TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

October 10, 2019
8:00 a.m.

MEMBERS:

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

BOBBY WILKINSON, Executive Director
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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 summaries for June 27, 2019 and July 25, 2019

LEGAL
b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related scattered site properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), and 2503 N Wilson (HTC 70084 / CMTS 913)
c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Weldon Blackard (HOME 539112 / CMTS 2706)

ASSET MANAGEMENT
d) Presentation, discussion, and possible action a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement 01150 Limestone Ridge Apartments Big Spring

HOME AND HOMELESSNESS PROGRAMS
e) Presentation, discussion, and possible action on 2020 Homeless Housing and Services Program Youth Set-Aside funds for the City of San Antonio

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

g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting the repeal of 10 TAC §2.204, Contents of a Quality Improvement Plan; an order adopting new 10 TAC §2.204, Contents of a Quality Improvement Plan; and directing that they be published for adoption in the Texas Register

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

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

BOND FINANCE

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

19611 Granada Terrace Houston
19613 THF 333 Holly The Woodlands
19614 THF The Pines The Woodlands
19615 Oaks on Clark San Antonio
k) Presentation, discussion, and possible action on Resolution No. 20-003 Authorizing the Execution of an Irrevocable Instructions and Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Churchill at Pinnacle Park Series 2004

l) Presentation, discussion, and possible action on Resolution No. 20-004 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:  

a) Outreach and Activities Report (Sept-Oct)


c) Report regarding a Request for Proposal for Underwriters issued by the Texas Department of Housing and Community Affairs

d) Report regarding a Request for Proposal for TBA Program Administrator issued by the Texas Department of Housing and Community Affairs

e) Report regarding a Request for Proposal for Mortgage Warehouse Facility issued by the Texas Department of Housing and Community Affairs

ACTION ITEMS

ITEM 3: GOVERNING BOARD  

Presentation, discussion, and possible action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030

ON THE RECORD REPORTING
(512) 450-0342
ITEM 4: COMPLIANCE
Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Estates at Shiloh (19439)

ITEM 5: HOME AND HOMELESSNESS PROGRAMS
a) Presentation, discussion, and possible action on 2020 Ending Homelessness Fund Awards

b) Presentation, discussion, and possible action on an amendment to the 2018 Emergency Solutions Grants Program Contract for Youth and Family Alliance dba LifeWorks

ITEM 6: ASSET MANAGEMENT
Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application 18235 Memorial Apartments McAllen

ITEM 7: RULES
a) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order proposing new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication for public comment in the Texas Register

b) Presentation, discussion, and possible action on amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments;
§10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the Texas Register (PULLED)

c) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and the proposed new 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and directing the publication for public comment in the Texas Register

d) Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the Texas Register (PULLED)

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

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

g) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities; an order proposing new 10 TAC Chapter 90, Migrant Labor
Housing Facilities; and directing its publication for public comment in the Texas Register

ITEM 8: MULTIFAMILY FINANCE
a) Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events

17028 The Vineyard on Lancaster Fort Worth
17295 Legacy Trails of Decatur Decatur
17327 Legacy Trails of Lindale Lindale
17736 Providence at Ted Trout Drive Hudson (PULLED)
17290 Golden Trails West
17259 Mistletoe Station Fort Worth

b) Presentation, discussion, and possible action on a timely filed appeal of the expiration of a Commitment of Housing Tax Credits for 19223 Bamboo Estates Apartments

c) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications
19407 Norwood Estates Austin
19436 Bridge at Granada Austin
19440 Ventura at Parmer Austin ETJ
19441 Decker Lofts Austin ETJ
19437 Residences at Stillwater Georgetown

d) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications and a determination of eligibility under 10 TAC §11.101 of The Qualified Allocation Plan
19429 Govalle Terrace Austin
19433 Wayman Manor Temple

e) Presentation, discussion, and possible action on a determination regarding
eligibility under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Bridge at Canyon View (#19411) in Austin

f) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#19418, Bridge at Loyola Lofts, Austin)

g) Presentation, discussion, and possible action regarding a determination of eligibility under 10 TAC §13.5(d)(2) of the 2018 Multifamily Direct Loan Rule 18509 El Sereno Apartments Cibolo

h) Presentation, discussion, and possible action regarding an Award of Direct Loan funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability 19503 Sierra Royale Robstown

i) Presentation, discussion, and possible action on the Fifth Amendment to the 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability and approving its publication in the Texas Register

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

EXECUTIVE SESSION --

OPEN SESSION --

ADJOURN 203
MR. GOODWIN: Welcome to the monthly Board meeting of the Texas Department of Housing and Community Affairs for October 10, 2019.

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

MR. BRADEN: Here.

MR. GOODWIN: Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Mr. Vasquez?

MR. GRAHAM: Here.

MR. GOODWIN: Okay. We have a quorum.

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

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

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

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

(No response.)

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

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

MR. GOODWIN: Second?

MS. THOMASON: Second.

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

MS. THOMASON: Yes, I did.

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

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

MS. RESÉNDIZ: Second.

MR. ECCLES: It's vice chair.

MR. GOODWIN: Vice chair.

MS. THOMASON: Vice chair.

MR. GOODWIN: Oh, you wanted to take my place. I tried to talk her into that a long time ago and she wouldn't do it.

(General talking and laughter.)

MS. THOMASON: Vice chair.

MR. GOODWIN: All right. So we have a motion and a second. Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Congratulations, Ms. Bingham.

MS. BINGHAM ESCAREÑO: Thank you very much.

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

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

MR. GOODWIN: David Cervantes.

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

MR. ECCLES: Absolutely.

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

You sure you want to do it, David?

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

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

(General laughter.)

MS. THOMASON: I'll make another motion to have
Beau, our general counsel, as secretary, and Mr. Cervantes as the treasurer.

MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: It's been 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: Congratulations, David.

Congratulations, Beau. It comes with no extra pay.

MR. ECCLES: Understood.

(General laughter.)

MR. GOODWIN: Item 4, Compliance.

Good morning.

MS. MURPHY: Good morning. Patricia Murphy, director of Compliance.

Item 4 on your agenda is presentation, discussion, and possible action on dispute of the Compliance Division's assessment of the applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding Shiloh Estates, application number 19439.
This item is similar but not exactly the same as some disputes that you heard at the June 27 meeting. Like the disputes that were before you in June, at this time there are no uncorrected events of noncompliance associated with the properties controlled by this applicant group. These are all issues that were not corrected within the allowed corrective action period.

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

The trigger for this application being classified as a Category 3 is the compliance history of the City of Dallas Housing Finance Corporation. This is the third previous participation review the City of Dallas Housing Finance Corporation has been through since April of 2019. Each time they partner with different organizations and each time they partner they've been
approved, but this particular application, when combined with these particular applicant, creates the Category 3 designation. Nonetheless, the underlying issues themselves are unchanged and have been accepted by EARAC and the Board as recently as the September 5, 2019 Board meeting in association with application 19419, Palladium Redbird.

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

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

MR. GOODWIN: Any questions for Patricia?

(No response.)

MR. GOODWIN: Do I hear a motion to accept staff's recommendation for denial?
MR. VASQUEZ: Move to accept the staff's recommendation for denial.

MR. GOODWIN: Do I hear a second?

MS. THOMASON: Second.

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

MR. ECCLES: This is item 4?

MS. MURPHY: Correct.

MR. GOODWIN: This is item 4.

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

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

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

MR. GOODWIN: Okay.

MR. WILKINSON: Mr. Chairman, am I not reading this correctly, item 4, that the recommendation is not denial?
MS. MURPHY: Let's see. Correct, yes. Yes, right, that you should not preclude a positive recommendation and it's authorized to proceed with the remaining, yes.

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

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

MS. MURPHY: Correct, yes.

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

MR. VASQUEZ: So the staff is recommending?

MR. GOODWIN: To move forward on this project.

MS. MURPHY: Yes.

MR. VASQUEZ: To move forward.

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

MS. MURPHY: Correct.

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

MR. VASQUEZ: I withdraw my motion, Mr. Chairman.
MR. GOODWIN: Withdraw that motion. Okay. Now we'll accept another motion to accept staff's recommendation.

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

MR. GOODWIN: Okay. A second?

MS. THOMASON: Second.

MR. GOODWIN: Any other questions or discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you. Thanks, John.

MR. SHACKELFORD: Thank you.

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

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

I'm presenting first item 5(a) which is the inaugural round of awards for the new Ending Homelessness Fund. The EH Fund was established in the last legislative session to be effective September 1, 2017. The fund
allows persons registering their vehicles or renewing registrations to donate directly to end homelessness in the State of Texas. A hundred percent of the funds in this program are collected through direct donation, and TDHCA is tasked with administering the fund. The fund is only made available to cities and counties so we can't make it available directly to nonprofit organizations.

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

Here come the flags.

(General laughter.)

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

The initial offering of funds was originally about $175,000 to be split evenly amongst each entity.
accepting funds. Since the City of Texarkana requested to withdraw their declination of funds and the Department agreed, and other cities had already been informed of their award amount, additional funds were made available so that Texarkana could have an equal award to everybody else. So the total of the award today is right at $210,000. The remaining balance, there's some funding left in the pot right now, is going to be combined with future collections and awarded in state fiscal year 2021.

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

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

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

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

MR. VASQUEZ: Okay.

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

MS. VERSYP: It's pretty steady, right about $12,000 a month. We have never awarded funds before
because we were waiting to build up enough funding for it to be significant, so we think that we'll continue to collect probably around that same $12,000 a month because it's been so steady.

MR. WILKINSON: Or more. Tell your friends.

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

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

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: It's been moved and seconded. 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. Item 5(b).

MS. VERSYP: Item 5(b), this is a recommendation to approve a six-month extension to the
2018 ESG contract with Youth and Family Alliance. They do business as LifeWorks, and so that's how we'll refer to them.

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

In response to the finding, LifeWorks, independent of TDHCA, submitted the question to both the auditor, who is our field office representative, and HUD, through an automated technical assistance took, requesting that HUD make a determination that youth in extended foster care are not wards of the state and therefore meet the definition of homeless. The responses that LifeWorks received conflicted with one another and the finding remained unresolved until final disposition of the question was received in August of this year.
TDHCA was informed on August 21 that neither TDHCA nor its subrecipient, such as LifeWorks, should expend funds to provide services to youth in extended foster care, affirming the finding issued almost a year prior. The results were communicated to LifeWorks, but due to the longer than expected period of time for response, LifeWorks was not able to fully expend the awarded funds since the funds could not be utilized as originally intended, and costs for emergency shelter must be allocated to serve only the proportionate share of eligible clients which is a small group within the shelter.

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

I'm happy to answer any questions.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Do I hear a recommendation of approval from staff's recommendation?
MR. VASQUEZ: Move to approve staff's recommendation for the extension.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: So it's been moved and seconded.

Did you have any comments that you wanted to make? You need to state your name.

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

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

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

So, Abigail, I want to thank you for walking
through all of this with us and for y'all's flexibility in creating and supporting funds to be used with youth and homelessness.

