment and expressed in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. MARCHANT: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

We're almost there, everyone. Item 9(a) Presentation, discussion, and possible action regarding a workout for La Esperanza Del Rio, HOME #1002040.

Mr. Banuelos.

MR. BANUELOS: Good afternoon. Rosalio Banuelos, director of Asset Management.

Item 9(a) is a workout for La Esperanza Del Rio. In 2013 this development received a $1 million HOME loan award and $500,000 in 9 percent housing tax credits to construct 60 units in Rio Grande City, Starr County.

The development financing includes a $1,442,302 USDA 538 permanent loan in a first lien position from

Bonneville Multifamily at an interest rate of 4.9 percent, with a 40-year term and amortization, resulting in annual payments of principal and interest of $82,347.

The HOME loan is at zero percent interest, has a 40-year term and amortization and monthly payments of $2,083.33, so approximately $25,000 annually in debt service. It currently has an outstanding balance of $879,166, and the owner is current on the debt service payments.

In May of 2021 the owner approached the Department with a request for a workout assistance. The original request was for a new loan from the Department to pay off the first lien; however, this option was determined infeasible due to funding limitations.

Subsequently the request from the owner was revised to be for deferral of payments on the Department's existing HOME loan for three to five years and for a new loan in the amount of $161,700, with a request for both loans to be structured to payable out of surplus cash.

The $161,700 loan is needed to meet certain conditions to be able to reduce the interest rate on the first lien debt. The owner representative indicated the new loan would be used to pay a $68,700 yield maintenance to Bonneville, reimburse $30,000 to the replacement reserve, replace $48,000 to the operating reserve, pay counsel fees of $14,000, and title fees of $1,000. All of these costs cannot be afforded by the owner.

The owner explained that the development has faced several financial challenges, including the Department funding of a competing property, with more competitive amenities and a more visible location.

Also, the owner reports that Starr County has the highest poverty percentage in Texas and has the second lowest median household incomes statewide. Therefore, the development is not achieving rents at program limits.

According to the owner, the financial challenges are leading to increased deferred maintenance. Additionally, in 2020 the development suffered $111,000 of structural damage from Hurricane Hannah.

The amount of the damage was less that the property's insurance deductible, which forced the owner to negotiate with its lender and investors to release $30,000 from the replacement reserve and $48,000 from the operating reserve to take care of the needed repairs.

The investor required that the $48,000 in the operating reserve funds be paid in full by December 31, 2021, and would not allow any replacement reserve draws in 2021 other than for safety issues.

As of March 2021, the replacement reserve value is $46,000, and the account will have to be replenished to a minimum balance of $60,000 as required by the lender; however, there is no positive cash flow to accomplish this.

In addition, the expiration of the property tax exemption will further reduce the net income. With a partial exemption currently in place, the development has tax savings of approximately $10,000 annually, and the owner reports that the exemption extinguishes under a cumulative exemption of $105,000. As of now, $51,000 in cumulative exemptions have been granted so far, leaving a remaining balance of $53,000.

The requested additional loan from the Department in the amount of $161,700 will provide the funds needed to buy down the interest rate on the first lien, and this loan would have annual debt service payments of $4,042, subject to available surplus cash.

However, as has been stated, this additional loan payment will be offset by the reduction to the interest rate on the first lien debt which could result in debt service savings of at least $10,000 annually.

The additional funding warrants two additional direct loan units, increasing the number of these units to a total of 12. The two additional units would be at 50 percent income level with low HOME rents, and 80 percent income level with high HOME rents. And these could be layered with other housing tax credit units but not with the existing HOME units.

Staff recommends restructuring the existing HOME loan to be payable out of surplus cash annually as well as the approval of the approximate $161,700 in direct loan also to be payable out of surplus cash.

The additional loan would be funded using Tax Credit Assistance Program Repayment Funds, or TCAP-RF, and will be structured as subordinate third lien, repayable out of surplus cash annually at an interest rate of zero percent with a 40-year amortization and 35-year term to match the maturity of the HOME loan. Additionally, there would be a 15-year HOME match affordability period and a 35-year state affordability period which would run concurrently.

