GOVERNING BOARD MEETING

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

December 14, 2017
8:03 a.m.

BOARD MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director
INDEX

AGENDA ITEM | PAGE
--- | ---
CALL TO ORDER | 7
ROLL CALL | 7
CERTIFICATION OF QUORUM | 7

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

EXECUTIVE
a) Presentation, discussion, and possible action on Board meeting minutes for September 7, 2017

LEGAL DIVISION
b) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606 / CMTS 2680)

c) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Plainview Triplex II (HOME 532315 / CMTS 2658)

d) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Sabine Park Apartments (HTC 96134 / CMTS 1594)

ASSET MANAGEMENT
e) Presentation, discussion and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 and amendments to the Developers and Guarantors
13196 Emerald Village San Antonio

f) Presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Application
97019 Creekstone Ranch Victoria
15306 Altura Heights Houston
16015 The Standard at Boswell Marketplace Fort Worth
17012 Secretariat Apartments Arlington

ON THE RECORD REPORTING
(512) 450-0342
g) Presentation, discussion and possible action regarding proceeds from sales of TDHCA Real Estate Owned ("REO") property and directing that the proceeds be allocated to the Department's Asset Management Fund for asset management purposes

SECTION 8 PROGRAM

h) Presentation, discussion, and possible action on the 2018 Section 8 Payment Standards for the Housing Choice Program ("HCVP")

BOND FINANCE

I) Presentation, discussion, and possible action on Resolution No. 18-011 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection Therewith; and containing other provisions relating to the subject

HOME AND HOMELESSNESS PROGRAMS

j) Presentation, discussion, and possible action to authorize the issuance of the 2017 HOME Single Family Programs Reservation System Notice of Funding Availability ("NOFA") and publication of the NOFA in the Texas Register

MULTIFAMILY FINANCE

k) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer
17407 Shadow Ridge Round Rock
17411 Villa Americana Houston
17420 Del Valle 969 Austin ETJ
17429 Canyons at 45 West Amarillo
17432 Valle Verde El Paso
17433 Sandoval El Paso
17435 Lakeview Senior Living Rowlett
17436 Boyce Lane Austin ETJ
17437 Trails at Leon Creek San Antonio
l) Presentation, discussion, and possible action on an award of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability
17502 Freedom's Path at Kerrville, Kerrville

RULES
m) Presentation, discussion, and possible action on orders proposing adoption of amendments to 10 TAC §23.61, Tenant-Based Rental Assistance General Requirements and directing that they be published in the Texas Register

n) Presentation, discussion, and possible action on proposed new 10 TAC §1.5, Waiver Applicability in the Case of Federally Declared Disasters, and directing that it be published in the Texas Register

o) Presentation, discussion and possible action on an order adopting the amendment of 10 TAC Chapter 10, Subchapter E, concerning the Post Award and Asset Management Requirements, and an order directing its publication in the Texas Register

p) Presentation, discussion, and possible action on the draft 2018 State of Texas Low Income Housing Plan and Annual Report, and proposed repeal and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication for public comment in the Texas Register

q) Presentation, discussion, and possible action on an order adopting the amended 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the Texas Register

r) Presentation, discussion, and possible action on an order adopting the amended 10 TAC Subchapter D concerning the

ON THE RECORD REPORTING
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CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
   a) TDHCA Outreach Activities, (November - December)
   b) Report on a subgrant for 2017 Emergency Solutions Grants Program Subrecipient Bridge Over Troubled Waters
   c) Presentation, discussion, and possible action to accept the report on the Draft Computation of Housing Finance Division Total and Unencumbered Fund Balances and Transfers to the Housing Trust Fund
   d) Presentation and discussion of the 2018 Operating Budget filed with the Legislative Budget Board ("LBB") and the Governor's Office of Budget, Planning and Policy ("GOBPP")

ACTION ITEMS

ITEM 3: REPORTS
   a) Report on the review of the Contract for Deed Conversion Program
   b) Report on the meeting of the Audit and Finance Committee

ITEM 4: INTERNAL AUDIT
   Presentation, discussion, and possible action to accept the External Peer Review of the Internal Audit Division

ITEM 5: RULES
   Presentation, discussion, and possible action on an order adopting the amended 10 TAC Chapter 13 concerning the Multifamily Direct Loan Program Rule, and directing its publication in the Texas Register

ITEM 6: MULTIFAMILY FINANCE
   a) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Vista on Gessner) Series 2018 Resolution No. 18-012 and a Determination Notice of Housing Tax

ON THE RECORD REPORTING
(512) 450-0342
Credits

b) Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2017 Qualified Allocation Plan ("QAP") related to Credits Returns Resulting from Force Majeure Events 15241 Trails of Brady Brady 15247 City Square Apartment Homes Garland

c) Presentation, discussion, and possible action to adopt the 2018 Multifamily Programs Procedures Manual

d) Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to Fee Schedule, Appeals and other Provisions.

17107 The Residence at Wolfforth Wolfforth

e) Presentation, discussion, and possible action regarding approval for publication in the Texas Register of the 2018-1 Multifamily Direct Loan Notice of Funding Availability

f) Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds 17404 Commons at Goodnight Austin

g) Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability

17500 The Works at Pleasant Valley Phase II Austin

17509 Poesta Creek Apartments Beeville

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

EXECUTIVE SESSION

OPEN SESSION

ADJOURN

ON THE RECORD REPORTING
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MR. GOODWIN: Call to order, the board meeting for December 14, for the Texas Department of Housing and Community Affairs. And I would ask Tim to lead us in the Pledge of Allegiance, and please stand.

(The pledges of allegiance to the United States and to the State of Texas were recited.)

MR. GOODWIN: We will start with the roll call.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Ms. Reséndiz?

(No response.)

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Mr. Vasquez.

MR. VASQUEZ: Here.

MR. GOODWIN: We have a quorum. We will begin. First, I would like to recognize a special guest we have here, the former chairman of the Texas Department of Housing, Mr. Kent Conine.

Kent, would you stand up?

(Applause.)

MR. GOODWIN: Mr. Lyttle, I believe you have
something you are going to read?

MR. LYTTLE: Yes, Mr. Chair. I have a resolution for the Board. It reads as follows:

"WHEREAS, more than 23,500 persons experiencing homelessness were counted in Texas during the last two weeks of January 2017, including over 6,800 people in families, all as reported in the 2017 Annual Homelessness Assessment Report;

"WHEREAS, the state and federal homelessness and homelessness prevention programs administered by the Texas Department of Housing and Community Affairs (the "Department") support street outreach, emergency shelters, rapid re-housing, homelessness prevention, and support services as front line responses to community homelessness;

"WHEREAS, the Department's homeless programs assisted over 35,000 persons, helping them to move toward housing stability after experiencing or being at risk of homelessness in State Fiscal Year 2017;

"WHEREAS, the Department recognizes that each person who works with someone experiencing or at risk with homelessness makes a difference;

"WHEREAS, the Department supports local governments and organizations that work, often in collaboration, to address, prevent and minimize
homelessness;

"WHEREAS, December 21, 2017, is National Homeless Persons Memorial Day, which annually falls on the longest night of the year; and

"WHEREAS, the Department recognizes those who have lost their lives while homeless;

"NOW, THEREFORE, it is hereby RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby and recognize December 21, 2017, Homeless Persons Memorial Day in Texas and encourages all Texas individuals and organizations, public and private, to join in in this observance of the National Homeless Persons Memorial Day.

"Signed this 14th day of December 2017."

MR. GOODWIN: Do I hear a motion to approve the resolution?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Move and seconded. All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. Opposed?

(No response.)

MR. GOODWIN: It passes.
Mr. Gouris?

MR. GOURIS: Yes. Good morning, Board members.

I'm Tom Gouris, Deputy Executive Director for the Department, and I have some holiday cheer and a quick comment in recognition to report to you about our Single Family Finance Division, and in particular our chief investments officer, Monica Galuski.

The Bond Buyer, which is the national trade publication for the municipal bond industry, and the Northeast Women in Public Finance Association, have recently honored Monica in selecting her as a trailblazing woman in public finance.

Monica was among 12 women nationwide who were recognized at the Bond Buyers' Deal of the Year awards ceremony last week in New York City.

This recognition was even more meaningful in that she was nominated by her staff, for her work with them over the past year and a half to restructure the way we do business in the single-family finance world.

As we have been reporting over the past year and a half, highlights of the changes that they've made include the designation of the Idaho Housing Finance Agency as our master servicer, which has reduced the up-front servicing costs and improved -- improved approval turnaround times.
The execution of a $10 million, ten-year, low-interest loan from Woodforest Bank, which has helped reduce cost of funds for down payment assistance, and the accomplishment of a facility to access short-term federal home loan bank funds from Bank of Dallas funds to further reduce the costs previously incorporated as part of our master service costs.

All of these changes have combined to increase our monthly activity nearly four times, from roughly $20 million in average loan value per month, to almost $90 million.

We are very proud of Monica and her accomplishments of her team, as well as the complementary efforts of the First Time Home Buyer Division.

MR. GOODWIN: Thank you.

(Applause.)

MR. GOODWIN: Monica, we're very proud of you too. Thank you for the great job that you've done and for the recognition; it's well-deserved. Thank you.

Moving into the Consent Agenda. I think, Peggy, we had an item that we wanted to be read into the Consent Agenda?

MS. HENDERSON: Peggy Henderson, TDHCA registering opinion for Edward L. Castor, on Agenda Item, Consent Agenda Item 1(k), Project Number 17437,
representing Camino Bandera HOA, and he is against staff's recommendation.

MR. GOODWIN: Okay. Are there any items on the Consent Agenda or Consent Report items that a board member would like to poll before we take a motion on the Consent Agenda?

Beau, I think you had something that you wanted to bring up on the Consent Agenda before we took a motion?

MR. ECCLES: Yes. And it is on Item 1(k), which is presentation, discussion and possible action on determination notices for housing tax credits with another issuer.

Given pending federal tax legislation, I thought it was important to remind everyone that a determination notice is a calculated assessment of the likely amount of 4 percent tax credits that a development could be able to claim at cost certification.

It is not an award or commitment by the TDHCA Board. A determination notice is the result of an assessment that staff has performed, assuming that the 4 percent program, the bond program and any other financing programs continue substantially unchanged, and that the actual cost of all aspects of the development do not materially deviate from the projections and assumptions.
The determination notice is not a guarantee, and does not insulate in any way against possible changes in these assumed factors, including by way of example and not limitation, changes in interest rates, changes in syndication pricing, changes in development costs, and even changes to the very programs themselves, including legislation to alter or curtail any program.

Just how we want to wake up in the morning --

(General laughter.)

MR. ECCLES: -- is with a lawyer giving you that kind of caveat.

MR. GOODWIN: Thank you.