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

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

MR. GOODWIN: Thank you.

Any other questions?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

We have a couple of letters that we need to
read in. We'll get staff's report and then, Michael, I'll ask you to read those in.

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

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

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

    The property was approved for credits in 2012 but the developer wasn't able to secure approval from USDA post award and the 2012 credits were returned. The development owner is now requesting an amendment to the application to prepay the USDA 514 loan and remove the corresponding USDA rental subsidy from the development, while still qualifying for an award under the at-risk set-
The owner indicated that the development is not eligible for USDA funding because USDA does not consider the property eligible under the 514 financing structure due to the ground lease structure for the tax exemption. In addition, the USDA has questioned whether the property is meeting its purpose of serving farm labor workers as less than 25 percent of the units receiving USDA rental assistance are occupied by farm labor qualified households. The property currently relies on an annual waiver from USDA to occupy a majority of the RD units with non-farm labor qualified residents in the affordable housing.

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

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

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

Up until March of 2019, the applicant was still moving forward with the USDA application process but a letter dated March 12, 2019 -- which is included in your Board materials -- USDA informed the applicant that USDA had completed their review of the transfer application
that was received on February 12, 2019, and found that the application was incomplete. The letter listed 37 items that needed to be submitted and/or corrected in order to have a complete application.

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

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

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

The applicant is essentially creating its own at-risk by prepaying the USDA loan, but absent of the
prepayment, neither the HAP or the USDA subsidies for the development are due to expire within two years of July 31, 2018, and the USDA loan and associated subsidies will not expire until 2040 and the HAP contract does not expire until 2033. Therefore, the application would not be eligible under the at-risk set-aside.

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

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

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

That's all I have, but I'm available for
MR. GOODWIN: Before we read the letters, any questions?

(No response.)

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

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

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

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

"The housing authority has informed me that the problems before the Board stem, in part, from misinformation provided or a refusal to provide
information in a timely manner by the U.S. Department of Agriculture office. This should not jeopardize the housing authority's ability to complete their redevelopment with the funds the Texas Department of Housing and Community Affairs has already awarded.

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

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

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

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

"This letter is in support of the amendment request by Texas McAllen Memorial Apartments II, LP and
the Housing Authority of the County of Hidalgo. The amendment proposes to prepay the United States Department of Agriculture 514 loan and remove the corresponding USDA rental subsidy for Memorial Apartments.

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

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

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

"As you discuss this item, I urge you to keep
in mind the statutory purpose of TDHCA: to assist local
governments in providing public services for their
residents and helping them overcome financial, social and
environmental problems. What's more, the purpose of the
Tax Credit Program is to 'Prevent losses for any reason to
the state supply of suitable, affordable, residential
rental units by enabling the rehabilitation of rental
housing, or by providing other preventive financial
support.'

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

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

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

MR. GOODWIN: Thank you, Michael.

Any questions from any Board members?

(No response.)

MR. GOODWIN: If not, I've got a question.

Sixty percent of these units currently receive a USDA
rental assistance?

MR. BANUELOS: 142 of them.

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

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

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

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

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

MR. GOODWIN: Okay.

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

MS. RESÉNDIZ: I have a question.

MR. GOODWIN: Okay.

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

MR. BANUELOS: So by paying off the USDA loan,
the rental subsidies would go away with that prepayment.

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

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

MR. BANUELOS: That is correct. So the application came under the USDA set-aside. The question here is whether absent the USDA set-side the application would have qualified under the at-risk set-aside. And for the at-risk set-aside there are two provisions that would have be satisfied, or one or the other, that any subsidy would expire within two years or that there would be a HUD insured mortgage that would be eligible for prepayment.

In this case the USDA loan doesn't qualify under that provision, and absent of the election to prepay the USDA loan, the subsidy would not expire so it would just continue past the two years.
MR. GOODWIN: And assuming the Board voted in favor of staff's recommendation, what position would it put this project in to reapply?

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

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

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

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

MR. BANUELOS: They would need to document how it qualifies under at-risk. We don't believe that it qualifies under at-risk because of the election to prepay the USDA loan. If there's any other way to see that, then, yes, they could apply under that.
MR. WILKINSON: This was central to the issue, this novel interpretation, it's not completely unreasonable but novel for us: Can you put yourself at risk by ending your USDA relationship? And that's to our rule at least would say no, and that's why we have staff recommendation, the main reason staff recommendation is what it is. If the Board wanted to use their discretion otherwise, that's a different thing, but the idea that staff could agree to this new interpretation of at-risk was, I thought, beyond what would be appropriate for us.

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

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

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

MS. RESÉNDIZ: So since they've already paid
that off to the USDA then the project is no longer at risk.

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

MS. RESÉNDIZ: It becomes at risk.

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

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

MS. HOLLOWAY: Marni Holloway, Multifamily Finance.

In 2018 we actually were under-subscribed.

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

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

MR. VASQUEZ: Okay. So yes and no.

MS. HOLLOWAY: So yes and no.
MR. VASQUEZ: Not directly.

MS. HOLLOWAY: Yes and no.

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

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

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

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

MR. BANUELOS: 142 of the units are covered by USDA.
MS. RESÉNDIZ: Out of how many units?

MR. BANUELOS: 246.

MS. RESÉNDIZ: 246. Okay.

MR. GOODWIN: Okay. Any other questions?

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

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

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

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

MR. GOODWIN: Any other questions?

(No response.)

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

MR. VASQUEZ: I would move to hear comments.
MR. GOODWIN: Entertain comments. Second?

MS. THOMASON: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

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

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

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

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

Let me first start out with it's been re-underwritten, it's completely feasible and supports the award that was made. The applicant has no idea how staff is coming up with their position. We applied for two set-asides, at-risk and USDA at pre-app, at-risk and USDA at
application. The application log shows us as the only USDA transaction that is both USDA and at-risk, and our commitment notice says set-asides, plural, at-risk and USDA. The statute that they're referencing of how they are somehow -- we're at-risk in our commitment notice and everything but we're really not at-risk is not even cited in any of the material they've provided us.

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

At the award a condition of the underwriting report prior to award says, Show us the 514 loan can be prepaid. And then there's a further condition in our commitment notice that deals with the exact same issue, and the payoff of the 514 loan is fundamental to the at-risk because by statute, USDA if the loan is paid off, the rental assistance goes away.
The fundamental question related to the voluntary payoff is irrelevant to the statute, but let's talk about voluntary. You must be kidding me. The executive director asked us to get in writing from USDA why they were accepting payoff of this, and they're telling you in as nice a way as possible, you're at risk, you do not meet the intent of this program, we can't fund it, we don't want to fund it, you're relying on a waiver we don't have to give you.

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

So we have done it all. We are at-risk and USDA. That was our app, that's our award. Now, what this amendment is asking you to do, we're dropping USDA, so we do not qualify for the award under USDA but we clearly do under at-risk, and we applied for both and we were awarded for both and we knew at the time, from pre-app on, because as Marni said, it was undeserved, as long as the application was compliant we would be awarded under one or the other or both.
Let me also mention, because I know for some of you this is important about real estate. Sixty acres in downtown McAllen, 246 apartments, USDA has over $15 million in this transaction that they advanced to build it. They're accepting $4 million to get us out of the program. So we are also acquiring 246 units and 60 acres in downtown McAllen, which is an indication of why we're at-risk with USDA. The want us out of the program and staff really knows that from the 2012 application.

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

Happy to answer any questions.

MR. GOODWIN: Any questions?

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

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

MS. RESÉNDIZ: Correct.

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

MS. RESÉNDIZ: A quick summation that led to
the misunderstanding.

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

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

And just so you know, our app I put in there, it circles at-risk and USDA. The rental subsidy contract
is in there. It expires every year in June, so it has to be renewed by USDA every year. Prepayment of the loan, by statute, automatically ends it.

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

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

Let's be honest, we'll be back here next year telling you all that the diminished need waiver has not been granted, we have 246 low income residents and they're not subsidizing 142 units. What do you think is going to
happen? People are going to get evicted. So we are at-risk in every meaning of the word, statutorily as well as a practical matter, and we'd really appreciate your consideration of our position and our information.

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

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

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

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

MR. SHACKELFORD: (Speaking from audience.) I'll be after the others that want to speak.

MR. FISHER: Thank you.

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

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

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

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

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

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

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

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

MR. GOODWIN: Thank you.

Any questions?

(No response.)

MR. GOODWIN: Okay. Next.

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

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

MR. MALDONADO: Hidalgo County Housing Authority.

MR. VASQUEZ: Okay. Thank you.

MR. MALDONADO: I apologize.

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

We come before you because we want to make sure that y'all understand what our conditions are in South Texas. Yes, we're not the major agriculture center of Texas anymore and we have kind of evolved into other economic fields, but we still have a major -- I think even today, I know that a few years ago, but even today we
house in Hidalgo County, Mr. Chairman, we house the highest percentage of farm workers in the State of Texas and probably in the country in this county. And a lot of low income, indigent members of our community, we try as best we can to cover.

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

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

MR. GOODWIN: Thank you.

MR. MALDONADO: Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Next.

MR. LOPEZ: Good morning, Mr. Chair and Board
members. My name is Mike Lopez. I'm the executive director for the Hidalgo County Housing Authority, been there 28 years, I think, give or take, I forget.

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

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

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

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

So I've been trying, it's frustrating, but we're here before you, we've got the need, big need, and seriously the ceilings are collapsing of age. I mean, that property is 40 years old and they're just too old. All of a sudden we get a call that the ceiling collapsed. Luckily it hasn't hit a tenant yet, haven't had any injuries, and I pray that we get these tax credits so we can get all that repaired all in one swoop.

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

MR. GOODWIN: Thank you.

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

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

In the next section of statute when the term is being used, first in the definition of at-risk development -- and this is at Government Code 2306.6702(5), an at-risk development means the development has received the benefit of a subsidy, including a 514 loan, but is also subject to the following conditions: the stipulation to maintain affordability and the contract granting the subsidy is nearing expiration -- that's what
I was just mentioning -- or the HUD-insured or HUD-held mortgage on the development is eligible for prepayment or is nearing the end of its term. So that's where prepayment is used, but this is not a HUD-insured or HUD-held mortgage that we're talking about.

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

MS. BINGHAM ESCAREÑO: Nearing expiration.

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

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

MR. ECCLES: Well --

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

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

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

(General laughter.)

MR. ECCLES: I'm not going to hold my breath on that.
I think that the material amendment that we're talking about here is to allow them to pay off the 514 loan and also be considered an at-risk development, so I think that probably what the Board would have to do here is come to the conclusion, though it's not of precedential value, that these circumstances, as presented here, satisfy the nearing expiration as set out in the rule, as well as statute.

MR. WILKINSON: But not be bound to those.

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

MR. WILKINSON: Thank you.

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

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

We did both because we knew USDA does not like this project. So what did we do? We said we were at-risk or USDA, or both, so if we're not at-risk and we remain USDA, we keep our award because we were under-subscribed. If we're not USDA but we're at-risk, we keep our award. So there were three possible outcomes where we would keep
our award and that's what we put in the application, and we showed the 514 payoff, we showed trying to keep the rental subsidy. If we kept the rental subsidy, we'd be USDA; if we didn't keep the rental subsidy and the loan was paid, we'd be at-risk.