Staff, however, does not recommend granting the requested five-year forbearance, and the owner has agreed with those recommendations.

This concludes my presentation, and I'm available for questions if there are any.

MR. VASQUEZ: Great. Thank you.

Board members, Mr. Marchant?

MR. MARCHANT: Just help me understand who you are and who you represent. Okay? Because I'm new.

MR. BANUELOS: Rosalio Banuelos, director of Asset Management at TDHCA.

MR. VASQUEZ: He's one of us.

MR. MARCHANT: So you're staff. All right. I hadn't got into the staff yet.

Are you recommending against this?

MR. BANUELOS: We're recommending approval of the request, with the exception of the five-year forbearance that they had requested on those payments, so we're recommending that the loan that is existing continue to be payable out of surplus cash, granting a new loan of $161,700 also to be payable out of surplus cash, but we are not recommending the five-year forbearance.

MR. MARCHANT: Okay. And what's the first lien that's still in place?

MR. BANUELOS: There's a balance of $889,000d -- sorry. The first line is $1,482,882, it's a USDA 538 guaranteed loan.

MR. MARCHANT: And what's the tax value of the property?

MR. BANUELOS: I do not know at this time.

MR. MARCHANT: They're carrying it on the tax rolls, right, Starr County? What county is it?

MR. BANUELOS: It is in Starr County.

MR. MARCHANT: Thank you.

MR. VASQUEZ: Do we have commenters on this item?

SPEAKER FROM AUDIENCE: We're only here if there are questions.

MR. VASQUEZ: Do any other Board members have questions?

MR. MARCHANT: I actually want to know what the value of the property is.

SPEAKER FROM AUDIENCE: The taxable value of the property right now with Starr County --

Mr. WILKINSON: Ma'am, please come to the podium.

MR. VASQUEZ: Tell us who you are and who you represent.

MS. REIDY: Sara Reidy with Casa Linda Development Corporation.

The current taxable value on the tax rolls with Starr County Appraisal District is $1,441,000.

MR. MARCHANT: Thank you.

MR. REIDY: I'm here to answer any other questions if you have any.

MR. VASQUEZ: Thanks.

Are there any other questions? If not, the chair will entertain a motion on item 9(a).

MR. BATCH: Mr. Chairman, I move that the Board authorize the executive director and his designees to effectuate the workout solution, as expressed in the Board action request on this item.

MR. BRADEN: Second.

MR. VASQUEZ: Motion made by Mr. Batch, seconded by Mr. Braden. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Continue on with 9(b) and a concise summary of the Board action request.

MR. BANUELOS: Item 9(b) is Presentation, discussion, and possible action regarding and increase to the housing tax credit amount for Springs Apartments, Housing Tax Credit #18614.

This development received a 4 percent and bond award in 2018 to construct 221 affordable units in Balch Springs, Dallas County. The determination notice was issued on April 13, 2018 with an approved annual tax credit amount of $1,314,707. The last residential building in the development placed in service on June 19, 2020, and the cost certification documentation was received by the Department on April 9, 2021.

In conjunction with the submission of the cost certification package, the development owner requested an annual tax credit award of $1,469,419, which is an increase of $154,712, or 11.77 percent, over the amount reflected in the determination notice.

A comparison of the development costs from the time of the closing analysis in 2018 to cost certification indicates that the total development cost increased by approximately 12.6 percent, going from $36.5 million to $41.2 million.

The majority of the costs increases were in building costs, financing costs, and indirect construction costs. According to the owner representative, there was also an increase in site work related to unforeseen excavation costs.

The increase in building costs was related to increases in lumber costs after the initial bid, changes in design of the roof from PVC to TPO, and installing vinyl flooring instead of carpet. The owner explained that they used their best estimation of these costs at the time of application, but they did not have the actual bids. Indirect costs increased mainly in the categories of architectural fees, engineering fees, and property taxes during construction.

The owner indicated that the architectural costs increased due to minor design changes throughout construction. Additionally, the architectural estimate at application did not take into account that this was a HUD transaction, which required two sets of plans, one due to the city and one due to HUD.