MR. ECCLES: But I did think it was important to say, and I would also like to congratulate cedar pollen on its triumphant return --

(General laughter.)

MR. ECCLES: -- to Central Texas, which explains my voice. Thank you.

MR. GOODWIN: Explains my voice too. Do I hear a motion to approve the Consent Agenda and report items?

MR. VASQUEZ: Move to approve.

MR. GOODWIN: Moved.

Seconded?

MS. BINGHAM ESCAREÑO: Seconded.
MR. GOODWIN: Moved and seconded. Any discussion, or any comments?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(NO response.)

MR. GOODWIN: Okay. We will move onto the action items. And I think we start there Mark, with you.

MR. SCOTT: Good morning. I'm Mark Scott, Director of Internal Audit.

At the Audit and Finance Committee meeting this morning I discussed the audit of the contract for deed conversion program.

And the program had been set up in response to a sunset recommendation, and in our audit testing and review of the programs' accomplishments, we found that the program generally accomplished its mission, and we did not have any compliance findings.

Let's see. On the -- at the audit committee -- the Audit and Finance Committee, earlier this morning, I talked about the peer review and the contract for deed conversion audit, as well as recent external audit activities. Ernie Palacios presented the budget, and the computations of the unencumbered balances for

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housing finance.

Those are also being audited by the State Auditor's office, and their report is scheduled for around December 20.

So I'll stop there for a second. Is there any questions?

MR. GOODWIN: Any questions?

Ms. Thomason, any comments, chair of the audit committee?

MS. THOMASON: Our meeting only lasted about 20 minutes, just --

MR. GOODWIN: Okay.

MS. THOMASON: -- about that challenge for you today.

MR. SCOTT: Okay. The next item is an action item. On the peer review of the internal auditing program at TDHCA, we actually received the top rating in every category. They were especially complimentary of the Audit and Finance Committee.

At the committee meeting I requested and received approval to recommend acceptance to the full Board, so at this point I'm asking for a vote of acceptance of the external peer review of internal audit that was done by Postlethwaite & Netterville.

MR. GOODWIN: Okay. Motion?
MS THOMASON: I'll make a motion.

MR. GOODWIN: So moved. Second?

MS. BINGHAM ESCAREÑO: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. The motion passes.

MR. SCOTT: Thank you very much.

MR. GOODWIN: Thank you, Mark for the great job that you do.

MR. SCOTT: Thank you.

MR. GOODWIN: Moving on to Item Number 5, Marni?

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

Item 5 is the Presentation, Discussion and Possible Action on an Order Adopting the Amended 10 TAC Chapter 13, concerning the Multifamily Direct Loan program Rule, and directing its publication in the Texas Register.

The Department will be administering at least four sources of funds for direct loan awards in 2018, and will be taking up the 2018 NOFA later on in this agenda.

The Board approves the draft of the Amended
Multifamily Direct Loan Rule at the October 12 meeting that was published in the Texas Register for comment.

Two comments were received from one commenter, and staff is not proposing any changes as a result of those comments.

Staff recommends that the Final Order adopting the Proposed 10 TAC Chapter 13 concerning the Multifamily Direct Loan Rule be approved for publication in the Texas Register.

MR. GOODWIN: Do I have a motion?
MR. VASQUEZ: So moved.
MR. GOODWIN: Second?
MR. BRADEN: Second.
MR. GOODWIN: Moved and seconded. Any comments or questions?
(No response.)
MR. GOODWIN: All in favor, say aye.
(A chorus of ayes.)
MR. GOODWIN: Okay.
MS. HOLLOWAY: Moving on, Item 6(a) is Presentation, Discussion and Possible Action regarding the Issuance of Multifamily Housing Revenue Bonds (Vista on Gessner) Series 2018. Resolution No. 18-012 and a Determination Notice of Housing Tax Credits. Vista on Gessner is located in Houston. It is an
acquisition and rehabilitation transaction of 805 units serving the general population.

All of the units will be rent- and income-restricted to 60 percent of the AMI.

This transaction involves a Fannie Mae, Multifamily Pass-Through Mortgage-Backed security. This is a structure the Department has utilized for prior transactions, but it differs in that financing necessary to complete this transaction exceeds the amount of tax-exempt debt the Department can issue.

The next amount of tax-exempt bonds that we can issue is 50 million, which leaves the Department short by one and a half million. (Coughs.)

Thank you, cedar pollen.

(General laughter.)

MS. HOLLOWAY: As a result, the transaction is structured with one loan for 50 million that will be originated by the Department to the Borrower, funded by tax-exempt bond proceeds, and a taxable mortgage loan for two and a half million by the Fannie Mae lender, which would be RED Mortgage Capital.

As described in the finance and structure section of your board item, the two loans will be secured on a parity basis and cross-defaulted.

The project will be 100 percent cash
collateralized at all times, and payments will be
guaranteed by Fannie Mae.

The interest rate is estimated to not exceed 5 percent, with a maximum term of 18 years and an amortization of 35 years.

A public hearing was conducted November 14, with approximately 30 people in attendance, including State Representative Gene Wu.

Eight individuals provided comment and the transcript is included with your Board item.

The Department has received a letter of opposition from the Sharpstown Civic Association.

A certificate of reservation was issued in the amount of 50,000 for Vista on Gessner on September 25, with a bond delivery deadline of February 22.

Staff recommends approval of Resolution 18-102 for the issuance of up to $50 million in tax-exempt Multifamily Housing and Revenue Bonds for Vista on Gessner, and the issuance of a determination notice of $3,499,967 in 4 percent housing tax credits, subject to any underwriting conditions.

I need to mention that the determination notice amount differs from what was published in your book, due to some later underwriting action.

MR. GOODWIN: Okay. Do I hear a motion to
approve staff's recommendation?

MR. BRADEN: So moved.

MR. GOODWIN: So moved. Second?

MR. VASQUEZ: And seconded.

MR. GOODWIN: Okay.

Questions?

(No response.)

MR. GOODWIN: Any comments?

MS. HOLLOWAY: If I can point out just briefly --

MR. GOODWIN: Sure.

MS. HOLLOWAY: This will be the second year we don't have confirmed numbers that our 4 percent of bond program has exceeded production on the 9 percent side. Theresa, who had a flat tire so she can't be here, but she will be here later. How much I appreciate all of the effort that she puts in making sure that these deals run smoothly through the pipeline, and you'll note on the Consent Agenda there was a big bunch of determination notices. So --

MR. GOODWIN: Good. Okay. All in favor say aye?

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)
MR. GOODWIN: Okay. Moving to 6(b)?

MS. HOLLOWAY: Moving to 6(b). This is Presentation, Discussion and Possible Action on a request for the extension of the placement in service deadline under 10 TAC 11.65 of the 2017 QEP, related to credit returns resulting from force majeure events.

This first item is for Application 15241, Trails of Brady. This development was allocated $757,343 in 9 percent housing tax credits during the 2015 cycle.

The carrier for allocation agreement executed on December 28 included a certification from the development owner that each building for which the allocation was made will be placed in service by December 31, 2017.

On December 1, the Department received a request to extend the placement in service deadline under the requirements for credit returns resulting from force majeure events. This rule allows the development owner to return 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 the subsection are met.

The owner has provided evidence of significant and unusual rainfall, along with labor shortages that have significantly slowed their progress to completion.
Staff recommends approval of the Request for Treatment of Trails of Brady under an application of the force majeure rule, and that the placed-in-service deadline be extended until March 30, 2018.

MR. GOODWIN: Are you gentlemen to talk on this issue or the next one?

MR. CHILDRE: Yes, sir. This one.

MR. GOODWIN: Oh this one? Okay. So then I'll accept a motion to hear comments.

MS. THOMASON: So moved.

MR. GOODWIN: Second.

MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: Okay. All in favor, say aye.

(A chorus of ayes.)

MR. GOODMAN: Okay. Opposed?

(No response.)

MR. GOODWIN: Okay. So we will start to hear comments on 15241.

MR. CHILDRE: Yes, good morning. I'm Dru Childre, the developer of the project. And good morning Chairman, board members, Mr. Irvine.

And I just want to come up here and just let you know that we're here: the developer, the construction company's here to answer any questions or give you any information that you need.
I want to say thank you to staff, and I really appreciate your recommendation. And that's all I have.

MR. GOODWIN: Okay. Any questions, for --

(No response.)

MR. GOODWIN: Okay. Not hearing any, any other comments?

(No response.)

MR. GOODWIN: If not, we'll take a motion to approve staff's recommendation.

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you sir.

MR. CHILDRE: Thank you.

MS. HOLLOWAY: Still on Item 6(b), this is the same type of request for extension under the force majeure rules for Application 15247; this is City Square Lofts.

This development received an award of $893,609.
in 9 percent tax credits in 2015. The carryover agreement was executed on December 17th.

The development owner submitted a request on June 30, 2017, to remove Green Extreme Homes Community Development Corporation from the ownership, and the request was approved by this Board at its September 7, 2017, meeting.

For purposes of this board item, the development owner is RISE Residential Construction. RISE and Green Extreme had reached a settlement on September 30, 2016, that removed Green Extreme from the structure.

The owner closed their financing on September 30, 2016, approximately five months later than what would have been expected, due to the issues between parties and the ownership structure.

The owner started demolition on the development site in October 2016, but was not able to begin vertical construction until the City of Garland abandoned a street, which happened on February 12, 2017.

The plat was finally approved and the construction permits were issued on July 14, 2017, so almost two years after the initial award.

Once construction started, the owner claims that it was delayed 16 days by rain and was negatively impacted by a labor shortage. When requested by staff,
the owner did not provide specific evidence of how these events delayed construction.

On October 31, 2017, the owner submitted a request to extend the placement in service deadline under the requirements of the QAP related to credit returns, resulting from force majeure events.

According to communications from the development owner, the number one reason for the construction delay was litigation among the members of the general partner entity.

Accordingly, the question presented to the Board is whether the disagreement and resulting litigation constitutes sudden and unforeseen circumstances outside the control of the development owner, which is a requirement of the force majeure rule.

Other than in situations covered by force majeure, the department does not have authority to extend federal deadlines for placement in service, and it is questionable whether the events described in the request meet the requirements for force majeure.

Staff is unable to conclude whether the facts and circumstances presented fulfill the requirements of the force majeure provision, and places the matter before the Board for its determination.

MR. GOODWIN: So no staff recommendation?
MS. BINGHAM ESCAREÑO: No recommendation.

MR. GOODWIN: Okay. Do I hear a motion to hear comments? I see that we have people here who want to speak.

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: So moved. Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Moved and seconded, so we will hear comments regarding this before we make a determination.

MS. FISHER: Good morning. Melissa Fisher here on behalf of the developer, RISE Residential.