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

MR. BRADEN: Mr. Chair.

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

MR. FISHER: They subsidize all of the units with the diminished need waiver, but of the 140 -- we rely
on that every year, so if they were not to grant it, which
don't have to, 100 of those 140 would not be
subsidized. The 40-odd that are there meet the
qualifications of the farm worker set-aside only because
they're retired, they're elderly people who were farm
workers and aren't any longer.

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

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

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

MR. FISHER: That's right. The financing plan,
which has been underwritten as feasible -- and USDA is
requiring it too, you all require it under your rules, we
can't disenfranchise these residents, so there's a substantial rental reserve that allows these people to live out the term of their lease, and then when they move, that unit becomes a tax credit unit and continues to be affordable. If we don't do this and USDA bails out, then when the unit becomes vacant it is a market rate unit, and that's what is making us at-risk is if all the affordability goes away, USDA goes away, rental subsidy goes away, and there is no affordability restriction.

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

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

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

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

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

MR. FISHER: Yes.

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

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

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

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

(General laughter.)

MR. GOODWIN: Thank you, Bill.

John.

MR. SHACKELFORD: Thank you, Mr. Chairman,
members of the Board, Mr. Wilkinson, Mr. Eccles. I'm John Shackelford, represent the developer and the owner of this project.

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

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

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

But also, in the statute and under the rule, expiration is not defined, so I went to Google, pulled up Merriam Webster's definition of expiration, since it's not a defined term anywhere, and it says -- the first definition refers to death, so I won't give you that one. Number two, though, is "the fact of coming to an end with a point at which something ends." To me, if you voluntarily prepay, you've then triggered an expiration by its own terms. And I appreciate Mr. Eccles pointing out that under the at-risk definition the first is the stipulation to maintain affordability and the contract granting the subsidy is nearing expiration. We think we qualify, as I just said.

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

To employ the interpretation staff attributed to it -- and I understand why they did it -- you have to read into what we're talking about, this nearing expiration, you have to actually add words into that sentence to get to the point they're trying to make.
They're reading it as expiring to a certain date, a maturity date, end of the term. It doesn't say that, that's not what it says here, it just says nearing expiration. Nearing expiration can come about by any avenue, prepayment or otherwise. So to me, it could be about foreclosure, that's nearing expiration.

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

Thank you very much.

MR. GOODWIN: Thank you.

Any questions for Mr. Shackelford?

(No response.)

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

MS. BINGHAM ESCAREÑO: I'd like to move to approve the request for the material amendment to remove USDA funding, and I may need a little assistance from counsel, in that my motion would include that the at-risk
status still is satisfied with the prepayment of the 514
loan. Does that work?

Mr. Eccles: That the prepayment of the 514
loan under these particular circumstances presented in
these items constitutes nearing expiration under the QAP
Section 11.53(b)(ii).

Ms. Bingham Escareño: Yes, that.

(General laughter.)

Mr. Goodwin: I thought you meant to say that.

Do I hear a second?

Mr. Vasquez: Second.

Mr. Goodwin: Motion and second. Any further
discussion? Any other questions?

(No response.)

Mr. Goodwin: All those in favor say aye.

(A chorus of ayes.)

Mr. Goodwin: Opposed?

(No response.)

Mr. Goodwin: Okay. Moving on to item 7, the
rules.

Mr. Banuelos: Rosalio Banuelos, director of
Multifamily Asset Management.

Item 7(a) is presentation, discussion, and
possible action on an order proposing the repeal of 10 TAC
Chapter 10, Subchapter E, Post Award and Asset Management
Requirements, and an order proposing new 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements, and directing their publication for public comment in the Texas Register.

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

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

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

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

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

Under Section 10.404(d)(1) relating to a special reserve account, we are adding a statement of "unless otherwise approved by the Department" at the end
of the section stating that "proceeds from any refinancing or other fundraising from the development will be considered net cash flow for purposes of funding the special reserve account." This is to allow for other uses of those funds such as repairs to the property and other things that would assist the property.

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

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

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

MR. GOODWIN: Mr. Chairman of the Rules
Committee, any comments?

MR. VASQUEZ: Thank you, Chairman Goodwin.

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

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

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

MR. GOODWIN: And a second?

MR. BRADEN: Second.

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

(No response.)

MR. GOODWIN: Okay. If not, all those approve say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

(General laughter.)

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

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

MR. GOODWIN: Good morning.

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

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

And first, as I said, last night at the Rules Committee meeting, organizationally our policy research specialist, Alena Morgan, did a great job of organizing the rule within each section, so I just want to acknowledge her efforts. I also want to acknowledge the work and valuable feedback that Bobby, Beau, Marni, Brooke, Megan Sylvester, and Monita Johnson-Henley in our Legal Division, Brent Stewart and Tom Cavanaugh in our
Real Estate Analysis Division, and Rosalio Banuelos and Laura Debellas in our Asset Management Division put into this rule. I don't know this as a fact, but I would guess that the Direct Loan program involves more divisions within the agency than nearly any other program, and this rule could not have been drafted without multiple divisions' input.

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

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

MR. GOODWIN: Comments?

MR. VASQUEZ: I have a motion.

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

MR. VASQUEZ: Mr. Chairman, I move that the proposed repeal and proposed new rule for the Multifamily
Direct Loan rules, as presented by staff this morning, be approved by the Board and directed for publication and public comment in the Texas Register.

MR. GOODWIN: Do I hear a second?

MS. THOMASON: Second.

MR. GOODWIN: Any discussion?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Thank you, Andrew.

MR. SINNOTT: Thank you.

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

(General laughter.)

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

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

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

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

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

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

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

As it relates to other parts of the current rule, other changes in response to public comment include: we added definitions for terms referred to elsewhere in
the rule, development, improvement survey and reverse mortgages; we included relevant citations from the Texas Tax Code and provided further guidance on households addressing tax delinquencies; we clarified that the subchapter on insurance and title requirements will not apply to the Amy Young Barrier Removal Program which is a grant assistance; and we specified requirements for title reports, loans by third party lenders, and refinancing primary mortgages.

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

MR. GOODWIN: Any questions?

(No response.)

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

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

MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: Second.

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

MS. LONEY: Good morning, Mr. Chairman and Board members. My name is Lauren Loney, L-O-N-E-Y. I'm
an attorney and co-director of advocacy at Texas Housers, the statewide nonprofit that advocates for low income tenants in our affordable housing programs.

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

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

Thank you.

MR. GOODWIN: Any questions?
(No response.)

MR. GOODWIN: Any other comments?

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

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

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

MR. GOODWIN: Thank you.

Any other comments?

(No response.)

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

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

(No response.)

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

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

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

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

The final HTF rule to be adopted has these main changes from the current version of the rule: it clarifies how the Department may utilize HTF loan repayments and interest earnings to resolve unanticipated challenges when administering the single-family programs; it removes a $20,000 cap on grant assistance from the
program in order to provide flexibility and responsiveness to rising construction costs; it modifies a qualified inspector minimum experience requirement from five years to three years to increase availability of capable inspectors; it includes citations for requirements regarding financial accountability and the Department's previous participation review; creates an extension for certain pre-1995 manufactured housing units to participate in the program as long as they receive exterior-only accessibility modifications; and adds a 12-month warranty requirement on all project deliverables.

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

MR. GOODWIN: Any questions?

(No response.)

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

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

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

MR. ECCLES: For the ones that have already
MR. VASQUEZ: This is the second round.

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

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

And a second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. Any comments?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

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

MS. BINGHAM ESCAREÑO: No breaks.

(General laughter.)

MR. GOODWIN: 7(g), Tom.

MR. GOURIS: Good morning, Board members. My
name is Tom Gouris. I'm the direct of Special Initiatives. I'm going to talk to you about migrant farm worker housing and our requirements that we're proposing to amend or revise and repeal and adopt.

Since 2005, the Department has been responsible for licensing of migrant labor housing facilities that house three or more individuals for three or more days, and any facility that does that comes to us to get licensed. It's a voluntary issue from their perspective. We're responsible for licensing them but we have very limited authority or ability to find and pursue these folks that might be housing folks.

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

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

So what you'll see in our rules is a lot of redlining of items but most of those remain a part of the rule as referenced in the OSHA and ETA standard, and then we identified the eleven things that weren't going to be maintained in the OSHA and ETA standards and we highlighted those to make those specifically required in our rule.
As I said, we reached out to those employers who were using the H-2A process and posting those jobs that they had on the DOL website, reached out to those and we've been very successful in getting a number of them to become licensed. We had something on the order of 40 licensees, 48 licensees last year, and we're up to 240 licensees now, so we've made great progress there. We think that that's about half of the current universe of eligible H-2A facilities, and we expect that we will continue to make progress in getting the remainder that need to be licensed.

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

One more thing, the fees that we collect, they are used for the licensing and inspection process and to support our marketing outreach efforts. Last biennium we were allowed to utilize about $10,500 of those fees that were collected. For this current biennium that cap was raised to $35,000, so we have a little bit more leeway,
which is good, but that also means that our fee structure
doesn't have to be as aggressive for those H-2A employers,
so we're proposing to reduce the fee for H-2A employers
that have a current inspection to $75 for the year,
whereas, other employers will remain at $250.

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

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

MR. GOODWIN:  Any questions?

MS. RESÉNDIZ:  Tom, how many locations do we
currently have at the $75?
MR. GOURIS: We have none at $75. We anticipate that of the 240 we have had in the last year, something of the order of 180 of them or so would probably qualify for the $75 fee.

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

MR. GOURIS: And inspections.

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

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

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

MS. RESÉNDIZ: Thank you.

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

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

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

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

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

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

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

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

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

MR. GOODWIN: And a second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. It's been moved and seconded. Did you want to comment?
MR. MAUCH: Yes. And I also have written comments for folks, if I can pass those out really quickly?

MR. GOODWIN: Beau?

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

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

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

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

MR. GOURIS: I received them yesterday.

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

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

In terms of farm worker housing now, we reviewed the information two weeks ago, and 60 percent of the H-2A employers don't have a license. All those
employers were sent a letter by the Department a year ago, 60 percent of them decided they didn't want to comply, and as far as we're aware, there has been no enforcement action.

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

Bad housing conditions are really widespread in Texas. We've had clients at TRLA who have been forced to live in shipping containers that were covered in hay and ostrich feces, we've had people who slept in housing where they were asked to sleep on concrete and showers were outside facing a road, we have clients who have to deal with scorpions, roaches, tarantulas, bedbugs routinely in the housing. I've had clients who taped themselves into
the sleeping bags at night because they were afraid of pests getting in. This is a big deal, it does impact people's day-to-day lives throughout the work season.