According to the owner, the engineering costs were underestimated at the time of application, and the property taxes were also estimated incorrectly at application. The increase in financing cost is mainly due to an incorrect calculation at the time of application and delays during construction, which increased the final interest expense.

Staff's analysis of the development indicates that the development supports the requested tax credit amount, but Board approval is required because the amount exceeds 110 percent of the amount reflected in the determination notice. If this is approved, the owner will be required to pay the required fee for the additional credits.

Staff recommends approval of the increase in the tax credits, and I'm available for any questions.

MR. VASQUEZ: So this just exceeded the cost certification by an additional 1.77 percent or it wouldn't be coming to the Board.

MR. BANUELOS: Correct.

MR. VASQUEZ: Do any Board members have questions for Mr. Banuelos?

(No response.)

MR. VASQUEZ: If not, the chair will entertain a motion on item 9(b).

MR. BRADEN: I move the Board approve and authorize the executive director and his designees to effectuate the 4 percent tax credit increase, as expressed in the Board action request on this item.

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

MR. BATCH: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Batch. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

One more.

MR. BANUELOS: Still under 9(b), similar request for an increase in credits. This is for Pointe at Crestmont, Housing Tax Credit #16429.

This property received an award in 2016 to construct 192 units in Houston, Harris County. On May 26, 2017, a determination notice was issued with an approved credit amount of $1,102,799. The buildings in the development were placed in service by September 13, 2018, and the cost certification documentation was received by the Department on July 9, 2020.

With the cost certification request, the owner requested an increase to the credit amount to $1,332,702, an increase of $229,903, which is 20.85 from the amount in the determination notice.

According to the owner, after the construction contract was signed in April 2017 there were delays in construction due to a roof fire. Also, City of Houston had a waterline break, and there were delays in permit issuance, which resulted in additional costs.

The City of Houston also required compliance with Section 3 under Davis-Bacon, which also increased indirect construction costs. Construction costs increased due to unforeseen site work and upgrades made throughout construction. The amount of the change orders was over $3.4 million.

Property taxes and water tap fees were accidently omitted from the cost schedule application and were omitted at cost certification.

A comparison of the development costs form the time of application in late 2016 to cost certification, the total development cost increased over $5 million, or over 15 percent, from $32.7 million to approximately $37.8 million.

Construction costs, including contractor fees, increased over $2.7 million, and indirect construction costs increased approximately a million. Developer fees also increased by $35,000. Financing costs increased by $2 million, and according to the owner, this is a result of additional payment of interest during construction that was not included in the original budget at application.

Staff's analysis of the cost certification has concluded that the development supports the requested amount of tax credits, but again, because this request is more than 110 percent from the amount in the determination notice, Board approval is required.

Staff recommends approval of the increase to the tax credit amount.

MR. VASQUEZ: Thank you.

Any questions for Mr. Banuelos?

(No response.)

MR. VASQUEZ: If not, the chair will entertain a motion on item 9(b) related to Pointe at Crestmont.

MR. THOMAS: Mr. Chairman, I move the Board approve and authorize the executive director and his designees to effectuate the 4 percent tax credit increase, as expressed in the Board action request on item 16429 Pointe at Crestmont.

MR. VASQUEZ: Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Thank you, Rosalio.

We're on the home stretch. Item 10(a) Presentation, discussion, and possible action on waiver relating to 10 TAC Section 11.101(b)(2) related to the development size limitations for Bluff View Apartments in Boerne.

MS. MORALES: Teresa Morales, director of Multifamily Bonds.

This item involves the waiver associated with the maximum development size in a rural area. The QAP restricts 4 percent applications to 120 units. Although a 4 percent application has not been filed, the Department received a waiver request for a proposed new construction 200-unit development in Boerne.

Boerne is located northwest of San Antonio and is considered a rural area according to the Department's site demographics. Pursuant to the QAP, an area is considered rural if it is within a metropolitan statistical area that has a population of less than 25,000 and does not share a boundary with an urban area.