I just wanted to read a few things into the record.

So a way of introduction, the RISE Residential Team has developed, successfully constructed and developed 24 affordable properties, translating to 4,138 units to the State of Texas since 2003.

Not once have we asked for an extension on a 9 percent transaction until today.

We're here today to respectfully request that extension of the 12/31/2017 placed-in-service deadline, for City Square Apartment Homes in Garland, Texas, due to the effects of several force majeure events including litigation, weather and labor shortages in Dallas County.
To set the stage, the time line is as follows:
July 2015, allocation awarded; three weeks later, August 6, we purchased the land and building; $5 million. Fast forward 13 months, September 2016, delayed one year due to litigation with our original nonprofit partner.
And in October we did, as Marty said, begin construction on the rehabilitation project.

So first, let's talk about litigation.

Litigation as a force majeure event in the QAP. Conflicts arose in 2015 between RISE and our original partner, which impeded our ability to move forward while involved in litigation, and then with the nonprofit partner, they had threatened to return the credits to the Department against our wishes.

They also contacted the City with the intention of thwarting the project from that perspective. TDHCA staff was involved in and aware of this dispute and subsequent litigation with our partner.

In light of the conflict, the initial investor retreated, and obviously refused to close with the problem partner involved.

After months of negotiation, we finally agreed to pay the partner $700,000 to walk away and finally allow us to close the transaction, which we did on September 30, 2016, over one year behind our usual schedule, but in the
spirit of adherence to obligation.

The delay is fundamental to the need for this extension as allowed in the QAP.

Why did we not encounter this problem in the past? In our 15 years of exclusively developing affordable housing RISE has delivered, as I said, 24 fully-leased, compliant properties. In those to receive the allocation, close the transaction before award year-end, and get to work with a full 24 months to go.

That wiggle room is why we never had this issue before. As a recent example, the 2016 allocation we received for Indian Lake Apartment Homes that you so generously awarded us last July for -- in the Rio Grande Valley, is 100 percent complete this month.

Second, weather delays. So the project site was shut down due to rainfall for 32 days since we began. The substantial rainfall in the first phase of construction impeded our ability to pour foundations, do dirt work, obviously integral to the first months of construction.

Also with the severe flooding this summer, followed by Hurricane Harvey in August, which led to disaster declarations, we were delayed in our laborers' spread to other pieces of Texas.

Dewey Stevens will talk more into specifics to this development in a few moments.
Third, labor shortages. Labor shortages are defined in the QAP as event of force majeure, which allows for the extension of time.

Most of Texas has seen a severe shortage of labor availability. The hardest-hit areas in DFW were 56,000 units that are under construction right now. Our labor base isn't even close to being able to keep up. Where we would have had 60 skilled trades onsite, we may now have ten at a time.

A few relevant quotes from area publications:

*Dallas Business Journal*, "In 2016, 75 percent of all GCs reporting an inability to completely staff construction on their projects. Dallas is in the top U.S. markets impacted by these factors, with 15 percent of the apartments delayed into 2018."

*Dallas Morning News*, "Dallas is undersupplied by 18,000 to 20,000 construction workers today."

As far as timely notification, when we first -- we did first notify staff in July of this year that we would likely need an extension based on these events. It was decided by staff that the best time to formally make your request was after the GC knew for sure when we would be substantially complete. In September we formally requested that extension, and resolved the nonprofit issues.
So to deny our request today, and recapture the credits would be terminal for us. We specialize in affordable development; we have no other outside pursuits, outside of the industry.

Having already put close to $10 million into this project, pulling funding now would bankrupt the project, likely our company; it would also eliminate a Texas-based company that provides hundreds of jobs to Texans every year; and a company considered by the investment community as one of your most active and reliable, affordable developers in the state.

In light of the unforeseen litigation, weather, labor shortages, we hope that you agree that these delays were completely outside of our control.

It seems clear, based on the facts before you, that this development does meet multiple criteria to qualify under the QAP for this extension, under the force majeure provisions.

Thank you very much. I'm going to hand it over to Kent Conine to talk about labor shortages, but I'll be close if you have any more questions.

MR. GOODWIN: Let's see if there are any questions before you leave --

MS. FISHER: Sure.

MR. GOODWIN: -- I have one question. I think
you made the statement in there that litigation is seen as
a *force majeure* item in the QAP. Is that accurate, Beau?

    MR. ECCLES: It is listed amongst those things.

    But --

    VOICE: Please use the mic.

    MR. ECCLES: Oh, I'm sorry. Litigation is one
of the matters that can be considered a *force majeure*, but
there are a couple of aspects of that that need to be
considered.

    One is the causation. The credits were returned
as the result of a *force majeure* event. But *force majeure*
events are "sudden and unforeseen circumstances outside the
control of the development owner."

    MR. GOODWIN: Okay.

    MR. ECCLES: And that can include acts of God
such as fire, tornado, flooding, significant and unusual
rainfall, or subfreezing temperatures, or loss of access to
necessary water or utilities as the direct result of
significant weather events; explosion, vandalism, orders or
acts of military authority, litigation, changes in law,
rules or regulations, and it goes on from there.

    MR. GOODWIN: Okay. And my second question is,
I understand the project is under construction currently?

    MS. FISHER: It currently is. Yes.

    MR. GOODWIN: When will it be -- what is your
schedule completion date for in-service?

    MS. FISHER: Well, since we submitted our
extension request, and we didn't know if we were going
forward, we probably have lost two months. We've been
working, but I think outside of that, it would have been a
six-months, but with that two-month delay, I would say
eight.

    But we will take July, and we'll take six
months, we can pull it together if that's what needs to
happen.

    MR. GOODWIN: Well, I understand "take," but
when do you project that it will be in service, so --

    MS. FISHER: It will be in service within eight
months.

    MR. GOODWIN: With the eight months --

    MS. FISHER: Yes.

    MR. GOODWIN: -- so by September 1 --

    MS. FISHER: Absolutely. We'll be all running
online.

    MR. GOODWIN: Okay.

Other questions?

    MR. BRADEN: Mr. Chair?

    MR. GOODWIN: Yes?

    MR. BRADEN: So was a lawsuit actually filed?

    MS. FISHER: Yes.
MR. BRADEN: Who filed the lawsuit?

MS. FISHER: I'll let John, our counsel, speak more to the specifics of that. But I can definitely say, it was unforeseen. We -- you know, we entered into an MOU with a partner, and we had an application that was approved, and we wanted to move forward with that project.

And they didn't -- you know, they wanted to change a few things, and you know, we are under the obligation to deliver to the State what we promised.

And they were making that impossible for us. So it was unforeseen, there was a lot of litigation, very expensive, timely litigation that went on.

MR. GOODWIN: Other questions?

(No response.)

MR. GOODWIN: Nothing? Do you want to have John come up next, or --

MS. FISHER: I think we'll let Kent speak first if you don't mind.

MR. GOODWIN: Sure. Okay.

MS. FISHER: And then John -- John will speak next.

Thank you.

MR. GOODWIN: Sure.

(Pause.)

MR. GOODWIN: Sorry, Kent.
MR. CONINE: Good morning, Board members. My name is Kent Conine, for those of you that I have not met. I'm a builder-developer from the Dallas area, and past president of the National Association of Home Builders, and a past board member of TDHCA for some 15 years.

And I want to say to all of you, thank you for your service. I have an idea what you go through on a monthly basis, and the service to the State is in the end result is definitely worth the -- doing and spending your time doing it. And I want to thank you for that.

I wanted to address the current labor shortage in the DFW area, if I might. Based on some surveys that the Dallas Builders Association had done with the Meyers Group, which is a nationally recognized consulting firm, the industry -- construction industry is undersupplied in the Dallas area by some 20,000 construction workers, with the demand in the area.

We have 80,000, we need 100,000, basically. I've been building multifamily projects in the DFW area since the late 70s, and I've never seen both the single-family construction business and the multifamily construction business so busy at the same time.

Typically when the single-family market is up, the multifamily market's down and vice-versa, and that's how the labor supplies have been able to accommodate the
demand, but both of them are hotter than a firecracker in
the Dallas area.

And it's one of the first times I've seen that
happen in my years in the industry.

The construction industry also continues to rely
a lot on immigrant labor; many of those workers left the
industry during the last recession, and have not returned, especially with the -- President Trump getting elected, and
his tightening down the border and so forth, it's certainly
created a problem.

According to the National Association of
Homebuilders there are 2.3 million foreign-born workers in
the construction business nationwide, which is 500,000 less
than what we had in 2007.

Permits continue to be high; as I said, in both
single-family and multifamily. And [to] also exacerbate it
is the fact that the millennial population, the new younger
kids that are graduating from high school and getting in
the industry, are not populating the construction industry
like they used to.

If you look at historical standards, 35 percent
of the entire construction worker base should be made up of
the kids that are entering the industry that are under 30
years old. Today that number is 25 percent.

So we have our kids not getting into the
industry, we have the foreign workers not there, and we have a huge demand going on at the same time.

In Dallas you can drive by many houses and subdivisions and apartment complexes and see the buildings that have been framed up, roof's on, and no brick on.

The masonry shortage is just unbelievable. You can't imagine how tough it is, and what price you have to pay, to get a brick mason to show up on a job these days.

As a former board member of TDHCA, these are the kind of circumstances that arise when the Board can use its discretion to meet the objective and mission of the partner, which is to provide an adequate supply of affordable housing to the citizens of Texas, using as many federal resources as efficiently as possible.

The QAP gives the Board the specific authority to grant place in service extensions due to force majeure, and I believe, based on my past experience, this qualifies for one.

Current construction contractors for multifamily work that I talk to are now projecting 20 to 24 months to complete a project on jobs that used to take 12 and 18 months.

Strictly, there is a construction labor shortage. Based on all these factors combined, I respectfully request that the Board grant the extension of
the placement in service date for the City Square Apartment Homes in Garland, and I'm here to answer any questions.

MR. GOODWIN: Any questions?

(No response.)

MR. CONINE: Thank you --

MR. ECCLES: Actually --

MR. GOODWIN: Oh -- Beau.

MR. ECCLES: Mr. Conine, I heard you speak generally about surveys, and I believe that there are some articles that are attached. Has any specific evidence of -- the credits need to be returned in this project as a result of labor shortages in this project.

Like evidence from the general contractor that certain trades were not available.

MR. CONINE: I bet Dewey will be able to answer that question. I was just here to speak on the general construction labor shortage in the Dallas-Fort Worth area.

The market seems to be hurting all over the State, you know, to be honest with you, but it's more acute in the Dallas area than most. I'll let Dewey address that.

MR. VASQUEZ: I do have a question I just have to ask.

MR. CONINE: Sure.