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

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

The attestations -- and this is the last thing I want to cover -- the attestations that the TDHCA wants to rely on for people who do receive an inspection from the TWC under federal standards, they're relying on an
attestation that they meet the additional state standards that are in 90.4 of the proposed rule. We know that attestations don't work because as of two years ago there were zero H-2A employers in the State of Texas who were licensed under state law. Every single one of those almost 400 H-2A employers attested, under penalty of perjury to the federal government on their application for H-2A visas, that they were complying with state law. That was a lie.

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

So thank you for your time.

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

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

I think we had some very good input last night. Mr. Mauch was there and some other colleagues. The whole process leading up to us getting the rules to this point, I think, there's been great work with staff and the
different constituencies out in the communities. We still have a ways to go but we've made great improvement, and I think everyone is saying we have come a long way although we still have a ways to go, especially on we've added new areas for easier methods to call in and report violations. I think we're going forward with better enforcement capabilities and rules that will address some of these problems, better penalty mechanisms and such like that that are incorporated in these rules.

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

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

MR. GOODWIN: Good. Thank you.

MS. RESÉNDIZ: And one last comment, Mr. Chairman. If there are any out there in the audience, any of the employers that have H-2A visas, if you've done it the right way, you haven't had any penalties,
congratulations, thank you so much. And the violations that are so severe as the ones that Mr. Mauch mentioned, I really hope that those are being addressed accordingly because there's just no room for that.

Anyway, I just had to speak up.

MR. GOODWIN: Any other comments or questions?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

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

We are starting with item number 8. Marni.

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

This is item 8(a). A couple of housekeeping details on this one. As you'll recall, we are pulling
17736 Providence at Ted Trout Drive; that will be before you in November. I'd also like to reorder the presentation, and we will be taking 17295 Legacy Trails of Decatur as the last item on this one.

MR. GOODWIN: Okay.

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

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

The construction loan agreement indicates the loan was closed on July 27 of 2018 with a completion date of October 31, 2019. The development owner has provided evidence of a force majeure extension form their construction lender. In their request the development owner says that 58 construction days have been lost due to
rainfall and/or mud for the development between the months of August 2018 through July 2019. When compared to the previous five-year annual average rainfall for the area, approximately 42.4 inches, the development had already exceeded the annual average by over 19 inches within the 12-month construction period with a total of 61.44 inches since the groundbreaking.

Under the Asset Management rules, all multifamily developments must submit a construction status report quarterly. Review of the reports indicate that the notice to proceed with construction was issued on August 1 of 2018. Beginning with the first field report, problems with the construction schedule due to rain are mentioned. By the time of report 9 on May 28 of 2019, site visit notes construction was 50 percent complete, they were estimated to be seven months behind, with five weather delays in the month of May and 53 delays of weather delay through May 31.

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

Staff recommends that the request for treatment of The Vineyard on Lancaster under an application of the
force majeure rule be approved. The 2017 QAP and Uniform Multifamily Rules and the 2019 program calendar will be applicable to this event if approved.

I'd be happy to take any questions.

MR. GOODWIN: Any questions?

(No response.)

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

MS. RESÉNDIZ: Motion to approve.

MS. BINGHAM ESCAREÑO: Second.

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

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

MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: Okay. No other questions?

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

MS. HOLLOWAY: No, there is not.

MR. VASQUEZ: In any construction plan, one
would think that they've already planned for at least the average and in any proper construction schedule one should plan for a worst-case scenario. It just seems like its borderline.

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

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

MR. GOODWIN: Does that satisfy your question?

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

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

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

(General laughter.)

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

Any other questions?

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

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

MR. WILKINSON: Yes.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?
(No response.)

MR. GOODWIN: Okay. Next item.

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

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

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

This claim is supported by a construction status report from the May 22 site visit which says, "Current estimated date of substantial completion is February 5, 2020. Project is progressing at a slow pace and appears to be approximately three to four months
behind the original contracted schedule. The contractor reported 69 rain days since the beginning of construction."

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

I'd be happy to take any questions.

MR. GOODWIN: Any questions?

(No response.)

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

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

MR. GOODWIN: A second?

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

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

(General laughter.)

MR. GOODWIN: Any other questions?

(No response.)

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

(A chorus of ayes.)
MR. GOODWIN: Opposed?
(No response.)
MR. GOODWIN: Okay.
MS. HOLLOWAY: Next one is application 17290, this is for Golden Trails.

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

On August 22 of 2019, the Department received from the development owner a request to extend the placement in service deadline under the force majeure rule, citing significant and unusual rainfall as the cause. In their request the development owner says, "McLennan County typically receives approximately 36 inches of rain per year, however, since October 2018, when the work on the project's foundation commenced, through June of 2019, a mere nine months, 42.79 inches of rain have already fallen." The request states: "Due to these unforeseen issues, a total of 154 construction days have been affected due to the rainfall and/or the need to allow the clay to dry sufficiently before construction of the foundation could proceed."
From the third construction status report on this development the project schedule is cited as a significant item of concern.

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

MR. GOODWIN: Any questions?

(No response.)

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

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay.

MS. HOLLOWAY: Next one is application 17259, this is Mistletoe Station which received an award of 9
percent credits in the amount of $1,500,000. The development proposed new construction of 78 units for a
general population in Fort Worth.

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

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

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

Per the contractor, construction was moved to a
six-day work week schedule to make up for the lost time
associated with severe weather, but the number of lost
workdays in September and October of 2018 nonetheless led
to significant delays in site and utility work. Per the
architect, the total construction schedule to date has
toted 98 rain days over three months within twelve
months of the construction schedule. This high frequency
of rain is well above the historical data for this region
of Texas, accounting for a significant construction delay
and the construction team could not have planned for.

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

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

MR. GOODWIN: Any questions?

(No response.)

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

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

MS. RESÉNDIZ: Second.
MR. GOODWIN: Okay. Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay.

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

MR. GOODWIN: 17295?

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

On August 21 of 2019, the Department received from the development owner a request to extend the placement in service deadline under the force majeure rules citing changes in laws, rules or regulations, and significant and unusual rainfall as the basis for the request. The request also indicated that a shutdown of the federal government from December 22 of 2018 through January 25 of 2019 affected the construction schedule.
On October 2 of 2019, the Development owner sent a second letter, dated October 1, that did not mention changes in laws, rules or regulations or the government shutdown, but instead focused on significant and unusual rainfall with the same exhibits included in the first request.

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

Under changes in laws, rules and regulations in their request, the development owner states that the possibility of tax reform in late 2017 resulted in a freeze of the equity markets until it could be determined how investors would accurately predict their return on LIHTC investments. The development owner sought an investor from October 2017 to June 2018 when they secured an offer for a price per credit of 88 cents which was less
than the 90 cents indicated in the application. The result for the development owner was that additional financing was required.

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

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

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

The loan agreement indicates that the loan was closed on March 26 of 2019 with a completion date of February 18, 2021. Review of the reports indicate that the contractor agreement was signed on February 11 of
2019, which is indicated as the date of commencement of the work. The status report dated May 28 of 2019 indicates a project start date of March 20 and a completion date of January 10, 2020. No information regarding construction delays are provided.

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

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

And as I mentioned earlier, the loan agreement indicates that the loan was closed on March 26 of 2019. This is 607 days, or more than 20 months after the award which came with the development period requiring completion at the end of 2019. Only one application we know of had a later closing date and that's the one that
we'll be taking up next month. Had the financing closed
timely, it is probable that construction would have been
at a point of completion where rains in April and May of
2019 would not have had the same effect.

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

Per the request, the development owner
understood that the price for credits would be lower than
expected as early as the fall of 2017 at which time they
could have returned the credits without penalty. They
also did not apply for the USDA 538 financing until August
of 2018. This is a months long process that is usually
started prior to the submission of the tax credit
application in order to ensure closing of the loan in time
to start construction timely. The request includes no
evidence that but for the shutdown of the federal
government, the USDA loan would have closed in December
2018, allowing the timely completion of the construction.

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

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

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

MR. GOODWIN: I think we would be on the fly
making some determinations based on that letter that we're
not able to substantiate, so the letter is not going to be entered into the record.

Isn't that what we decided, Beau?

MR. ECCLES: They can certainly talk about it.

I had previously said that I was concerned that there were underwriting concerns. I've checked around on that. It doesn't raise underwriting concerns but it is something that is being presented to you the day of. They can certainly discuss it.

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

Any questions for Marni?

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

MS. HOLLOWAY: Correct.

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

MS. HOLLOWAY: Changes in laws, rules or regulations is one of the grounds for granting force majeure. We did not see in this request that there was a change in a law, rule or regulation.
MR. VASQUEZ: Okay, right. But just in general. So these are two separate attempts of throwing things against the wall to see if they stick.

MS. HOLLOWAY: Yes.

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

MS. HOLLOWAY: Yes, sir.

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

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

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

MS. HOLLOWAY: Sixty-five.

MR. VASQUEZ: Did not have this problem?

MS. HOLLOWAY: Correct.

MR. VASQUEZ: Okay. Thank you.

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

MS. HOLLOWAY: The rule states that the force
majeure event has to occur after the start of construction
and that the development owner must have done everything
they could to minimize and mitigate the impact, and timely
closed their financing.

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

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

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

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

MR. GOODWIN: I could have misunderstood.

MS. HOLLOWAY: I was talking so fast.

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

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

MS. HOLLOWAY:  Yes.

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

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

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

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

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

MS. HOLLOWAY:  Yes.

MR. GOODWIN:  Any other questions for Marni?

(No response.)

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

MS. BINGHAM ESCAREÑO:  So moved.

MR. GOODWIN:  Second?
MS. THOMASON: Second.

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

(A chorus of ayes.)

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

MS. MYRICK: Yes.

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

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

It was not an attempt to throw up something to make it stick on a wall. What I think I wanted to do was to provide context to staff and to everyone that was not
familiar with the transaction and to give all detail and
information on it. I in no way meant to shift the focus
away from the rain, which was my focus. It was 71 days of
rain and so I wanted to make sure that while that was
included in the request, again, I wanted to give context
to what the actual situation was for this transaction.

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

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

And I think that's under three minutes.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Next.

MS. MYRICK: Thank you.

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

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

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

And one other note I'll make. You mentioned these 60-some other deals that would have dealt with this.
They did but they didn't all involve federal finance, so if they weren't a USDA type product that was impacted by the shutdown, they wouldn't have had this issue that we had, so those deals that went through a more conventional, traditional, even TDHCA finance process wouldn't have had to deal with the same delays that we had to deal with. So I just wanted to throw that out there right off the bat.

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

First off, as the development team is concerned, I have 20 years experience in the finance and development of properties. Our team has done 45 projects or more, many of them here in Texas. This is the first time I've ever been in front of a board asking for this type of relief, so I hope you'll see that that's not a pattern with us. We know how to get these deals done, we know how to get them done timely, and had it not been for the rain in this case, we would have made it again. And I'll let some of our other partners kind of talk about that.
This deal, quite frankly, has been a tough one, I'm not going to lie. Some deals are easy. You know, when you do hundreds of deals over 20 years, some deals, as I hope you guys can understand as former developers yourself, some deals go easy and close quickly, some deals you're fighting tooth and nail every step of the way to overcome obstacles, and that's what we were doing here. So we literally had our two years of work into this project and we felt like it was the right thing to do to be a good partner for TDHCA to provide affordable housing to the citizens of Decatur and the State of Texas, so we really have felt good about the deal up until the rain came.