According to the U.S. Census Bureau data, Boerne had a population of approximately 18,000 in 2019. The city limits of Boerne and San Antonio are separated by less than one mile, and driving distance from the limits of Boerne to San Antonio at highway speeds is less than two minutes. If Boerne and San Antonio shared a boundary, Boerne would have been considered urban despite the population figure.

Its growing population, proximity to San Antonio, presence of multiple large employers nearby, and new commercial and single-family development occurring in Boerne, the applicant believes that Boerne is growing at a rapid pace and is characteristic of what would be seen in areas considered urban.

Based on all of the information outlined in your materials, staff recommends that a waiver be granted.

MR. VASQUEZ: Thank you.

Does anyone have questions for Ms. Morales on 10(a)?

(No response.)

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

MR. BATCH: Mr. Chairman, I move the Board grant the limited waiver concerning development size limitations for the proposed development, as expressed in the Board action request on this item.

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

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

On to 10(b) Presentation, discussion, and possible action regarding eligibility under 10 TAC Section 11.101(d)(1)(C) related to ineligibility of developments within certain school attendance zones for Marine Park Apartments in Fort Worth.

MS. MORALES: Teresa Morales, director of Multifamily Bonds.

The Department received a request for a pre-determination relating to ineligibility of a development based on the school performance. The applicant proposes to acquire and rehab an existing property that falls within the attendance zone of an elementary school that received a 2019 rating of F by TEA and a 2018 Improvement Required rating. These ratings would render the development site ineligible under the QAP.

In reviewing the TEA ratings for 2015, 2016 and 2017, Marilyn Miller Elementary School achieved a Met Standard rating for two of those three years. Over the past several months there have been a couple of these determinations that have been brought before you.

Just to draw the distinction between the neighborhood risk factor relating to schools and school ineligibility, the neighborhood risk factor would be a school with a rating combination of F and Met Standard or D and Improvement Required, the neighborhood risk factor information could be provided that would serve to mitigate the school ratings, and staff could find the site eligible, but this particular rating combination of F and Improvement Required, the site is considered ineligible with no opportunity to mitigate, which means that the only recommendation by staff is that you find the site ineligible.

A common theme regarding schools has been the pandemic and the extent to which virtual learning has impacted school performance, particularly among elementary age students. TEA did not provide accountability ratings of the 2019 and 2020 school year and announced that accountability ratings would be paused for the 2020-2021 school year.

There is development specific information in your materials provided by the applicant that speak to possible reasons to find the site eligible. The rental rate increases in the zip code of this particular development, the income targeting to 50 percent of area median income households, and implementation of supportive services that are not currently provided, as well as the extensive rehab that is planned of approximately $47,000 per unit more than what the QAP requires given the age of this particular property.

The waiver provision in the QAP is specific in demonstrating how the need for the waiver is not within the control of the applicant and that by granting the waiver the Department would better serve its policies and purposes under statute.

The pandemic has caused disruptions to the TEA accountability system that are not within the applicant's control, and moreover, some of the previously mentioned development specific information could serve to meet the requirements of the waiver rule under 11.207 of the QAP.

Worth noting and what may make this waiver different from prior requests of its kind is a commitment by the applicant to provide after-school programs to the residents as a required tenant service throughout the life of the land use restriction agreement.

The applicant has also proposed the construction of an additional onsite community learning space which would also be reflected in the LURA. If the Board so desired, it could grant the waiver conditioned upon the provision of these particular items.

This concludes my presentation, and I'm available for any questions.

MR. VASQUEZ: To clarify, this is a rehab; it's an existing development.

MS. MORALES: Correct, it's an existing development, and under this particular ineligibility item there are exemptions for rehabs, but they're only if those properties are in our portfolio, and this particular one is not.

MR. VASQUEZ: Do any Board members have questions for Ms. Morales?

MR. THOMAS: Mr. Chairman, just one question.

Teresa, so just to be clear, what is staff's recommendation on this?

MS. MORALES: Staff's recommendation is that you find it ineligible.

MR. BATCH: Ineligible.

MS. MORALES: Ineligible. And that's because staff will not have ability or discretion under the rule to evaluate the information that they provided.

MR. THOMAS: Great. Thank you.