MR. VASQUEZ: For clarification, just -- and again all due respect to your presentation -- but did you
just make an argument to this Board that we have a labor shortage because we do not have enough illegal alien labor force in the area?

MR. CONINE: No, that's not what I said. I said foreign-born workers; that we have a shortage of foreign-born workers.

They get here by numerous ways, most of them legal, some of them probably illegal, but -- and I certainly don't want to comment on the illegal workers in this country, because I don't know -- you know, I have no idea how to quantify that.

But most of the foreign-born workers that we use, those numbers have -- are quantified on a national basis, and we're a half a million under what we were in 2007.

MR. VASQUEZ: Okay. So illegal, undocumented, foreign-born -- just another euphemism.

MR. CONINE: Well, I'd make the argument --

MR. VASQUEZ: It just seems like that was the argument.

MR. CONINE: I would make the argument legal foreign-born. The ones -- you know, we have to turn in Social Security numbers and the like, and you know, try the e-verify system, and -- I would try the legal side of the equation because that is also an important factor in the
construction industry.

We get a lot of legal foreign-born workers in the construction business here.

MR. VASQUEZ: And again, despite that segment of the argument, you recognize that there is labor shortages across the state.

MR. CONINE: You bet.

MR. STEVENS: Good morning. My name is Dewey Stevens, I'm the operating officer for RISE Construction. So I'm not sure that there's a lot that I can add to what Melissa and Kent spoke to, but there's a compounding element in city laws.

We have two different types of construction: we own the residential, which is the 80 new units; and the City of Garland has mandated that we do the tower as a commercial application.

This is more of a specialized labor, more highly qualified, we use different types of equipment, special -- in the MEPs and such. There is a significant demand -- and probably more so than there are for the residential labor.

Other issue is that the size of the project being reduced, say one to 80 units, the other to 46, is it diminished our ability to attract large contractors. Large contractors are going to go where there's 500, 600,
700 units.

It minimizes their costs with respect to general conditions, mobilization for -- it stabilizes their workforce and such. So we have to drag in and cobble together, and what we've done as the general contractor Melissa alluded to, we've been in this business 15 years, and we have built in some very tough communities: Midland, Texas, four years ago. Who knows what else goes on in Midland.

And how the general contractor has to function with respect to how you cobble together different subs; you bifurcate contracts, you multiply the contracts to a particular discipline, to try to accelerate the schedule.

I'm an old student housing builder for anyone that understands what student housing is, it is a drop-dead schedule and you have no option to make it.

And with that, you have to use all your imagination, all the tools available, and fortunately, RISE is -- has the experience not only in its upper echelon, but also the people that we have working for us in our project managers and superintendents have participated in this, and much of them are student housing builders.

A lot of them have been under the gun, we've closed deals and we've had five months to get it back in service, in South Texas. So we understand what is required
to do this and how to cobble things together; how to put pieces in place, and how to work the puzzle.

But I don't think there's much more than I can add, other than -- there's one more compounding effect just with respect to labor. Just to -- and Kent mentioned Dallas-Fort Worth.

As the rest of the country expands and as it continues to grow, it will -- because most of these builders are national builders, they'll go anywhere and everywhere. And I hate to say they surf for dollars, but that's the reality.

If I can get a $1 a foot in Texas, I can get $1.20 a foot in Florida, I'm heading to Florida. So as the economy expands in the rest of the country, we can expect to and see a diminishing of the labor -- in Dallas-Fort Worth and particularly the whole State of Texas.

Because now we've got -- the hurricanes have occurred here, and the flooding occurred here several months ago. Once Houston and the surrounding areas start to weave back -- to engage that labor force, we expect to see a diminishing labor force in Dallas-Fort Worth.

So, I'll be glad to take any questions --

MR. GOODWIN: Dewey, I'd like to hear you address Beau's question which is, relative to this project, can you point to labor shortages that have happened?
Isn't that what you asked, Beau?

MR. ECCLES: Yes, in particular --

MR. GOODWIN: Not in general, but specifically.

The concrete people that were supposed to show up with 20 workers show up with five, or --

MR. ECCLES: And what delay that caused in this project.

MR. STEVENS: Well, the labor force, you mentioned 20 so we'll stick with the 20. You have -- you're scheduled to pour X amount of yards of concrete. If you have to cut your labor force in half, to say, 10, which is often the case, up to a point maybe even more than that.

That you cannot pour -- place 250 yards of concrete. You can place 100. So that extends the time; instead of doing X in one day, you're doing X in three days. And that extends all the way through, not only from the site development all the way through the finish ends.

Because everyone is diminished in labor. No one has a sufficient labor count. In fact, it's probably 60 percent less than what we need.

And go back many years ago, it wasn't unusual to see, in the height of a major construction project -- to see 300 or 400 people onsite. You know, going back ten years ago.

But the reality, if you see 50 or 60 people
onsite, I would consider ourselves to be fortunate. And we're often having to cobble together, bringing multiples to try to accommodate that shortage.

MR. ECCLES: But I think that the question isn't theoretically how it works. I think the question is, can you provide one or two concrete examples -- not necessarily relating to concrete --

(General laughter.)

VOICE: Good point.

MR. ECCLES: -- of situations where an actual labor shortage was observed impacting this development.

MR. STEVENS: Yes. Concrete is a great example. Site work is a great -- utilities. You simply do not have enough people to work the equipment. You use site work for example. Where if you have -- normal site work would take ten pieces of iron, ten pieces of equipment.

If you don't have people to put on the equipment, you simply can't operate.

MR. GOODWIN: So are you saying that you didn't have ten pieces of equipment, you had five --

MR. STEVENS: No, I had ten pieces of equipment, I had five people. So I do not have enough people --

MR. GOODWIN: On this project?

MR. STEVENS: Yes, that's correct.

MR. GOODWIN: Okay. That's what I think we're
looking for --

MR. STEVENS: Oh, okay. I understand. Well, everything that we've done up to this point has been a labor shortage, and we're flaming.

Where we should have 40 or 50 framers in a variety of wall framing, truss framing, decking and all of the processes that go with framing, we are short 50 to 60 percent of the people.

Now, the reality is, what affects us is these guys trying to satisfy their customers. So instead of getting a five- or six-day work week, we're getting a three-, three-and-a-half-day work week, because they're trying to satisfy another customer.

They're going to Kent's job.

MR. GOODWIN: Okay.

MR. VASQUEZ: Another question. I have one more question.

MR. STEVENS: Sure.

MR. VASQUEZ: Do you all have any other projects going on in the area?

MR. STEVENS: We do. We're about to start -- I have one in Greenville; I have one in -- Melissa mentioned, down in South Texas which is finished; we have the Rowlett project we'll hopefully start in the next several months.

MR. VASQUEZ: Are we not going to expect that
you guys are going to come back to us again with the same issues on these other projects?

MR. STEVENS: Well, I don't think we'll have the initial delay. We close -- Melissa alluded to the fact, we close quickly. We understand the priority to get out of the gate, and get out of the gate quickly.

As Kent alluded --

MR. VASQUEZ: So -- excuse me. So these problems, the labor shortages are in the past. It's not now going forward.

MR. STEVENS: I think we have accommodated for the labor shortages. Kent alluded to, we used to build in 12 -- take a 200-unit project, we could build in 12, 14 months. It's now 20 to 24 months.

There's not anything that we can do about it. The labor shortage has impacted everyone.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Thank you, Dewey.

MR. STEVENS: Thank you.

MR. GOODWIN: John, did you want to wrap up?

MR. SHACKLEFORD: Thank you, Mr. Chairman, members of the Board, Mr. Irvine and Mr. Eccles.

John Shackleford, here on behalf of the developer.
You know, sometimes as an attorney you touch a file and you do it sort of lightly; and in others you are all-in and you spend a lot of time with it.

This is one of those that you spend a lot of time on it. You asked sort of how this came about, if this was sudden and out of the control of the developer. And I can assure you, it was.

Before a developer goes into a deal with a nonprofit entity, such as what we had with Green Extreme Homes, they had an agreement; they had what was called an MOU, Memorandum of Understanding. Unfortunately, that was negotiated with a different attorney; the -- Green Extreme Homes decided they didn't like the terms of that deal, they went and sought other counsel, Mr. Palmer, his office.

Mr. Palmer's office worked extremely hard trying to help their client get to a position that -- they were satisfactory, we worked extremely hard on behalf of RISE.

But I can tell you, that was -- took an inordinate amount of time. RISE spent more money on attorneys' fees to get that deal closed, than I've ever charged a client on any other deal before.

Because you put the application in, you get to, you know, be awarded in July 2015, we think we're ready to go, and then the co-partner ends up deciding the terms weren't to their satisfaction, they changed attorneys, that
takes delay, so it created a lot of issues, totally beyond the control of RISE.

I can assure you, it was totally beyond the control of RISE. And so we think we do satisfy 11.65(a) as far as this being in litigation.

Not only that, but we also had in this instance, RISE and Green Extreme or an affiliate of theirs had entered into an arrangement for not only just the Garland deal but two other transactions, and so it affected three relationships, three different transactions, and that compounded the litigation and trying to get a settlement with Green Extreme on the Garland transaction is why it took until September 30, 2016, before we could finally reach an agreement with them.

And what that does is, when you have one partner not willing to go forward in the deal, or threatening not to go forward, threatening to turn the credits in, that we can't end up finding the common ground, no investor's going to touch you; no lender's going to touch you.

They're going to wait and see, are you going to get your matter resolved. We were keeping TDHCA abreast; I have contact with Marni from time to time at these board meetings.

She would say, You guys going to be able to get your deal worked out? You guys going to be able to make
it? Just keeping her informed.

Sometimes it got a little contentious between us and Green Extreme. I had to end up writing a letter -- a couple of letters, I think to Mr. Irvine, putting them on notice that at that time Green Extreme was not in the organizational structure, but they had the MOU and they have certain rights, but they couldn't speak on behalf of us, and so if they were trying to have unilateral conversations with TDHCA people, that we needed to participate; that kind of thing.

So we felt like we were trying to keep everybody abreast. As soon as we -- you know -- got permits, Mr. Fisher sent an email to Rosario Buenos, on July 17, saying it doesn't look like we're going to be able to meet the -- keep the service date deadline.

He said, Let's wait until you guys can move to get Green Extreme Homes out of the transaction completely. We then set about doing that. Staff was great working with us; you guys approved that in September 2017.

So I feel like in this instance, knowing what I know about all of the peculiars that went on, day to day for well over a year in trying to work out an agreement with Green Extreme Homes, there was nothing RISE could do.

And what they ended up doing was writing a check for $700,000, which I'm sure several people sitting
behind me are thinking, My Gosh. They wrote a check for
$700,000 to have these people go away.

But that's what we did. But thankfully between
Mr. Palmer's office and our office Green Extreme and RISE
working together, we found we were able to make an
arrangement, and I'm confident that this project will get
done.