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

The letter I submitted from Bellwether that you're not distributing -- and I can understand and appreciate -- it was more just meant to document they're
our lender in the deal, their support for the deal, their support for the relief from force majeure, and they also gave us a timeline that, hey, we did start this financing back in October -- or in August, rather, of 2018, and we submitted our rate lock agreement and were ready to close in December, and had that government shutdown not happened, we would have been closed and under construction.

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

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

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

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

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

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

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

MR. GOODWIN: Any other questions?

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

Setting aside the shutdown and everything, the
government shutdown, focusing just on the rain.

    MS. HOLLOWAY: Yes.

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

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

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

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

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

    MR. VASQUEZ: Sure.

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

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

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

MR. GOODWIN: Who else is going to speak?

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

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

So we were able to get comfortable with it, as Bob mentioned, the lender got comfortable with it, there were a lot of professional eyes on this deal that even
with that delay we felt it could get done.

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

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

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you. Next.

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

I'm part of the development team, I'm also part of the construction team, which is my background, I'm a sticks and bricks guy, I've got 30 years experience in that. And we chose to hire a general contractor that
actually has more experience than I do in this, he's got 40 years experience and over 50,000 units, because we knew we were going to be up against a timeline.

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

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

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

MR. GOODWIN: Any questions?

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

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

MR. GARRETT: Well, I can assure you, as was said earlier, if we had thought for any moment that we weren't going to make it when we started this deal, we
would not have started this deal because the devastation here, we're talking about millions of dollars and loss of affordable housing in Decatur, Texas. So I assure you we had no ill will or no ill intent to ask for a "bailout" as has been discussed. That's the last thing that I would want. I want to do what I say I'm going to do and that's, like I say, tell the truth and live with the consequences.

Thank y'all very much.

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

MR. GOODWIN: Really?

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

MR. GOODWIN: Yes. Thank you, John.

MS. THOMASON: I have a question for Marni.

MR. GOODWIN: Yes.

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

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

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

MS. HOLLOWAY: Not that I know of.

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

MS. HOLLOWAY: Yes.

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

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

MR. GOODWIN: Bobby.

MR. WILKINSON: Force majeure is presenting problems to staff. Years ago it didn't exist and we had a development burn to the ground in 2014 and it was put in the QAP. Significant and unusual rainfall is subjective, and then a timely start also subjective. The gentleman here said that they could have got it done in nine months, no problem, if they hadn't had unusual rainfall. Staff is in a difficult position and I think we wanted to try to draw a line on force majeure. We see just increasing amounts of, hey, I got some sprinkles, I need six more
months. But they presented other evidence, pictures, whatnot, you've experienced it yourself.

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

MR. WILKINSON: Right.

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

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

(General laughter.)

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

MR. BRADEN: I'll make a motion.

MR. GOODWIN: Okay.

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

MR. GOODWIN: A second?

MR. VASQUEZ: Second.

MR. GOODWIN: Okay. Any further discussion?
MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

Thank you, John.

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

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

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

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commitment expiration date may not be extended.

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

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

The appeal indicates that as of September 24 all required documents were provided through the Serv-U account and that appropriate fees were submitted via overnight delivery. While not required by the rule, staff did review the late documents and determined that the application verification and compliance review form was not submitted and the Section 811 PRA program agreement also was not provided, although the appeal said that all documents were there. The correct fee payments were received on September 25 so nine days after the expiration
of the commitment. Allowing the late submission of the executed commitment documentation and fee payment would be tantamount to extending the commitment expiration date, which is specifically prohibited by the rule.

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

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

I'd be happy to take any questions.

MR. GOODWIN: Any questions for Marni?

(No response.)

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

MR. PHILIP: Yes.
MS. BINGHAM ESCAREÑO: Move to hear comments.

MS. THOMASON: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. PHILIP: Mr. Chairman and Board members.

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

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

We are working on three items. One of the commitment letter, the other one is there are some underwriting conditions that we needed to provide. We contacted in writing and provided that information. Then there is another email from TDHCA which requires us to fill out the carryover questionnaire, which has the EIN number on this form and signature box on all of them. So
basically the information supposed to be submitted with
the underwriting -- with the commitment notice is exactly
the same, so we have submitted that and then we had
feedback and we submitted those in time. And since then
we have uploaded the information on the Serv-U,
overnighted the check, and there was two items we
mentioned which is initiated by TDHCA.

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

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

A denial of this appeal is devastating for a
new startup nonprofit, which we are trying to do. Okay?
And we ask the Board to favorably consider authorizing the
staff to accept the documentation and the fee submitted so
that we can move forward and complete, and we will be able
to finish the project on time also. And also, the
nonprofit which is the co-developer has developed four other developments and so we have the knowledge and the experience to work with.

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

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

    MR. PHILIP: Thank you.

    MR. GOODWIN: Any questions?

    (No response.)

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

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

    We're asking that application 19228 be treated as any other applicant and is held to the strict
requirements and deadlines of the 9 percent LIHTC application process. All we ask is that all applicants should have to play by the same rules.

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

MR. GOODWIN: Any questions?

MR. GOODWIN: Thank you.

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

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

MR. ECCLES: I would say the staff does not have the discretion. By rule, 10 TAC 10.402(a), the commitment expiration date may not be extended. That rule could be considered for waiver. I don't believe waiver has been requested, though. I think it was just brought that it was a sorry, I messed up.
The Board would have the ability to waive that particular no extension. That said, I'm not sure that it's been requested. It hasn't been justified as a waiver, and that's kind of where we are with this.

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

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

MR. GOODWIN: Mr. Braden.

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

MR. GOODWIN: Okay.

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

MR. GOODWIN: And a second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Any further discussion or questions?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?
MR. GOODWIN: All right. Moving on to item 8(c). Teresa.

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

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

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

Sorry, Shay.

(General laughter.)

MS. MORALES: As a brief overview, the Texas Bond Review Board administers the private activity bond program for the state, and similar to the 9 percent program, where there is a ceiling amount of credits that can be allocated, there is a ceiling amount of bonds that
can be issued. Multifamily development has its own set-aside of bond volume cap that is available from January to August 15 each year. After this date everything collapses and reservations are issued on a first come, first served basis.

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

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

While there may be individuals who comment that the 4 percent credits will go unused and effectively wasted if not used for a particular transaction that may
be before you, these numbers suggest otherwise. If one deal does not get done, there is still demand and volume cap is still being used. The other thing to note is that it is not uncommon for a failed 9 percent application to make its way through the process as a 4 percent application.

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

MR. GOODWIN: Any questions for Teresa?
(No response.)

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

SPEAKER: Not yet.

MR. GOODWIN: Okay.

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

MS. MORALES: How much additional volume?

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

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

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

MR. WILKINSON: Across multiple issuers.

MS. MORALES: Correct.

MR. WILKINSON: Not just us.

MR. GOODWIN: Any additional questions?

(No response.)

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

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. 8(d).

MS. MORALES: 8(d) involves the award of
approximately $1.7 million in 4 percent housing tax credits associated with two multifamily properties. These 4 percent applications differ from the group that you just approved in that these have eligibility determinations that need to be made, and staff is recommending eligibility on each. If it pleases the Board, I can briefly summarize the issue applicable to each and then Board action can be taken on the item as a whole.

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

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

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

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

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

MR. GOODWIN: Any questions for Teresa?

(No response.)

MR. GOODWIN: Is this what you wanted to speak
on?

SPEAKER: The next one.

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

MS. RESÉNDIZ: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

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

Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

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

Mendez Middle School, what I'll refer to as Mendez, has had consecutive Improvement Required ratings by TEA from 2014 to 2018. According to the rule, a school that has been Improvement Required for three consecutive years shall be unable to mitigate unless there is a clear trend indicating imminent compliance due to the potential
for school closure pursuant to Texas Education Code. Documentation has not been submitted to evidence this clear trend despite its five-year Improvement Required status.

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

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

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

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

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

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: You wanted to speak.

Do I hear a motion to entertain comments?

MS. BINGHAM ESCAREÑO: Move to hear comments.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: All in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay.

MR. BROWN: Good evening, Chairman and Board.

My name is Jake Brown, and I represent the developer, LBG Development, on the project.

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

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

Their proposal to us and our proposal to you is a youth enrichment program that will be operated at the property by Rainbow Housing and the program will operate twenty hours a week for education and academic achievement.
for the residents, the youth of the property. So this will include things like a homework power hour, educational activities, character building, leadership skills, et cetera. And so the academic concept portion of this program will be in direct partnership and coordination with AISD, specifically Mendez Middle School, so they're in line with the curriculum and what they're presenting and teaching the students at this after-school program.

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

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

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

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

Last note, this is a 4 percent deal so it's not
a case of where if it was a 9 percent there might be
somebody right behind us, a better quality project that
would be eligible that could take our place. If these
units aren't constructed, it's just going to go to waste
and there won't be affordable housing.
I think we're all in alignment here. Our goal is to provide affordable housing, and I think that we're all in agreement that the City of Austin needs it. Thank you.

Any questions?

MR. GOODWIN: Any questions?

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

MS. MORALES: So without getting too much into the weeds, there's two types of reservations that are associated with the bond volume cap. One is your non-traditional where it's tied to a project and applicants have five months to get through our process, their issuer's process, and get closed on the financing. The other avenue that applicants can take is they can pursue what's called traditional carryforward. The issuer requests that and it has not five months but three years. Unfortunately, that type of reservation is project-specific, meaning of the applicant or the project does not move forward, the issuer cannot return that volume cap, it can't get reused, it's tied to this specific project.

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

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

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

Mr. Brown: Any other questions?

Mr. Goodwin: Any other questions?

(No response.)

Mr. Brown: Thank you guys.

Mr. Goodwin: Okay. Who wants to be next?

Mr. Simmons: Good afternoon, members of the Board. My name is David Simmons, and I'm proud to serve as the executive director of the Texas STEM coalition. As you are aware, the Texas STEM coalition was approved by AISD as a third party operator for Mendez Middle School. Our agreement was approved in June 2018, June 26, 2018, I believe, and school started about six weeks later, so with very limited planning, we began the process of revisioning Mendez Middle School.

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

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

So we know what to do. It's complex work, it's difficult work. Children from economically disadvantaged families have unique needs. We have also partnered with Communities in Schools to work on the emotional support,
the trauma interventions that many of our students need. I'm proud to say that we reviewed information yesterday at our board meeting. Discipline referrals at the campus are 80 percent less today than they were a year ago on the campus.

So if you haven't been to Mendez Middle School lately, it's been totally transformed, we've restructured everything. It's taking time. We deliver our product, if you will, our delivery is through project-based learning. It is where students have a direct involvement in their own learning. They're required to participate, they produce projects, it's not just sit and get.