MR. BRADEN: The QAP that was just authorized for publication, it still has the staff requirement in it?

MS. MORALES: Yes, it does.

MR. VASQUEZ: So we do have the discretion, however --

MS. MORALES: The Board has the discretion to grant the waiver.

MR. VASQUEZ: And especially if we make it contingent upon those extra efforts.

MS. MORALES: Correct.

MR. WILKINSON: Our recommendation is that if you would support the waiver that you do so contingent upon the LURA restrictions.

MR. BRADEN: What were those LURA restrictions again, Teresa?

MS. MORALES: One was to provide -- so there are a list of supportive services, sort of a menu of options that applicants can choose from, and that entire list is included in the LURA and they pick and choose throughout the duration of that affordability period based on the needs of the residents.

One of those could be an after-school program, and in this instance it wouldn't be an option for them to provide but it would instead be a requirement, and then they select other menu items from that list and it's for the after-school programs.

MR. BRADEN: So the idea would be it would least require an after-school program in the supportive services so that hopefully to the extent education is an issue they have programs there.

MS. MORALES: They could facilitate whatever programs would be offered at the school. And then the other option that they have provided was to construct an onsite community learning center that could be used for the school district or any other uses as well.

MR. BRADEN: And did the developer agree to that?

MS. MORALES: Yes, they have.

MR. BRADEN: The TEA ratings are pretty old, so I'm pretty concerned about how accurate they are and might allow a waiver to this. On the other hand, are we opening a waterfall where we get tons of requests if we do this?

MR. WILKINSON: The Board has granted a few. There was Wheatley High School and the one from San Angelo, so they had to come to you with some kind of argument.

MR. VASQUEZ: Also, is this a purely eligibility question or are we granting the 4 percent?

MS. MORALES: It's purely an eligibility question.

MR. VASQUEZ: So there's still a lot of other hoops to jump through, paperwork and all kinds of things.

MS. MORALES: Correct. For this particular property the application hasn't been submitted yet. The applicant just identified the site, wanted to pursue it, but had the school issue and wanted to know if it would be found eligible so they can pursue it.

MR. BRADEN: Have we done that before, sort of an advance waiver?

MS. MORALES: Yes.

MR. WILKINSON: Wheatley High School was one, the HIC one, the TxDOT relocation issue.

MR. BRADEN: I can make a motion. I'll move that the Board grant the waiver sought by the applicant regarding the ineligibility of the application due to school accountability ratings, with the understanding that the LURA would require supportive services, including an after-school program and an onsite community learning center, as otherwise expressed in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Braden. Is there a second?

MR. MARCHANT: I'll second it.

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries. Eligible.

MR. BATCH: Can I have a quick comment, Mr. Chairman?

MR. VASQUEZ: Sure.

MR. BATCH: Well, I guess it's really a question. What sort of follow-up on these LURA items, what assurances would the Board receive that they're actually implementing whatever services are required?

MS. MORALES: So once the LURA is drafted, it will include provisions for these things, and then our Compliance Division, they go out and they go on site and monitor, and so with listing a provision in the LURA, that's your safeguard that they are doing what they said they were going to do.

MR. BRADEN: And the LURA actually follows the property records with respect to the project, so it's an official record.

MR. BATCH: Thank you.

MR. VASQUEZ: Great. Moving on to the final item on the agenda, item 10(c) Presentation, discussion, and possible action regarding the issuance of determination notices for 4 percent housing tax credit applications involving projects 21451 Horizon Pointe, and 21450 W. Leo Daniels.

Ms. Morales.

MS. MORALES: There are two 4 percent allocations under this agenda item, and I believe Board action can be based on the item as a whole and not separate votes on each application.

The first, Horizon Ponte, was originally approved by the Board in November of 2020. The applicant was unable to close and had to withdraw the original bond reservation.

A new reservation was issued, and given the passage of time and changes to numbers, a new application was submitted. This application would normally be one that would qualify under the streamlined process; however, the reevaluation of the compliance history of the applicant resulted in a change in the compliance category and modifications to some of the previously approved compliance conditions that require Board consideration.