I sit on the board of a bank in Garland, Texas; two of the board members, one's a former city council member, and I can tell you, they're extremely excited to take what used to be a rundown old Bank of America building in, you know, downtown Garland, and have it turned into residential property.

So they're extremely excited to have this project going forward, and I would respectfully request that you grant the extension. Any questions?

MR. GOODWIN: Okay. Any questions?

MR. BRADEN: Yes. So who filed the lawsuit?

MR. SHACKLEFORD: Green Extreme filed a lawsuit in connection with -- we had the three transactions, Green Extreme filed a lawsuit.

MR. BRADEN: What was the name of the entity that received the original allocation?

MR. SHACKLEFORD: I think TX Garland Apartments, L.P., which is a Texas limited partnership that our law
firm formed, we formed the general partner entity.

MR. BRADEN: And Green Extreme was the general partner of the general partner entity, or what was --

MR. SHACKLEFORD: Well, typically, what we do is, they weren't in the -- well, they were in the organizational structure for purposes of showing who all's going to be the partners in the transaction.

But until right before getting to closing, they had not been formally admitted into the partnership.

MR. IRVINE: They would be the co-GP.

MR. SHACKLEFORD: They would be the co-GP, at the closing of the transaction with the investor and the interim construction lend.

MR. BRADEN: What I'm trying to figure out is, the applicant, the entity that received the original allocations, was the litigation between controlling entities of that entity?

MR. SHACKLEFORD: Well, we had a nonprofit that had 95 -- upon admission into the partnership would have 95 percent ownership of the general partner entity, and RISE would have a 5 percent ownership interest --

MR. BRADEN: Right. I understood that.

MR. SHACKLEFORD: Right.

MR. BRADEN: But why isn't this just a fight among the applicants' control parties; why is that beyond...
the control of the applicant if their owners are fighting?

    I mean, I understand it's not fair to the one,

to RISE. But they were fighting among themselves,
and the -- from our perspective, the applicant is the
applicant.

    MR. SHACKLEFORD: That's a good point. So I
address it this way: In 2016, in -- September 30, 2016,
when RISE works an arrangement with Green Extreme, they go
out of the deal.

    They're not the applicant anymore. They're not
in the deal. Because of the delay though in getting
started, all that had a trickle effect in causing the delay
with everything else.

    We couldn't move forward with the City of
Garland on the abandonment, I had the mayor of Garland
calling me, saying they were going to move forward on this
until the thing got resolved.

    So on September 30, 2016, no longer is Green
Extreme partner of the applicant. So it's not any more
than a fight between the owner. But because of that fight
between the owner, that litigation, it created a ripple
effect down the line that we couldn't move forward with the
City of Garland.

    We couldn't get the abandonment, so we couldn't
go vertical. All we could do was the demolition.
MR. BRADEN: So you're saying -- so originally it was a fight between the owners, but at some point they settled, and the applicant -- the current applicant, it wasn't -- it's not a fight between the owners of the current applicant, but the delay was caused when they were both controlling the applicant.

MR. SHACKLEFORD: Correct.

MR. BRADEN: That seems a bit of a stretch in terms of the litigation for force majeure.

MR. GOODWIN: Other questions?

MR. VASQUEZ: Can one of you more clearly express to us -- if we don't take this stretch, this leap, what is truly the impact to your company, the organization? Or the -- I guess the project, and then by extension the -- what happens to the company and all of the other projects that you have going.

MR. SHACKLEFORD: Well, I can let Ms. Fisher address what it does to the company at their level, but on the legal level, the taxpayer-investor declares a default, and pulls out; makes a demand for their money back.

And as, I think it was testified to a little bit earlier, our -- my client's $10 million into the deal at this point.

So it has significant consequences. I think Ms. Fisher used the term, "terminal." So essentially
that's what it is.

MR. VASQUEZ: The two projects?

MR. SHACKLEFORD: On the economic level, it's a fatal blow to it.

MS. FISHER: To your point, I would add, yes. This project would go away, which would affect the project itself, the City of Garland I think would be very upset because as John said, they're very excited about it, and we work very closely with the city. This has been a long time coming.

The ripple effect for our other deals I think is what you're interested in. I think we have two other bond deals that are closing next week. I don't think that we would continue to operate. So those would definitely be in jeopardy.

MS. BINGHAM ESCAREÑO: Melissa, I have a question.

MS. FISHER: Sure.

MS. BINGHAM ESCAREÑO: Green Extreme, had they partnered in any other affordable development? Did they have any track record?

MS. FISHER: They did not. This was their first bite, and we were really excited about it. I mean, because they were very successful in the -- you know, the energy realm, they had great -- subpaneling, was that it? --
subpaneling of -- you know, add that into -- incorporate that into the Garland project and its great cost savings. Anyway, we were very positive about that partnership, and because it was their first round, I just think that they weren't ready. And it just didn't work out.

MS. BINGHAM ESCAREÑO: And can I ask you too, did you say that their -- they had an MOU to begin with, that had terms, and then somewhere along the line when it came to actually executing a full agreement, they had issues?

MS. FISHER: Right. We had a signed agreement. We had a signed MOU, to move forward. As we said, our plan was to close in three weeks. It might have taken a little bit longer with the equity investors, but we obviously went through with our plans, purchased the property, $5 million, we obviously expected this deal to pan out the way we expected it to, with our partner.

Because we did have a signed MOU. We would not have purchased that property without a signed MOU to begin with. So yes, we thought we had an agreement. And as John said, they recut the deal -- they wanted -- they changed lawyers. I guess they talked to someone and said, We can get more money.

And as you see here, we gave them quite a bit of
money for actually doing nothing, ultimately, so the deal
would have been better if they had stayed in.

  MS. BINGHAM ESCAREÑO: But those were the --
  those were kind of where it fell apart --

  MS. FISHER: That's where it fell apart --

  MS. BINGHAM ESCAREÑO -- they decided they
wanted a bigger stake?

  MS. FISHER: They changed their minds.

  MS. BINGHAM ESCAREÑO: Okay. I'm not going to
speak for my fellow Board members but this is what it
sounds like to me. It sounds like we're struggling -- I
mean, this is going to sound terrible, right? This is
going to sound parental. But you picked a bad partner --

  MS. FISHER: Right.

  MS. BINGHAM ESCAREÑO: -- and I think we're all
struggling with why that's force majeure. Right?


  MS. BINGHAM ESCAREÑO: And as horrible as that
sounds --

  MS. FISHER: Yes.

  MS. BINGHAM ESCAREÑO: If there were -- I mean,
I'm leaning a little bit more toward the labor issue; the
only problem with the labor issue is, I'm not sure it
answers the entire delay.

  MS. FISHER: Uh-huh.
MS. BINGHAM ESCAREÑO: I mean, it sounds pretty obvious to me that your biggest piece of your delay was because of this issue with the -- with Green Extreme. Right?

MS. FISHER: Uh-huh.

MS. BINGHAM ESCAREÑO: So --

MS. FISHER: I see your concern.

MS. BINGHAM ESCAREÑO: -- I think that's where we're stuck. But --

MS. FISHER: I see your concern. But I do think that the litigation is absolutely -- I think it absolutely falls within the force majeure terms because there was litigation, it was unforeseen, it absolutely impeded our ability to successfully run the closing, run the deal.

They literally went to the City of Garland and interfered with the project. So much that the City of Garland came to us and said, We're not working with them. We feel like they've lied to us. We're not going to do the deal with them in it.

They were talking with staff and TDHCA, saying that they wanted to return the credits. Which is absolutely -- never done that. And we were completely against that.

So as you can see, they were doing things that were out of our control, trying to interfere with our
ability to just do what we promised you guys that we would do. And it was based on litigation --

MR. VASQUEZ: Could -- I'm sorry to interrupt, but I think --

MS. FISHER: Sure.

MR. VASQUEZ: Okay. Could I ask our counsel --

Look, all right -- well, maybe one of the two-part question.

MR. ECCLES: Okay.

MR. VASQUEZ: The first -- do we have to answer this today? What if we had one more month? If it were due at the next meeting. Because I'd be interested in finding out if the -- this types of litigation is really what's intended in the statute.

I mean, I think of litigation, I think someone getting some sort of restraining order to stop this site, because it's an -- this is an historical, you know, there's a grave underneath it that they -- you know, or you know, they find dinosaur bones or something, and say, stop.

Versus this squabble between -- the internal squabble between the owners.

Is there any way we can go and ask -- get an opinion from someone else, saying, like to determine general -- asking is this -- does this even qualify as litigation, as conceived under this force majeure.
MR. IRVINE: The answer is no, unfortunately. The placed-in-service deadline is this month, and once they go beyond that, they are at risk of not being able to claim the credits.

MR. GOODWIN: So we need to make a decision today. You said you had a two-part question?

MR. VASQUEZ: Well, the first part was, can we wait --

(General laughter.)

MR. VASQUEZ: -- and it's not, can we --
MR. GOODWIN: And the second --
MR. VASQUEZ: Give it back to our counsel. And it's not -- is this truly what was the intention of the word, litigation, under force majeure.

MR. BRADEN: I'd like to make a motion to go Executive Session and consult with attorneys.

MR. GOODWIN: Okay. We have a motion to go into Executive Session to seek legal advice. Do I hear a second?

MS. THOMASON: Second.

MR. GOODWIN: Moved and seconded. All those in favor?

(A chorus of ayes.)

MR. GOODWIN: So we will move into Executive Session, the Board will go into Executive Session pursuant
to Texas Government Code 551.074, for purposes of discussing personnel matters, for the purposes of receiving legal advice from its attorney, which we will do.

So we'll be back in 20 minutes.

(Whereupon, the Board went into Executive Session at December 14, 2017, at 9:00 a.m.)

MR. GOODWIN: The Board is now reconvened in Open Session at 9:25 a.m., during the Executive Session the Board did not adopt any policy, position, rule, resolution or take any formal action or wrote on any item.

So we will reconvene.

THE REPORTER: The mics are dead.

MR. GOODWIN: They're on.

THE REPORTER: They're coming back on.

MR. GOODWIN: Okay. All of you had a question that you wanted to ask?

MR. BRADEN: Sure. I have a couple questions, Mr. Shackleford, if you're all right with coming up.

I just want to get this time line down, make sure I understand it. So in July 2015, is when the tax credits were awarded. Is that correct?

MR. SHACKLEFORD: Correct.

MR. BRADEN: And they were awarded to Texas Garland Apartment, GP, LLC.

MR. SHACKLEFORD: There's a GP entity in the
limited partnership. TX Garland's Apartments, LP is the actual applicant.

MR. BRADEN: Okay. So it's Texas Garland Apartments, LP, received the credits.