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

And again, we believe, given the opportunity and the time, we're definitely going to turn Mendez around. This model has been proven effective in schools that T-STEM has been involved with in East Texas and given the opportunity, we feel we will be successful here.
And I would like to, if I could, introduce Ms. Joanna Rowley.

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

MR. SIMMONS: Yes, sir.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Okay.

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

MR. GOODWIN: Great.

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

I am the director at Mendez Middle School, and just to give you a little bit of background about myself, this is my 27th year in education. Nine of those years I spent as a teacher, ten years as an administrator, and six years as an executive director, and this is my second year at Mendez Middle School. I do have school improvement experience in my background. I was a middle school principal in West Texas that was considered under-performing as well with culture and morale challenges. They were in extreme high need, high economically disadvantaged numbers. We actually, under my direction, reached Recognized academic standard after the first year
of implementation, and was one student shy from Exemplary status, which was the highest rating, within the second year while I was there.

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

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

Interventions are in place to provide
assistance to close the achievement gaps, and the UTeach
instructional coaches who are housed there at Mendez
provide teacher support in math and science specifically.
Our teachers meet on a weekly basis to undergo the data-
driven decision-making for the students.

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

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

MR. GOODWIN: Good. Any questions?

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

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

MR. GOODWIN: Any other questions?

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

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

MR. WILKINSON: And do you expect to have a
better ranking for the year?
MS. ROWLEY: Absolutely, absolutely.

MR. WILKINSON: Thank you.

MR. GOODWIN: Any other questions?

(No response.)

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

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

MR. GOODWIN: How would I know that?

(General laughter.)

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

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

I'd like to point out we talk about the shortage of affordable housing in Austin, but to just kind of drive that home, the latest figures came out on the number of households that are rent-burdened in Austin and it's 49 percent of households here spend more than 30 percent of their income on housing, and 23 percent are severely rent-burdened where they spend more than 50
percent of their income on housing. If you can imagine
that, spending more than 50 percent of your income on
housing. And here is an opportunity to deliver 215 units
and make a dent in that.

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

MR. GOODWIN: Any questions for Barry?

(No response.)

MR. GOODWIN: Thank you.

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

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

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

MS. MORALES: Correct.

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

(No response.)

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

MS. RESÉNDIZ: May I make a comment?

MR. GOODWIN: Sure.

MS. RESÉNDIZ: This is what makes it so difficult is the kids are the ones that are suffering if a
school closes, but yet understanding the need for affordable housing. What do y'all project would happen if the school closed?

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

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

And I think it's also important to note, that was mentioned earlier, school turnaround is a complex thing, and not to make excuses of what happened before we came onboard, but we really believe that with the discretion that we now have as a body over Mendez Middle School that we're able to do some of the things in terms
of providing unique student interventions, making sure we have teachers that want to be in that environment as opposed to being reassigned to that environment. It makes a huge difference when you have people on the same page buying into a new system.

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

MR. GOODWIN: Any other questions?

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

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

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

MR. GOODWIN: Do I have a second?

(No response.)

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

MR. ECCLES: Yes.

MR. GOODWIN: I'll second the motion.

Other Board member discussion?

(No response.)

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

(No response.)

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

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

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

And a bit portion of my feelings too is that this school is at 50 percent of capacity. It holds 1100 or 1200 people and it's got 600. That means there's 600 of them that have found alternatives someplace else. So
that's the reason I'm in favor of staff's recommendation

Any other comments?

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

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

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

I think the T-STEM presented a compelling
argument. I think the supportive housing type of Rainbow
programs on site make a difference. So while I've been
part of the Rules Committee that set in place this future
if you have an F and doesn't meet standards, then there is
no mitigation, here I am breaking that even before it goes
into place.
Again, I believe that they've already started and I think I'll vote against the motion as well.

MR. GOODWIN: Okay. Any other comments?

(No response.)

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

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

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

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

MR. GOODWIN: Opposed?

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

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

Do we need a motion to grant the appeal?

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

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

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

MR. GOODWIN: All those in favor say aye.

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

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

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

MR. BRADEN: That makes sense.

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

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

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

MR. VASQUEZ: Yes.

MR. GOODWIN: Those in favor say aye.

(Ayes: Members Braden, Reséndiz, Thomason, and Vasquez.)
MR. GOODWIN: Opposed?

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

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

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

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

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

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

MR. GOODWIN: Okay. Plus the 200 that we just approved in 8(e).
MS. MORALES: Correct.

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

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

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

MR. GOODWIN: Second?

MR. BRADEN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Are you done?

MS. MORALES: I'm done.

MR. GOODWIN: You're done. Good job, Teresa.

8(g). You don't look like Andrew.

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

MR. GOODWIN: You're playing Andrew.

(General laughter.)
MS. HOLLOWAY: Andrew gets the next two, I'm going to take this one.

Marni Holloway, director of Multifamily Finance.

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

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

A public assistance county is different from an individual assistance county. Like Harris County was an individual assistance county. Public assistance counties are places that people who live in individual assistance
counties can go and take their assistance with them.

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

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

Our Real Estate Analysis staff has evaluated
this new application and has found that the GP advances
could be paid off within 15 years. If they are not paid
off within that time for some reason, the amount remaining
would be treated as capital contributions under the
partnership agreement.

So despite our repeat requests for
documentation as we've been working through this
application, we have not received documentation of the
bridge loan between the general partner and the
development. They have represented to us that these
advances were a loan; we've received no documentation of
that.

We also have not received documentation that
the applicant will not be able to convert their
construction financing to permanent financing until our
loan proceeds have been used to cover that GP advance, so
to pay off that GP advance. And we've asked for that
documentation a number of times.

Most recently we received letters from both
their lender and equity provider within the last couple of
days. Those letters did not speak to an inability to
convert. What they spoke to was the health of the sponsor
of the development, and direct loan funds are not about
the health of the sponsor, they're about the health of the
development. They are now in lease-up stage and I believe
actually are fully occupied.

For the reasons stated, staff recommends that
the application 18509 be found ineligible in accordance
with the Direct Loan Rule.

MR. GOODWIN: Any questions for Marni?

MR. VASQUEZ: So just to understand, they're
asking for a loan from us to refund the extra money that
the general partner had to put in.

MS. HOLLOWAY: Yes.

MR. GOODWIN: And do I further understand that
they've been requested numerous times to provide
documentation about the source and use of those funds that
our loan would be and they've not provided that?

MS. HOLLOWAY: It's not so much the source and
use as documentation of some loan agreement, some note
between the GP and the development to document that that
was in fact a loan that needs to be paid off, and
documentation from their lender and equity that they will
not convert and they will not get their last equity
payment unless we come in with this million dollars to
repay the GP advance.

MR. GOODWIN: So even in light of these
requests that the information has not been provided, they
still wanted to leave this on the agenda today?

MS. HOLLOWAY: Yes.

MR. GOODWIN: Okay. And how long ago did we
start requesting this information from them? Is it 30
days, 60 days, or is it weeks?

MS. HOLLOWAY: No. Months, several months.

MR. GOODWIN: Several months.

MS. HOLLOWAY: Yes. And we have met in person
and discussed these issues and made that request and still
don’t have them.

MR. GOODWIN: And those requests have been very
specific as to what we were looking for and wanted?
MS. HOLLOWAY: Yes.

MR. GOODWIN: Any other questions from Board members?

(No response.)

MR. GOODWIN: I see that we have two people that want to speak. Right? So we'll entertain a motion to hear comments.

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Cynthia, are you going to be first?

MS. BAST: Good morning. Cynthia Bast of Locke Lord, representing the applicant for this loan.

As you heard, the development did encounter extraordinary circumstances during the course of construction, and if you read the staff writeup, I believe they have acknowledged that the applicant did provide evidence of the adverse factors that were beyond its control.

So procedurally where we are is that you have a
development that was already awarded funding by TDHCA, the
rules require that the Board find this applicant eligible
for a multifamily direct loan, and Section 13.3(d)
specifically allows for an award for this kind of
circumstance. It says that "Funds may be used to assist
distressed developments previously funded by the
Department when approved by the Board."

So then you go on to Section 13.5(d)(2) which
talks about how the Board determines that eligibility that
is required, and there are three factors for eligibility.
The first is evidence of circumstances beyond the
applicant's control which could not have been prevented by
timely start of construction; the second is force majeure
events; and the third is evidence that there are no
further exceptional conditions existing that will delay or
cause further cost increases. So those are the three
criteria that the rules set forth. And I believe the
applicant has provided evidence that it meets those
criteria and that that has been, again, acknowledged by
staff.

So if we've met that criteria under the rule,
then we should be done. Right?

Well, there's another sentence in the rule, and
I think this is partly what the staff is basing their
recommendation on. The staff is asking for evidence that
not getting this loan would materially impair the ability of this housing, the feasibility. That's why they're asking would the lender, an investor, would they foreclose, would something not go forward with this housing if this loan is not made. So that standard derives from a sentence in the rule that says -- again, we're back to the eligibility criteria -- it says, "The Board may find other applicants eligible for good cause such as developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing." And so they're saying there has not been adequate showing of the material impairment.

My point here -- and it is my last point -- is that this sentence doesn't say that an applicant is required to show this material impairment. It simply says that that is an example of good cause for which the Board may find an applicant eligible. And so if the applicant were required to show that its ability to provide the affordable housing is impaired, then this requirement would have been included in the criteria for your eligibility determination.

So the point we are making is that we believe under the rule this applicant is eligible, and you will hear from Mr. Mohanna who will give you more information
and background from the developer's perspective.

Thank you.

MR. GOODWIN: Thank you.

Any questions for Cynthia?

(No response.)

MR. MOHANNA: Mr. Chairman, members of the Board, my name is Moe Mohanna. We are the developer, the general partner, the guarantor, basically where the buck stops.

Staff has done an excellent job. We've been working with them since 2018 and making sure and digging into the very details of the cost increases and making sure that these cost increases were extraordinary and beyond our control, and they have verified that and so that's not an issue of contention.

We have taken every effort to offset that after blowing through the contingency, including admitting a CHDO, getting a property tax exemption, getting the reduction in operating expenses, trying to get a higher perm loan. We went and tried to get an AHP loan, however, our lender at that time was not sponsoring AHP applications during that year. We lost that option. We negotiated with the GC a reduction of about $300,000 in their fee, again to bring costs. We're deferring our entire share of the fee completely, which staff has
mentioned available cash flow. Well, available cash flow
can either go one way or another. So in addition to our
share of the developer fee, which is the larger share with
the nonprofit, that is being deferred to be paid out of
cash flow. There is the funds that we provided that in
theory then would be paid, so you can't have both be paid
within the ten or fifteen year.

The issue is timing and the issue is how the
industry works. The industry requires us, as a developer,
general partner and guarantor, to provide a mechanic lien
free completion guarantee to the lender/investor. The
moment I show a construction cost increase, change order
from the CHDO contractor, we are required to provide the
funds necessary from our pocket in any form in order to
make sure that the budget is balanced. Otherwise, we'd be
in default. If I was to hold on providing that funding, I
would put the project in serious jeopardy. The project
was approaching its placed in service deadline at that
time.