So I recommend approval of the conditions noted in the exhibit in your materials and recommend the issuance of a determination notice in the amount specified in the Board writeup for Horizon Pointe.

The other application, W. Leo Daniels, was brought before you in October of 2020 for a determination of eligibility based on the crime rate of both the subject and the adjacent census tract.

Despite the mitigation that was submitted, staff recommended the site be found ineligible because the local police beat data did not yield a crime rate below the threshold in the rule. The Board overturned staff and found the site eligible.

The applicant was not able to close by the bond reservation deadline, and the application was withdrawn before coming before you for consideration of the determination notice.

With the new reservation the application has been re-reviewed for the crime rate, which for the subject census tract was below the threshold in the rule; however, the local police beat data for the adjacent tract remains above the threshold.

Normally this would result in a staff recommendation of ineligibility; however, given the Board's prior decision to find the site eligible despite the crime rate, staff is recommending the Board affirm its prior decision and find the site eligible.

Similar to Horizon Pointe, there are compliance conditions associated with this application. Staff recommends approval of the conditions noted in the exhibit in your materials, recommends the issuance of the determination notice in the amount specified in the Board writeup, and recommends that the Board affirm its prior decision with respect to crime.

MR. VASQUEZ: Thank you.

Any questions for Ms. Morales on item 10(c)?

(No response.)

MR. VASQUEZ: I assume speakers are here for information purposes if necessary.

SPEAKER FROM AUDIENCE: If you're voting for it, I don't need to speak.

MR. VASQUEZ: Wise man.

The chair will entertain a motion on item 10(c).

MR. BATCH: Mr. Chairman, I move that the Board find the previous finding of eligible relating to the crime rate associated with the W. Leo Daniels application and that determination notices in the respective amounts be issued to these two applications on this item be approved and that the compliance conditions for W. Leo Daniels apply to ITEX as an applicant for administrative approval of other ITEX applications, all as expressed in the Board action request on this item.

MR. VASQUEZ: And just to further clarify, that's for the 21450 W. Leo Daniels and 21451 Horizon Pointe?

MR. BATCH: Yes.

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

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

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

So the Board has addressed the posted agenda items. Now is the time of the meeting where members of the public can raise issues for the Board on matters of relevance to the Department's business or to request that the Board place specific items on future agendas for consideration.

Is there anyone who would like to provide public comment at this time?

MS. PARHAM: I hate to come up. I'm Amy Parham, I'm the CEO of Habitat for Humanity Texas. I've been thinking about home meaning good food and good chairs a lot this morning, and I want to thank you for your work.

In this past summer we have worked with your staff on the Housing Assistance Fund. We've seen a lot of requests going out for assistance around COVID relief just in the last 30 days; we're looking forward to continuing our work with the Department on that.

And item (i) on the consent agenda several hours ago is something that's really important to us. As we begin to look forward to the next legislative session, we've got some tweaks that we want to propose to you for the Housing Trust Fund, which is a critical issue to Habitat for Humanity across Texas.

So I'm going to talk fast, keep it short, say thank you so much to you and your staff. I've been with Habitat for about nine years, and I've seen growth in the staff of how friendly and accepting they are to work with their partners, and I want to say thank you for you and your leadership.

MR. VASQUEZ: Thank you, Amy. Thanks for everything that Habitat does.

Anyone else want to keep us longer?

(General laughter.)

MR. VASQUEZ: And everyone who is still here gets extra tax credits.

(General laughter.)

MR. VASQUEZ: So with all the agenda items disposed of, I will entertain a motion to adjourn the meeting.

MR. BRADEN: So moved.

MR. VASQUEZ: Motion made by Mr. Braden.

MR. MARCHANT: Second.

MR. VASQUEZ: Seconded by everyone else.

The next scheduled meeting of the Board is October 14, 2021, at a location to be determined to be announced, so stay tuned.

It is 1:50 and 9 seconds. We're adjourned.

(Whereupon, at 1:50 p.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: September 2, 2021

I do hereby certify that the foregoing pages, numbers 1 through 178179, 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: September 8, 2021

(Transcriber)

On the Record Reporting
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