MR. SHACKLEFORD: Yes, sir.

MR. BRADEN: And at the time the award was made, was Green Extreme a member of Texas Apartments, LP, technically?

MR. SHACKLEFORD: No.

MR. BRADEN: Okay. And subsequent to that award being made, Green Extreme, in essence, filed a lawsuit against RISE, because of a dispute that was going on.

MR. SHACKLEFORD: Correct.

MR. BRADEN: And then that has now been all settled out, and the current applicant is RISE.

MR. SHACKLEFORD: Well, RISE was one of the parties in the GP.

MR. BRADEN: Okay. So the current applicant is still the same applicant, but they're now controlled by RISE.

MR. SHACKLEFORD: Correct. Correct. Green Extreme never came into the partnership at all, until September 30, 2016. Prior to that time, Green Extreme was an unrelated third party.

MR. BRADEN: So the litigation that we're
talking about -- again, we're talking technically -- is actually by a third -- well, an unrelated third party that caused this litigation of the current applicant.

MR. SHACKLEFORD: Yes. At that time, Green Extreme was an unrelated third party. They had not entered into the -- become a party to the general partner entity of the partnership.

MR. BRADEN: Okay. That answers my question.

MR. GOODWIN: That answer your question?

MR. ECCLES: Just a quick point of clarification. Could you tell us the style of the case that was filed by Green Extreme against RISE.

MR. SHACKLEFORD: Mr. Eccles, I don't recall.

MR. ECCLES: And what court it was filed in?

MR. SHACKLEFORD: It was filed up in Colin County.

MR. ECCLES: And do you recall when that was filed?

MR. SHACKLEFORD: I -- do not recall when it was filed.

MR. ECCLES: But Green Extreme was the plaintiff, and RISE was a defendant?

MR. SHACKLEFORD: There were multiple defendants. Yes. The partnership, general partner entity, RISE Construction, there was -- there were about, as I
recall, five to seven defendants in the lawsuit.

MR. ECCLES: Okay. Thank you.

MR. GOODWIN: Okay?

Any other questions?

MS. BINGHAM ESCAREÑO: Mr. Chair, I'd like to make a motion.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: I'd like to move to approve the applicant's request, under application of the 
force majeure rule.

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

MR. BRADEN: I'll second that.

MR. GOODWIN: Okay. Your motion is seconded.

Any other discussion?

(No response.)

MR. GOODWIN: Questions or comments? All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: It is passed.

MR. GOODWIN: Marni, Item 6(c).

(Pause.)

MS. HOLLOWAY: Item 6(c) is, Presentation, Discussion and Possible Action to Adopt the 2018
Multifamily Programs Procedures Manual.

Statute requires that the Board adopt a manual to provide information regarding the administration of and eligibility for participation in the housing tax credit program.

Every year staff revises the Multifamily Program's Procedures Manual to account for any rule changes, correct issues that arose during the previous year, and attempt to provide better information for applicants.

The manual is a resource guide; it includes references to the rules and examples of acceptable documentation based on the program rules and requirements.

There is a change to the manual since it was published in the Board materials, hard copies have been provided to the audience and all of the Board members.

This change clarifies the difference between environmental clearances for the Section 811 program, and to let direct loans.

Just as with this change, staff may update the manual based on additional information that may become available or to correct inconsistencies or clarify information in the future.

Applicants are notified of any changes via
ListServ announcement. Staff recommends that the 2018 Multifamily Programs Procedures Manual be approved.

MR. GOODWIN: Sir, do you want to speak about this?

MR. VASQUEZ: Yes.

MR. GOODWIN: Okay. So do I hear a motion to hear comments?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: It being moved and seconded, all in favor say, aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. We'll take comments.

MR. DE LA VALINT: Good morning, Board members. Don De la Valint, DMA Development. Long-time listener, first-time caller, so I apologize if I stammer a little bit.

There's just a few things I want to clarify in this document, and specifically as they relate to preapplication and those implications on full applications, just given the timing that this Board won't meet again until after preapplication is due.

The first one has to do with a self-score in the preapplication document. Currently, the preapp planning
document that's posted online requests that the readiness-to-proceed item is self-supported by applicants, which is a five-point scoring item, and normally under regular circumstances wouldn't be such a huge deal, but there was also a change in the QAP, for preapp participation points, where your score can't change by more than four points up or down.

So essentially, we're requiring applicants to decide before preapp, before they've seen any of the competition, any of the regions to decide whether or not they're going to pursue these readiness to proceed points.

You know the purpose of the preapp process is for developers to be able to make, you know, good business decisions on whether or not they want to proceed with, you know, the sense that they current have under control.

So I'd ask the -- at least maybe, it's not a self-score item in the preapp, but maybe an acknowledgment, I think developers can connect the dots as far as whether or not, you know, applicants would be eligible. Similar to the way State Rep letters, and you know, resolutions from city council or, not self-scored at preapp.

Similar to that is the declared disaster area points is also a self-score item. This year I think is the first year in quite some time where most of the State isn't -- doesn't qualify for most of the 10 points declared
disaster area because of the two-year look back.

This year there are some counties that are excluded, and you know, not to, you know, play Chicken Little up here, but you know, in the event that there was some sort of disaster between preapp and full app, I think it would be, you know, prudent for an applicant to be able to, you know, claim those points.

It's not very often that the State can be, you know, nimble in really getting to, you know, address a disaster so quickly. And this would be an opportunity for the State to do that, and I think the intent of the preapplication and full app is still -- the integrity is still there, assuming that change is made.

And then the last thing that I will comment on in the documentation is, this procedures manual seems to indicate that at full application, in order to qualify for ratings to receive points, that an applicant would need to provide construction contract -- their financing letters, showing that, you know, all diligence has been received and a permanent set of plans, and the rule itself says that this documentation -- I think it needs to show by October.

So I just want a clarification that applicants would have until October to provide this information. I don't think that it's realistic to get that much information by -- you know, March 1 or whenever that full
application is due.

And that's it. I'll answer any questions. Do you have any questions?

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: I'm assuming you shared these comments, prior to these rules being formulated, with staff?

MR. DE LA VALINT: Yes, sir. I've tried to get all the staff this week -- to get someone on the phone to kind of discuss a little more thoroughly, but you know, just an email to Marni and Shay this week.

MR. GOODWIN: Okay.

MR. DE LA VALINT: Thank you.

MS. ANDERSON: Good morning. My name is Sarah Anderson, and this would be my first time to speak today and hopefully the only time. I wanted to piggyback off of some of the things that were just spoken about.

Primarily the -- not force majeure -- the readiness to proceed item. It was -- it came in at the last second, and the manual does speak to some of the items that are required to be submitted.

I think that we were hoping -- it essentially mirrors the language exactly that was put in the QAP.

I think we were hoping to get a little bit more
clarification and maybe -- my concern about the -- some of these things may be submitted, or they may not, or something else can be submitted, is going to bring us back to being in July, arguing about whether or not what we've submitted meets what you wanted.

And I think we were -- we'd love to see maybe a little bit more specificity with regard to what you expect, so that there are no questions later on in the process.

Also I -- we did ask the question about when these items are due, and I think Marni may be able to get up and clarify, but our understanding is that the items that are itemized in there are due with the application, and the point being that at application, you're able to show how far along you are, so that you will be able to close in October.

And I think it would be nice to get I guess staff on record, clarifying so we all understand exactly what your expectations are at application, and that would be it.

MR. GOODWIN: Thank you.

Any questions for Sarah?

(No response.)

MS. ANDERSON: Thank you.

MR. GOODWIN: Okay. Marni, could you address Sarah's comments?
MS. HOLLOWAY: Certainly. And I believe all of you are aware that this readiness to proceed item was actually added by the Governor to the QAP. So we are -- working through what it is, and it's something that's new to us.

We probably -- actually not probably, we will be further developing instructions for this particular item moving forward. We actually had a conversation about it yesterday, and then again today, about what it is that we will be looking for.

My concern is, the minute we put this list of three items that must be provided in order to get these points, someone's not going to be able to -- you know, present Item 3, and so they don't get those points.

And it will vary depending on where the project is. You know. If it's a project in a small city, or in a county, it could very well be in a very different stage than in a major metropolitan area.

We will be providing a list of potential options, and we will be asking applicants to explain to us how these documents that they've presented to us prove up that they are ready to proceed, and that they will be ready and able to close in October.

Yes, that will be due with the application; it will not be due in October.
As regards the preapp, I understand the concern regarding the change in the QAP and the variation of the four points, and what happens if you -- opt to not take the readiness to proceed points.

We could, as we have in the past, include this as an informational item, rather than as a part of the self-scoring in the preapplication. That's what we've done in the past with the extra opportunity points that we were using for tie-breakers, just so that everybody knows what all of the applicants are doing.

Regarding the ten points on a declared disaster area, I would request some sense from the Board of where you are with that particular item.

MR. GOODWIN: Okay.

MS. HOLLOWAY: That's something that has been in self-score, in the preapp, you know, as long as its existed.

MR. GOODWIN: Questions or comments from Board members?

(No response.)

MR. GOODWIN: If not, I would accept a motion to accept staff's approval and adoption of these rules.

MR. ECCLES: Not a rule, just a manual.

MR. GOODWIN: A manual, I'm sorry.

VOICE: And that's actually a point that I do
want to qualify. And I think Marni there was a change regarding this item, wasn't there?

MS. HOLLOWAY: I mentioned that. That what I said was, there's a change to the manual since it was published in the Board materials, which has been provided to the audience and all of the Board members.

This change clarifies the difference between the environmental clearance, for Section 811 and direct loans.

MR. ECCLES: Right. And just to piggyback on something that was just said. The Board is adopting this manual, but this manual is not a rule.

MS. HOLLOWAY: Uh-huh.

MR. ECCLES: There's comments that were made, but that is not public comment as it relates to the rulemaking process, the manual is for instruction and informational purposes, but if there's a conflict between the manual and the rule, the rule is what is governs, and it's what the Board will use to determine any sort of conflicts.

And I believe that that's stated several times in the manual itself.

MR. IRVINE: And of course, the Board is the ultimate arbiter of what the rule means, if there's any question about interpretation.

MR. GOODWIN: With that legal clarification, I
hear a motion to approve the procedures manual?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Moved. Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Moved and second. Any other discussion or question?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Okay. We'll move on to 6(d).

MS. HOLLOWAY: Item 6(d) is Presentation, Discussion and Possible Action on timely filed appeals under 10 TAC '10.902 of the Department's Multifamily rules related to fee schedule appeals and other provisions.

Application 17107, the Residence at Wolfforth, was awarded $664,709 of competitive tax credits, and a $500,000 award of HOME funds during the 2017 cycle.