In order to be in a position to show, as
they've requested, present a letter from our
lender/investor that it is materially impaired, I would
have to stop funding, stop the project, get a default
notice, or even walk up with a foreclosure notice to say
it's materially impaired. The reason we cannot provide
that letter because I'm required under the limited partnership agreement and my construction loan agreement to provide those funds, then we go and find sources for the funds, it's not the other way around. I can't tell my lender/investor I'm going to stop until I find the source and maybe that source will provide us an allocation.

Unfortunately, that's not how the industry works, and while the staff worked with us the way they believe the rules are written and interpreted, they say, No, you need to come to us before you spend it, you need to be in a situation that's going to be impaired, not step up and do your obligations and responsibility under those agreements.

These developments are made that you receive all the funding that is required so the project is financially feasible and sustainable for the life of the development. That's the beauty of the success of this program. We're in a situation that contingency has been used, we're in a situation that we've tried other alternatives to increase perm loan funding, we've been hit with adjusters because of delays that we've had in order to address this, we've deferred our entire fee, and yet there is still a significant gap that has to be in a permanent position.

We've come to you as a lender of last resort.
We've exhausted all possible options. The request for the letter, we're the source, we're the guarantor, we're the general partner, we're the lender. It's an internal loan that we had to provide. I'd be more than glad to provide a loan to the guarantor myself to the partnership, general partner, myself. It's a document because we play all those roles in the partnership, but that document exists internally. Something from the lender? They're never going to give us that, they will hold us to our guarantee first.

Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Did I understand you to say there is a loan document between you and the ownership entity?

MR. MOHANNA: Yes, sir, internally.

MR. GOODWIN: And isn't that what we've requested and not been provided?

MR. MOHANNA: That was requested, I believe, in our meeting we had with Marni and Andrew. I thought it was in August, I didn't think it was months ago. But I'd be more than glad. It's an internal document, it's not a formal document because I have to bring it down from my corporate level to the general partner level to the partnership level. More than glad to provide that
MR. GOODWIN: And the covenants of your other financing do not preclude that type of arrangement?

MR. MOHANNA: They require it.

MR. GOODWIN: They require it.

MR. MOHANNA: In order to step up and honor my guarantee under my limited partnership agreement to provide a mechanic lien free completion guarantee and on the construction loan agreement, they say you as the guarantor, as the developer, as the general partner will provide whatever funds are needed to achieve that completion in a timely manner.

MR. GOODWIN: Right. If I understand -- I guess I'm lost here, I'm also a little simple-minded --

MR. MOHANNA: That make two of us.

MR. GOODWIN: -- if this is what was requested for months and it exists, why have you not provided it before today? Why would you sit here today and say I will provide it, if we've requested it, and that is the document we talk about that we requested.

MS. HOLLOWAY: Yes, we did request that loan document.

MR. GOODWIN: And if you say it exists, why wouldn't you have provided it beforehand?

MR. MOHANNA: That is definitely my error. I
mean, it's a one-page internal document.

MR. GOODWIN: Sure.

MR. MOHANNA: We have not provided it before because it's an internal document, but I can make that available.

And I apologize. I think the crux of the matter was not that document. The crux of the matter was despite the criteria that Ms. Bast showed in front of you today, the crux of the matter was show me a document that the development or the completion of these affordable units would be materially impaired. Presented with that request, which is impossible for me to produce --

MR. GOODWIN: You thought you'd be in default.

MR. MOHANNA: -- exactly, I thought we were dead in the water. That was the crux of the matter. If today you are telling me --

MR. GOODWIN: A catch-22. And I'm not telling you, I'm just asking you.

MR. MOHANNA: I apologize. If today I'm being informed that no, it's that internal document that I need to show that the guarantor/general partner provided this loan, that's what we need to provide, I would have pulled that out, written it and signed it right there. But the crux of the matter that was said is your case is dead in the water because you have an event of foreclosure, this
project stopped. That was what we thought was the issue, not this document, so I apologize if I misunderstood what the issue is.

MR. GOODWIN: Other questions?

MR. VASQUEZ: I have some questions. I'm confused about the math and the understanding. So we're asking for a direct loan request of $1,140,000. Right?

MR. MOHANNA: Yes.

MR. VASQUEZ: And then I see, I think in your letter, talking about construction budget modified three times for total of $1,329,000, and then saying this $1.14 million loan reduces the gap to $779,000.

What extra money has been put in? What's the total need change in the cost of the project, and then I see something like the lender -- which I think is Bank of America?

MR. MOHANNA: Yes.

MR. VASQUEZ: Said they'll do another $900,000. You said that's GC, or the GC will reduce their fee by $425-.

MR. MOHANNA: I appreciate your confusion, and I'll tell you why. TDHCA really has been very diligent in understanding all the possible outcomes and scenarios, so we do not have a commitment from the lender for the increased loan amount because that's going to come in at
perm loan conversion. But they want us to show all the best cases to make sure that whatever gap we're asking for is the maximum gap. So we showed multiple scenarios. We showed a scenario before we did the CHDO introduction and the increase in the perm loan, we showed after the introduction with a potential increase in the perm loan.

So if I may answer your question in this way. The CHDO has been admitted, we have anticipated an increase in the perm loan, we have used up our construction contingency, we will be deferring -- Highridge Costa will be deferring its entire share, which is the majority, of the developer fee. After that there's still a $1.3 million gap. That documentation has been provided to TDHCA.

So I know the scenarios are confusing, but if today you asked me if you get an increased perm loan, if you defer your entire developer fee, if you have the reduction from the GC, what are the funds that you would still have to put in in order to close on the perm loan, they are about $1.3 million, they're above the $1.1-. MR. VASQUEZ: Okay. I think it would help your case, at least from my perspective, to understand you're not asking us to cover all these costs.

MR. MOHANNA: Absolutely not.

MR. VASQUEZ: There is another million dollars
on top of this that is being deferred?

MR. MOHANNA: At least a million of our
developer fee is being deferred, there is still money that
we are going to put in. The $1.1- just reduces the paying
of the money above and beyond any deferred developer fee
and above and beyond any increased perm loan amount.

MR. VASQUEZ: Again, that's really important
information for us to understand the full picture.

MR. MOHANNA: Absolutely. These were
scenarios, because if you come and ask me today, great,
I'm going to give you this money, you're going to be in
that good position, do you have the commitment for the
increased perm loan, the answer is no. If the lender
doesn't give us the increased perm loan commitment, then
no, we're talking that we'll be out even more money than
we're talking about today, us out the money. So this by
no means is addressing all the costs.

MR. VASQUEZ: In that case, if you don't get
the increased perm loan, you as the developer are prepared
if necessary.

MR. MOHANNA: We've put the money up already.
It's not a question of what happens. So if there's any
question in anyone's mind what happens if the perm lender
doesn't give you that money, is this project in jeopardy,
the answer is no. How can I guarantee that? Because the
money required to balance the loan today is already in. So the party that will not be paid is us.

MR. VASQUEZ: All right.

MR. GOODWIN: Other questions?

MR. WILKINSON: I think Megan has some comments for us.

MR. GOODWIN: Megan.

MS. SYLVESTER: Megan Sylvester, federal compliance counsel.

Just a quick point of clarification. Today's action is not approving a loan or approving an award for a loan, today's actions just to determine whether they have met their burden of eligibility under the Direct Loan Rule and the NOFA. If you were to grant this, then next month you'll hear from underwriting and program about whether they may meet the eligibility criteria listed in the rule and the NOFA to be paid for these specific costs. But that's not what the question is today.

MR. GOODWIN: So repeat that, would you, Megan?

MS. SYLVESTER: Sure.

MR. GOODWIN: I thought I understood but now I'd like to hear it again.

MS. SYLVESTER: So today it's just did they describe circumstances and did they provide sufficient documentation to be an eligible applicant. Next time, if
you grant the motion today that they did meet that burden, next time you'll hear from the program staff and underwriting about whether the costs that they are actually asking to be reimbursed for are eligible under the competitive NOFA that they applied under that the Direct Loan Rule.

MR. GOODWIN: Okay. I think I understand. Any questions for Megan before she leaves?

(No response.)

MR. GOODWIN: Thank you.

MS. HOLLOWAY: If I may?

MR. GOODWIN: Sure.

MS. HOLLOWAY: Real Estate Analysis has produced a report that says in its conclusion: "As submitted, the increase in development costs and corresponding revisions to capital structure do not affect the feasibility conclusion. Applicant general partner advance has been presented to the Department as a loan that will be paid out from cash flow. If the direct loan funds are not awarded, debt coverage would be 1.42 percent. The underwriter would assume an increase in the primary debt by $270,000. This would require a deferral of 80 percent of the developer fee which could be repaid within eleven years of operation. Per the 2018-1 NOFA -- this is the 2018 NOFA that the application was submitted --
- awards to refinance or of supplemental financing will not exceed an amount necessary to replace lost funding or maintain original anticipated levels of feasibility, as determined by staff."

MR. GOODWIN: But again, that would be determined in next month's meeting.

MS. HOLLOWAY: Yes, but I think it shores up that they haven't proven that they need the money, that their ability to provide the housing has been materially impaired.

MR. GOODWIN: Okay. Any comments or questions from any Board members?

MR. VASQUEZ: Again, just to --

MR. GOODWIN: Another comment you wanted to make?

MR. MOHANNA: Just another comment.

MR. GOODWIN: Sure.

MR. MOHANNA: Just to be clear, this is the complexity of the system. I'm a simple developer and there's a timing of when the money comes in and the timing, I think, that this money needs to come in during construction and so on and so forth. In a perfect world I would ask, one, if we're deemed eligible because these expenditures have been made, this gap is there, we can prove it beyond a doubt. You'll have cost audits from
third party certified accountants to show all of the
above.

If I were to put the rules the way I want them,
I'd say don't put a dime in until perm loan conversion so
that you're not putting in any more than you should put.
We're not looking to have any portion of our deferred
developer fee paid off, none. The numbers show that the
entire fee has to be deferred and show that in addition
there's over a million dollars that are needed. We have
the math to show that. If there is a way that the state
can wait until the perm loan conversion to see all the
final sources, including the exact perm loan amount
increase, to make sure that not a dollar is being put
beyond what is needed, we would have no problem with that
condition.

We're not looking to take any extra money. We
don't see, even with this request, that we will be in a
position that all of the money that we're putting in above
and beyond the deferred developer fee will be repaid. We
don't even see that in this equation, mathematically
impossible.

To put the state in a position of comfort that
that occurs and to put the state in a position that
they're not putting a dollar more, if the rules allow -- I
know the rules require doing all that -- we'd be at perm
conversion here it is, it is the money and the lender of last resorts. If it's a million one, or $999- or $700,000, we're okay with that. We're not looking for a certain amount. This is what we believe it's going to be. If there's a chance it's going to be less, we'd be more than glad to take less. If there's a chance it goes away, which is impossible in today's math, I wish it would. I don't want to be here asking this, this is not what we do.

Thank you.

MR. GOODWIN: Okay. Any other questions, comments? Anybody ready to make a motion?

(No response.)

MR. GOODWIN: Beau, I've got a question for you. If we make this determination of eligibility, does that put us in any position next month, when we assume this would be coming back to us, that we've already presupposed that we should do this or have to do this?

MR. ECCLES: I think that what we're saying is this makes it so that the applicant is eligible to apply for the loan, but it does not --

MS. HOLLOWAY: As Megan said, this is not an award.

MR. ECCLES: Right.

MR. GOODWIN: It's just an eligibility.

MS. HOLLOWAY: Yes. They may be eligible to
receive the funds. It does not mean that they've proven a need, that they wouldn't be over-sourced. I mean, there isn't a precedent for what we would bring to you next month.

MR. GOODWIN: Okay.

MR. ECCLES: She used the P word.

(General laughter.)

MR. GOODWIN: People just cannot resist.

Mr. Braden.

MR. BRADEN: I'll make a motion. I'll make a motion that the application 18509 be found eligible.

MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: Any further discussion? Any comments?

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

MR. SINNOTT: Good morning. Andrew Sinnott, Multifamily Loan Programs administrator.

Item 8(h) is presentation, discussion, and possible action regarding an award of direct loan funds from the 2019-1 NOFA for Sierra Royale, application 19503.

This application, which previously received an
allocation of 9 percent tax credits in 2004, is proposing to refinance permanent debt which is approximately $1.7 million on a 76-unit multifamily development known as Sierra Royale in the City of Robstown, with direct loan funds under the preservation set-aside.

The development experienced significant property damage as a result of Hurricane Harvey in August 2017, and subsequently received an award of approximately $4.5 million in CDBG disaster recovery funds from the General Land Office for rehab and related soft costs. Despite refinance being the primary use of the requested direct loan funds because the CDBG DR are being used for rehab, the requirements of the preservation set-aside are being met since rehab is the primary activity in terms of the total development cost.

While this application does not meet the requirements of a workout development, since the Department does not have an existing loan on the property, it has many of the same attributes of a workout development that the Board approved earlier this year -- and that was Legend Oaks, 18507 -- in that it has experienced spiking operating costs as a result of the municipality increasing its water rates. As a result, the DCR requirement of a max of 1.35 in year one is not being met, so we increased the interest rate on the direct loan,
they came in with a 2 percent interest rate request, we increased it up to what we thought was approximately a market interest rate of 5.5 percent. Even with that 5.5 percent rate on our loan, the DCR in year one is 1.80.

Underwriting made adjustments to the financing structure as outlined in the Real Estate Analysis rules and is recommending approval for three reasons: first, the Department is the only lender; second, the Department is not trying to size the credit allocation which is the purpose of that max 1.35 DCR, so as the only lender on this deal, we're in an even better position with a higher DCR; and the Department is not limited by standards adopted in the Department's action plan to HUD because the preservation set-aside consists entirely of TCAP funds, so we're not using any of our federal funds.

Additionally, staff has limited developer fee in its underwriting, ensuring that the developer does not receive an unreasonable return.

Staff recommends the following actions. Moving forward with less than 20 percent owner contributed equity, as the CDBG disaster recovery funds could be considered equity since they're being awarded as a grant, so it's basically the equivalent of about a $500,000 tax credit allocation, that $4.5 million that they're getting. Approving an award of $1,849,736 in TCAP repayment funds,
structured as a first lien hard repayable loan, at a 5.5
interest rate with a 30-year amortization and 20-year
term. And finally, allowing the 5 percent match which is
a little over $92,000 for this deal, required by Section
6(h) of the NOFA, to be provided with respect to another
property, the Villas at Cedar Grove 19364, that the
applicant has control over which will result in a HOME
match LURA being placed on that property for one HOME
match eligible unit.

Should the Board approve this award of direct
loan funds, 25 of the 76 units will be restricted under
the TCAP LURA with those 25 units having 14 additional
years of affordability beyond the extended use period of
the tax credit LURA that exists today.

With that, I'll answer any questions.

MS. BINGHAM ESCAREÑO: Very creative.

MR. GOODWIN: Very creative.

Any questions?

MR. VASQUEZ: Just to clarify, so we're taking
out a permanent lender, a senior lender?

MR. SINNOTT: Correct. PNC.

MR. VASQUEZ: And we're taking over that.

MR. SINNOTT: There is an existing loan with
PNC and it has a balloon note coming up I believe in 2021
that we'll be taking out and that's at 6 percent.
MR. VASQUEZ: So we're giving them a better rate.

MR. SINNOTT: A little better rate. Yeah.

MR. GOODWIN: So do I hear a motion to approve staff's recommendation?

MR. VASQUEZ: I would move to approve staff's recommendation.

MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: I'll second.

MR. GOODWIN: Okay. Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Andrew, are you going to do the last item?

MR. SINNOTT: The last item of the day.

Item 8(i) is presentation, discussion, and possible action on the fifth amendment to the 2019-1 Direct Loan NOFA -- we just haven't done enough yet; we need one more.

This NOFA was originally approved with approximately $34.5 million in HOME and HTF TCAP repayment funds and NSP-1 PI. It's since been amended several times.
to respond to increasing demand in the general set-aside and decreased demand in the CHDO set-aside, and so that our 2019 allocation of NHTF could be made available. So after all these amendments that NOFA amount has increased from $34.5 million to approximately $67.6 million available.

We currently have two 4 percent housing tax credit layered priority 3 applications under the general set-aside requesting $8 million total and only $5,510,000 available in TCAP RF and $500,000 available in NSP-1 PI remaining under the general set-aside, resulting in a $1.99 million gap between what's available and what's been requested.

To help fill this gap, staff is recommending that the $1.5 million in TCAP repayment funds available and unrequested under the supportive housing soft repayment set-aside be reprogrammed to the general set-aside, and $990,000 in TCAP repayment funds received in April in April and May 2019 be added to the general set-aside, thereby allowing the $500,000 in NSP-1 PI to be released from the NOFA which will then be used for single-family activities. And this will also allow staff to move forward with a single fund source of TCAP rather than two fund sources of TCAP and NSP.

As a result of TCAP repayment funds no longer
being available under the supportive housing soft
repayment set-aside, new construction will be the only
eligible activity under that set-aside moving forward with
NHTF being the old fund source available under that set-
aside.

Staff also recommends changing the application
submission deadline for the general CHDO and general
preservation set-asides to 5:00 p.m. Austin local time,
tomorrow, October 11, 2019, since we're fully subscribed
under those set-asides, while allowing applications under
the supportive housing soft repayment set-aside to
continue to be received until 5:00 p.m. Austin local time
on November 26, 2019.

MR. GOODWIN: Any questions for Andrew?
(No response.)

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

MR. BRADEN: So moved.

MR. GOODWIN: Any discussion?
(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?
(No response.)

MR. VASQUEZ: I second that one, by the way.
MR. GOODWIN: Oh, you did second it. Sorry. I knew you wanted to get out of here. It's 12:10. They're going to be pitching before long.

(General laughter.)

MR. GOODWIN: So we've hit the public comment section where we take input for future Board meetings, and we have two letters that Michael is going to read to us, a little quicker than he normally reads.

MR. LYTTLE: I don't know. As a Cleveland Indians fan, I'm not sure I want to help out a Houston Astros fan over there. I'm just disgruntled, don't mind me.

(General laughter.)

MR. LYTTLE: Two letters that need to be read into the record that we've been asked.

The first one here is from State Senator Kel Seliger to the Board. Both of these letters, by the way, involve the 2020 draft QAP.

"I applaud the effort of the Texas Department of Housing and Community Affairs to provide affordable statewide housing using a variety of tools, such as grants, local partnerships and tax credits. I am writing in regards to the housing tax credits that the agency provides on an annual basis.

"I am fortunate to represent the St. Anthony's}
Hospital, located in Amarillo, which was once a storied institution. The hospital has recently formed into a nonprofit known as the St. Anthony's Legacy and Redevelopment Corporation which seeks to revitalize the property to accommodate over 100 senior housing units. While TDHCA considers many items in the selection criteria, it is my understanding that St. Anthony's efforts to secure 9 percent competitive housing tax credits for fiscal year 2019 were unsuccessful due only to Amarillo's population threshold being just under the minimum 200,000 requirement based on the 2010 census data.

"As a result of being contacted by numerous constituents, I urge you to examine the population criteria and consider a change to the threshold which would allow competitive projects in the City of Amarillo an opportunity to earn the much needed tax credits in the future. I support his initiative and hope you will give it consideration.

"Thank you for your assistance.

"Sincerely, Kel Seliger."

The second letter is from State Representative Four Price. It reads:

"I am submitting this letter as my comments regarding the above referenced proposed rules. Specifically, I respectfully request your consideration
that the proposed rule" -- and they're referencing the 2020 QAP, 10 TAC Section 11.9(c)(7)(A), Proximity to Urban Core -- "be amended by reducing the population threshold to 190,000 as there are only two cities in Region 1 Urban, Amarillo and Lubbock. If this rule is not amended, Amarillo will continue to receive unequal treatment until the 2020 census numbers take effect. It is believed that Amarillo's current estimated population exceeds 200,000, however, this estimate will not become official until sometime in 2021.

"In February of this year I submitted a letter in support of application number 19232 The Commons at St. Anthony's, Amarillo, Potter County, Texas, for consideration of the 2019 competitive housing tax credit program, Region 1 Urban. In addition to my enthusiastic support, the project application received widespread community support, including from many local leaders, the Neighborhood Advisory Association and the Amarillo City Commission which passed a resolution in support.

"The proposed development sought to address the existing need for more affordable and quality senior housing in the City of Amarillo. The redevelopment of this tract of land and buildings, once utilized by a major hospital system, would significantly revitalize this portion of Amarillo. As this property has long been
unoccupied, many in the Greater Amarillo community, including myself, were very disappointed that the project was not awarded the tax credit funding as the senior housing development is the cornerstone for redeveloping this site.

"I am informed that the reason for the St. Anthony's project losing out on the award is due to Amarillo's official population number of 190,000 being below the urban core population threshold of 200,000. Thus, I am further informed that a project in Lubbock, which has a population of 200,000 and above, received the award. This disparate treatment based on a mere 10,000 persons is neither reasonable nor equitable. The proposed rule seeks to keep, as part of the evaluation process, the arbitrary threshold in place.

"Again, I urge that the proposed rule be amended as aforementioned in this letter. If I can provide any other information or if you wish to speak with me, I would be pleased to do so.

"Sincerely, Four Price, State Representative."

MR. GOODWIN: Thank you.

Any other public comment for future Board meetings?

(No response.)

MR. GOODWIN: Hearing none, I'll entertain a
motion to adjourn.

MR. VASQUEZ: Move to adjourn.

MR. GOODWIN: Seconded. All in favor aye.

(A chorus of ayes.)

MR. GOODWIN: We're adjourned.

(Whereupon, at 12:15 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: October 10, 2019

I do hereby certify that the foregoing pages, numbers 1 through 202, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: October 17, 2019

(Transcriber)

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