Applicants for direct loan funds certify that they will follow all regulatory requirements imposed by the use of federal funds, which includes the Uniform Relocation Act. These regulations ensure that owners, tenants and businesses displaced by federally funded acquisition, demolition, construction or rehabilitation projects are adequately compensated.

Seven mobile homes were located on the property
that will be used to construct this development. Staff
does not have information regarding the status of the
occupants, if they were tenants of the mobile homes or
owners of the mobile homes renting space on the property.

The applicant's purchase agreement with the
owner of the mobile home park indicated that the property
will be vacant at closing.

The applicant did not send the required initial
URA notices to the occupants of the mobile homes until
requested, and the condition was imposed that they document
their compliance with the relocation act with their
commitment notice for tax credits.

The applicant has returned their HOME award,
stating that the terms of the award do not justify the
compliance with the relocation act requirements.

The Multifamily Direct Loan Rule provides that,
in part, and this is the first sentence, "If a direct loan
award is returned after Board approval, or if the applicant
or affiliates fail to meet federal commitment or
expenditure requirements, penalties may apply under the
QAP, or the Department may prohibit the applicant and all
affiliates from applying for direct loan funds for a period
of two years."

This section goes on to say, "if they have
returned their funds or have failed to take necessary
action specified in one or more agreement with the
Department, where the failure resulted in the Department's
failure to meet federal commitment and expenditure
requirements."

The applicant claims they should not be subject
to the penalty because another applicant returned HOME
funds last year and was not subject to this penalty.

The circumstances surrounding the return of the
HOME award to the Saralita development was very different
than the application we are discussing, and that award was
returned under the waiver of penalty allowed by the Board
for limited time related to concerns regarding the credit
markets in 2016.

They also claim that because we have not yet
failed to commit the full HOME allocation by the federal
deadline, the penalty should not apply. If in fact we were
not able to reallocate those funds, I would imagine that
the next argument would be that the failure was due to some
action or inaction by staff, rather than by return of the
award.

Staff determined that the applicant is subject
to penalty under the Multifamily Direct Loan Rule as a
result of returning the award. The applicant timely filed
an appeal which the executive director denied.

As explained in the executive director's denial
of the appeal, it is not possible to know at the time of return, how it will or will not impact the Department's meeting of HUD deadlines.

Staff's position is that a logical reading of the rule is that a penalty may be applied if the applicant returns their award. However, as the executive director's letter points out, there is another way to interpret the rule and ultimately it is the Board that has final authority to interpret its rule, therefore staff does not have a recommendation.

MR. GOODWIN: Okay. Any questions for Marni, or we ask for a motion to accept comments?

(No response.)

MR. GOODWIN: Okay. I'll hear a motion to accept comments, I see we have some people that want to speak --

MS. BINGHAM ESCAREÑO: So moved.

MS. THOMASON: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Okay. Before you start, I'm going to ask Tim to give us kind of a rundown of the time line, to see if the issue that you and I have discussed as it relates to this and when we would be penalized if we had
not committed those HOME funds, so all the Board members understand what we're dealing.

MR. IRVINE: Well, and I invite Marni and Beau to chime in and flesh out what I'm going to say, or correct me if I'm wrong.

The event of the return happens at a specific time. And we know what that is, and generally speaking the way that staff looks at the rules is when the event occurs, you look at how the rule applies to it.

The approach that we took assumes that the rules as -- if you return -- this is the consequence. There is an alternative way that one might read the rule, and that is, if you return and ultimately it results in the Department's failure to meet a commitment or expenditure deadline, then the penalty comes into play.

Which would mean that we would not know if the penalty did or did not apply until we had already failed to meet a HUD deadline. So -- fair summary?

MR. GOODWIN: And the deadline for the HUD is?

MR. IRVINE: For these funds, it would --

(Conversation off mic.)

MR. IRVINE: Come on up, Megan. Or Andrew.

MR. SINNOTT: Andrew Sinnott, Multifamily Direct Loan Administrator.

So the 2017 NOFA under which this application
received an award, included 2016 program year HOME funds.
So if the two-year commitment deadline from when we got the
2016 allocation of HOME funds, so it would have been July
2018 that we would have to commit these funds.

MR. IRVINE: So we have until next summer.
MR. SINNOTT: Right.
MR. GOODWIN: So if these funds are returned,
and if we don't have them allocated by July 2018, then we
would know that the second aspect of this -- and what is
the penalty to the Agency, for --

MR. SINNOTT: If we don't meet our deadlines we
would lose the funds.
MR. GOODWIN: We'd lose the funds. Okay.
MR. SINNOTT: We'd lost the funds, potentially.
Megan, instead of wincing, could you please come
to the microphone?

(General laughter.)

MS. SYLVESTER: Megan Sylvester, Legal Services.
It is slightly more complicated than that. While our
action plan from 2016 puts these funds into multifamily,
when we go to award the funds, we will award the funds with
the earliest fund year that we have available, as long as

So while it could have been >18, that is the
most logical outcome, it also could be a different date,
depending on where we are at that time that we have to commit the funds; which is why it is very difficult to say that any one action would cause a loss of the commitment deadline, because commitments are made as we enter into them, and it may be one year of funds, or a different year of funds.

The deadline is a little bit easier to determine in an expenditure context, because in an expenditure context, you've already committed funds from a certain HOME year. And that's all I have unless you have questions.

MR. GOODWIN: Any questions?

MR. BRADEN: I had a question. So under that analysis, would the earliest date be, then, July 2018?

MS. SYLVESTER: Most probably. I -- that would be the earliest date.

MR. IRVINE: Could conceivably run out another year.

MS. SYLVESTER: It could conceivably run out another year.

MR. GOODWIN: Okay. Sorry.

MR. MARKS: Thanks for giving those clarifications. My name is Scott Marks and I'm with Coats, Rose, and we also have Brett Johnson with Overland Property roup, who can speak to you about more of the details on the ground if you have questions about that.
Overland's appeal to the Board is really focused on whether a penalty, as appropriate, essentially de-barring the developer from the program for two years. When funds were returned before commitment for the funds was even received from the State, there is no commitment signed by the developer, or even received by the developer for the funds, and now those funds can be used for more urgent needs such as disaster recovery.

There are three good reasons why we believe you should grant this appeal, though. The first is the text of the TDHCA rule, and as Tim pointed out, there may be some ambiguity in the rule, so I want to talk about the text of the rule.

And then the precedent, the second reason to grant this appeal is the precedent sent by Saralita Senior Village, and so I'll talk about Saralita.

And then finally the policy reasons that support granting this appeal.

Let's talk about the text of the rule. The text says that the developer can be penalized in this way if they have returned their funds, or failed to take necessary action specified in agreements with the State, where the failure will result in the State's failure to meet federal commitment and expenditure requirements.

Now, I actually don't think that rule is
ambiguous. I think that's what it's telling the community and you know, what it suggests is that where there is this possibility that the State could lose federal funds, then we'll take this very, you know, heavy-handed action of putting the developer in the penalty box for two years.

In this case, as Megan pointed out, July 2018 is the drop-dead date for the State to commit these funds. In September, because these direct-loan funds, that program was undersubscribed. Right? So you had fewer developers apply for funds than you had funds.

Nine million dollars -- TDHCA reprogrammed $9 million to disaster recovery, which is a happy outcome. We have some tremendous needs in the state for disaster recovery. So this pot of funds where the $500,000 was coming from, $9 million was reprogrammed by the State to disaster recovery.

The 500,000 here which the developer has decided it will cost them more than $500,000, it will cost them almost the full amount of the loan just to comply with the federal requirements for it. So they are making it available to the State for more urgent needs, such as disaster recovery.

And I really can't think of a reason why the 500,000 cannot be reprogrammed to disaster recovery, just as the $9 million was programmed for that purpose.
Second, precedent. Saralita Senior Village.

There was some discussion in Marni's presentation on Saralita Senior Village. Let's go back to the policy.

The policy of the Board was, because of the drop in the equity pricing last year, if the developer needed to return tax credits and direct loan funds, because they could not make the deal pencil out, then the Board would not penalize the developer.

In Saralita Senior Village, it did not fit within that box. That was a policy box that you set, and in Saralita Senior Village, they decided to proceed with closing on the tax credit equity. They kept their tax credits. So the Board had said, If you return your tax credits and your direct loan funds, then there will not be a penalty.

And then Saralita Senior Village, they transferred the ownership to a new -- owner, and wanted to proceed, but the Board did not penalize the developer. And to us, that precedent was there. And by the way, they had signed their commitment; they had gotten much further in the process than Overland Property Group had, and there was no penalty applied to that developer.

And finally, the public policy purposes. As I pointed out, this application round was undersubscribed. It doesn't make sense to me that one of the very honorable
developers with an excellent track record in the State that has 11 tax credit developments in Texas, and almost 50 around the country, and hasn't had any compliance problems.

Why would we put a developer like that in the penalty box. It would seem to me that we want developers doing good work like they've been doing, continuing to compete for these funds in the future.

And then of course the disaster recovery needs of the State are another public policy reason why we think the appeal should be granted.

MR. GOODWIN: Good. Questions for Scott?

(No response.)

MR. GOODWIN: Thank you, Scott.

MR. ECCLES: Actually, Scott, let me just give a counterpoint and see what your response is to this. On the text, 13.11(b) breaks the penalty for returning a direct loan award after Board approval into two -- you know, sort of ranks.

One is a penalty under 11.9(f), and the other is two years in the penalty box as you put it. And it says, If a direct loan award is returned after Board approval, or if the applicant or affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC 911(f).

Or, the Department may prohibit the applicant
and all affiliates from applying for multifamily direct
loan funds for a period of two years, if they have returned
their funds, or have failed to take necessary action
specified in one or more agreements with the Department
where the failure resulted, in the Department's failure to
meet federal commitment and expenditure requirements.

And before I ask my question I will say, I feel
the impending arguments where people plug this sentence
into one of those sentence diagraming programs and come up
with like 80 different interpretations of what it means.

But it does at least I think on a plain reading
appear that we have returned after Board approval, or
failing -- doing, taking an action that fails to meet
federal commitment deadlines.

How do you see, especially the part about the
penalty box, this distinction that applies, that second
part of the sentence that the failure results in the
Department's failure to meet federal commitment and
expenditure requirements?

How do you graft that onto the beginning part,
that simply reads, "the Department may prohibit the
applicant and all affiliates from applying for MFDL funds
for a period of two years if they have returned their
funds."

MR. MARKS: Well, I think that first of all in
all the correspondence we've received from the Agency and
in Marni's presentation, it's failure to take action by the
developer that's really leading to the possibility of a
penalty here.

    I mean, really, returning funds, literally like
the -- it was just, you know I think weeks before the Board
took action and before the staff had sent a commitment
notice, and in here it's pretty clear that the funds could
easily be reprogrammed.

    And so I don't think the return of the funds,
the $500,000, is really what's driving. I think it's
failure to take action; and failure to take action is
immediately followed in the rule by when such failure
results in the State's, you know, failure to meet its
federal commitment and expenditure requirement.

    So I think just the plain meaning of the rule
suggests that there should not be this penalty here. But
even assuming for a moment that there is some ambiguity in
the rule, I think here where this developer acted so
quickly to return these funds, the State has, you know,
literally like a year to reprogram the funds to a purpose
that's such an urgent need of the State, just as it did in
September.

    And again the Saralita Village precedent is out
there; under the same rule the Board didn't grant the
penalty.

So even if there is some ambiguity in the rule, I think it should be resolved in favor of this developer in this case. Does that answer your question --

MR. ECCLES: It does. On the issue of Saralita and the repeated references to precedent, I would caution using concepts of stare decisis as it relates to previous orders of this Board. There will be distinguishing facts, I believe.

Marni pointed out that there were significant differences between that award, as well as the circumstances that allowed for the return of direct loan funds, which specifically related to the pricing issues that followed the election. But --

MR. MARKS: I didn't mean to suggest that it was binding or anything, on this Board. I just meant that that's out there as an interpretation of the rule. If the rule is ambiguous, that's out there as one interpretation of the rule by this Board very recently.

MR. ECCLES: Okay. Thank you.

MR. GOODWIN: Paul, you had a question?

MR. BRADEN: Yes. And a little bit for both, so but -- the rule provides, I mean, this penalty is not required by the rule. It's --

MR. MARKS: That is correct.
MR. BRADEN: -- right.

MR. MARKS: -- it's permissive.

MR. BRADEN: It's permissive.

MR. MARKS: The Department may prohibit the applicant and all affiliates from applying --

MR. BRADEN: Right.

MR. MARKS: -- for multifamily direct loan funds.

MR. BRADEN: Okay.

MR. GOODWIN: Any other questions or discussion? (No response.)

MR. GOODWIN: I'll entertain a motion.

MR. BRADEN: And let me --

MR. GOODWIN: Okay.

MR. BRADEN: -- I probably have a question of Marni.

MR. GOODWIN: Okay.

MS. HOLLOWAY: Yes.

MR. BRADEN: So Marni, typically we do send some type of formal letter after this is awarded, and then they sign it. Is that correct?

MS. HOLLOWAY: Yes. That is true. The direct loan award letter had not gone out, the commitment notice on the tax credits had. That commitment notice had a condition, and it's included in your Board materials, that
this applicant provide us with evidence of their compliance
with URA, because of the HOME funds.

    With that commitment notice when they sent it
back, rather than complying with these conditions, they
just said, We're returning these funds because it's too
expensive to do URA.

    MR. BRADEN: But they made a business
determination of the costs associated with complying with
that -- and then gave us notice that they were returning
these funds.

    MS. HOLLOWAY: With the commitment notice, yes.
    For the tax credits.

    MR. BRADEN: And do we feel that we'll be able
to use this allocation in connection with Hurricane Harvey
or other disasters?

    MS. HOLLOWAY: At this point in time I can't
tell you that. Yes, we did transfer $9 million out of the
multifamily HOME funds in the last NOFA, to single-family
to work on disaster recovery.

    They've started to use some of those funds,
believe, for TBRA, but they have not been able to yet
program them out for things like homeowner rehab.

    MR. BRADEN: So you can't give us -- or Tim, you
can't give us -- of likelihood of use of this money?

    MR. MARKS: We'll work as hard as we can to --
MS. HOLLOWAY: Yes, absolutely.

MR. MARKS: -- to make sure that they are compliantly used. You bet.

MS. HOLLOWAY: Yes.

MR. BRADEN: I'm trying to assess the risk associated with this. Because if truly we think this money will be gone, I guess I'm hesitant to penalize this developer if we think, you know, no foul kind of deal that in the end we're going to use this money for other things.

MS. HOLLOWAY: Uh-huh.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: A motion?

MR. VASQUEZ: I'll be happy to make a motion --

MR. GOODWIN: Okay.

MR. VASQUEZ: -- to, just let me add, if you -- it can only get worse, if you come up with some --

(General laughter.)

MR. GOODWIN: Tell the Board what his motion is going to be.

MR. VASQUEZ: We're getting -- help me phrase this right. I make a motion to accept the appeal by -- in the application, 17107, and not impose any penalty.

MR. GOODWIN: Okay.

MR. BRADEN: Second.
MR. GOODWIN: Second. Any questions or discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving to the 6(e).

MS. HOLLOWAY: Item 6(e) is Presentation, Discussion and Possible Action regarding approval for publication the Texas Register of the 2018-1 multifamily direct loan notice of funding availability.

The Department currently has $28,862,745 from multiple sources available for the 2018 direct loan NOFA. The total is made up of HOME program income, HOME annual allocation, TCAP repayment funds, and NSP-1 program income.

I think it's important to note that with the exception of $2.9 million set aside for CHDO Funds, which comes out of the annual HOME allocation, this initial NOFA is funded entirely with loan payments from earlier awards.

In addition, we anticipate that approximately $8 million of National Housing Trust Fund will be available in the coming months. When the NHTF Grant Agreement is executed, we will amend the NOFA to include those funds, bringing the total to more than $36 million.
The funds have been divided into set-asides for supportive housing and soft repayment, CHDO and in the general group as we have done in the past, but in addition we have created a priority for applications seeking to rehabilitate or reconstruct properties damaged by Hurricane Harvey.

These applications will receive first consideration for award within all set-asides for the first two months of the application period, after the regional allocation formula collapses.

The maximum supportive housing request will be $1 million, and in the general set-aside the maximum will be $3 million for new construction, and $2 million for rehabilitation.

Staff recommends approval of the 2018-1 Multifamily Direct Loan NOFA.

MR. GOODWIN: Do I hear a motion?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any discussion or questions?

(No response.)

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

(A chorus of ayes.)
MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: No one?

(No response.)

MS. HOLLOWAY: Actually, Andrew's going to talk --

MR. GOODWIN: Andrew's coming up?

MS. HOLLOWAY: -- about the awards.

MR. GOODWIN: Okay.

MR. SINNOTT: Good morning. Andrew Sinnott, Multifamily Direct Loan Administrator.

I just have three direct loan awards. Under two items, the first is Item 6(f), Presentation, discussion and possible action on a determination notice for 4 percent credits with another issuer; and an award of direct loan funds for Commons at Goodnight, a new construction deal here in Austin.

This application is being recommended for neighborhood stabilization program income award of $3 million from the general set-aside of the 2017-1 Multifamily Direct Loan NOFA.

This award will be structured as a construction loan only, that will be repaid upon conversion to permanent financing, similar to Bridge at Cameron, another deal here in Austin from the same development group that was
recommended for a direct loan award in October.

The development will consist of 304 units; 299 of those will be income and rent restricted at 60 percent of area median income. Of the 299 income- and rent-restricted units, 23 will be NSP-1, PI-assisted units.

With that, staff recommends approval of the issuance of the determination notice for $1,423,942, in 4 percent housing tax credits, and $3 million in NSP-1 programming funds from the 2017-1 NOFA.

MR. GOODWIN: Okay. Any questions?

(No response.)

MR. GOODWIN: I'll here entertain a motion to move staff's approval?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Moved. Seconded?

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: 6(g).

MR. SINNOTT: So 6(g) includes two direct loan awards. The first is the Works at Pleasant Valley Phase II, it's another new construction deal here in Austin.
This application is being recommended for a National Housing Trust Fund award of $1.5 million from the Supportive Housing Soft Repayment set-aside of the 2017-1 NOFA.

This award will be structured as a deferred forgivable construction to permanent loan. The development will consist of 29 units, 12 of which will be NHTF-assisted units for folks at 30 percent or below area median income.

The development will be located adjacent to Phase I of the Works of Pleasant Valley, which was a 45-unit supportive housing development that was financed with NSP funds in 2012.

This will be the first National Housing Trust Fund Award, which is being made from the 2016 allocation of National Housing Trust Fund.

With that, staff recommends approval of $1.5 million in National Housing Trust Funds for The Works at Pleasant Valley Phase II.

MR. GOODWIN: We'll entertain a motion for approval?

MR. BRADEN: So moved.

MR. GOODWIN: Second.

MS. THOMAS: Second.

MR. GOODWIN: Moved and seconded. Any questions?
(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Andrew?

MR. SINNOTT: The last one is Poesta Creek Apartments, which is proposing rehabilitation of a 50-unit development in Beeville. This application is being recommended for a HOME award out of the CHDO set-aside, of the 2017-1 NOFA for $2 million.

This award will be structured as a repayable construction to permanent loan, at 3.25 percent interest, with a 30-year term.

The Department will have a first lien position as the result of this investment. All 50 units in the development will be HOME-assisted units, for households at or below 80 percent AMI, with the majority assisting household at or below 60 percent AMI.

With that, staff recommends approval of $2 million in HOME funds from the CHDO set-aside, for Poesta Creek Apartments.

MR. GOODWIN: I will entertain a motion.

MR. BRADEN: I move to accept staff's recommendation.
MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: I second.

MR. GOODWIN: Moved and seconded.

Any discussion?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you Andrew.

MR. SINNOTT: Thank you.

MR. GOODWIN: We've come to the conclusion of our printed agenda. We're at a point in the meeting where we will take public comments, only as they will relate to developing in the agenda or future meetings.

Any public comments out there?

(No response.)

MR. GOODWIN: If not, we're in our last meeting of the year, and I would like for our entire staff that's in the audience to stand up, including Beau, and --

These people have done a wonderful job --

(Applause.)

MR. GOODWIN: -- and I'd like to show them our appreciation.

(Applause.)
MR. GOODMAN: No further business, I would --

MR. IRVINE: I'd like for the Board to stand.

MR. GOODMAN: The Board to stand?

MR. IRVINE: Yes. You guys are the hardest-
working, heaviest-lifting board in Texas, and I am so proud
of you all. Thank you.

(Applause.)

MR. GOODMAN: Always take offense to those
comments about my weight.

(General laughter.)

MR. GOODMAN: But wishing all of you and your
families a Merry Christmas and a Happy New Year.

And I will entertain a motion to adjourn.

VOICE: So moved.

MR. GOODMAN: Moved and seconded. All in favor?

(A chorus of ayes.)

MR. GOODMAN: We are adjourned. See you next
year.

(Whereupon, at 10:14 a.m., the meeting was
adjourned.)
CERTIFICATE

MEETING OF:   TDHCA Board of Trustees
LOCATION:    Austin, Texas
DATE:        December 14, 2017

I do hereby certify that the foregoing pages, numbers 1 through 97, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

12/20/2017
(Transcriber)  (Date)
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