

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

December 14, 2017  
8:03 a.m.

BOARD MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	8
EXECUTIVE	
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LEGAL DIVISION	
b) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606 / CMTS 2680)	
c) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Plainview Triplex II (HOME 532315 / CMTS 2658)	
d) Presentation, discussion, and possible action regarding the adoption of Agreed Final Order concerning Sabine Park Apartments (HTC 96134 / CMTS 1594)	
ASSET MANAGEMENT	
e) Presentation, discussion and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 and amendments to the Developers and Guarantors 13196 Emerald Village San Antonio	
f) Presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Application 97019 Creekstone Ranch Victoria 15306 Altura Heights Houston 16015 The Standard at Boswell Marketplace Fort Worth 17012 Secretariat Apartments Arlington	

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

SECTION 8 PROGRAM

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

BOND FINANCE

10

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

HOME AND HOMELESSNESS PROGRAMS

8

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

MULTIFAMILY FINANCE

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- k) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer  
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 17411 Villa Americana Houston  
 17420 Del Valle 969 Austin ETJ  
 17429 Canyons at 45 West Amarillo  
 17432 Valle Verde El Paso  
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 17435 Lakeview Senior Living Rowlett  
 17436 Boyce Lane Austin ETJ  
 17437 Trails at Leon Creek San Antonio

- l) Presentation, discussion, and possible action on an award of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability  
17502 Freedom's Path at Kerrville,  
Kerrville

RULES

- m) Presentation, discussion, and possible action on orders proposing adoption of amendments to 10 TAC §23.61, Tenant-Based Rental Assistance General Requirements and directing that they be published in the *Texas Register*
- n) Presentation, discussion, and possible action on proposed new 10 TAC §1.5, Waiver Applicability in the Case of Federally Declared Disasters, and directing that it be published in the *Texas Register* 66
- o) Presentation, discussion and possible action on an order adopting the amendment of 10 TAC Chapter 10, Subchapter E, concerning the Post Award and Asset Management Requirements, and an order directing its publication in the *Texas Register*
- p) Presentation, discussion, and possible action on the draft 2018 State of Texas Low Income Housing Plan and Annual Report, and proposed repeal and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication for public comment in the *Texas Register*
- q) Presentation, discussion, and possible action on an order adopting the amended 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*
- r) Presentation, discussion, and possible action on an order adopting the amended 10 TAC Subchapter D concerning the

Underwriting and Loan Policy, and an order directing its publication in the *Texas Register*

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P R O C E E D I N G S

1  
2 MR. GOODWIN: Call to order, the board meeting  
3 for December 14, for the Texas Department of Housing and  
4 Community Affairs. And I would ask Tim to lead us in the  
5 Pledge of Allegiance, and please stand.

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

8 MR. GOODWIN: We will start with the roll call.  
9 Ms. Bingham?

10 MS. BINGHAM ESCAREÑO: Here.

11 MR. GOODWIN: Mr. Braden?

12 MR. BRADEN: Here.

13 MR. GOODWIN: Ms. Reséndiz?

14 (No response.)

15 MR. GOODWIN: Ms. Thomason?

16 MS. THOMASON: Here.

17 MR. GOODWIN: Mr. Vasquez.

18 MR. VASQUEZ: Here.

19 MR. GOODWIN: We have a quorum. We will begin.

20 First, I would like to recognize a special  
21 guest we have here, the former chairman of the Texas  
22 Department of Housing, Mr. Kent Conine.

23 Kent, would you stand up?

24 (Applause.)

25 MR. GOODWIN: Mr. Lyttle, I believe you have

1 something you are going to read?

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

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

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

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

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

23 "WHEREAS, the Department supports local  
24 governments and organizations that work, often in  
25 collaboration, to address, prevent and minimize



1 homelessness;

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

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

7 "NOW, THEREFORE, it is hereby

8 RESOLVED, that the Governing Board of the Texas  
9 Department of Housing and Community Affairs does hereby  
10 and recognize December 21, 2017, Homeless Persons Memorial  
11 Day in Texas and encourages all Texas individuals and  
12 organizations, public and private, to join in in this  
13 observance of the National Homeless Persons Memorial Day.

14 "Signed this 14th day of December 2017."

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

17 MS. BINGHAM ESCAREÑO: So moved.

18 MR. GOODWIN: Second?

19 MR. VASQUEZ: Second.

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

22 (A chorus of ayes.)

23 MR. GOODWIN: Okay. Opposed?

24 (No response.)

25 MR. GOODWIN: It passes.

1 Mr. Gouris?

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

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

8 *The Bond Buyer*, which is the national trade  
9 publication for the municipal bond industry, and the  
10 Northeast Women in Public Finance Association, have  
11 recently honored Monica in selecting her as a trail-  
12 blazing woman in public finance.

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

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

20 As we have been reporting over the past year  
21 and a half, highlights of the changes that they've made  
22 include the designation of the Idaho Housing Finance  
23 Agency as our master servicer, which has reduced the up-  
24 front servicing costs and improved -- improved approval  
25 turnaround times.

1           The execution of a \$10 million, ten-year, low-  
2 interest loan from Woodforest Bank, which has helped  
3 reduce cost of funds for down payment assistance, and the  
4 accomplishment of a facility to access short-term federal  
5 home loan bank funds from Bank of Dallas funds to further  
6 reduce the costs previously incorporated as part of our  
7 master service costs.

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

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

15           MR. GOODWIN: Thank you.

16           (Applause.)

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

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

23           MS. HENDERSON: Peggy Henderson, TDHCA  
24 registering opinion for Edward L. Castor, on Agenda Item,  
25 Consent Agenda Item 1(k), Project Number 17437,

1 representing Camino Bandera HOA, and he is against staff's  
2 recommendation.

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

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

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

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

19 It is not an award or commitment by the TDHCA  
20 Board. A determination notice is the result of an  
21 assessment that staff has performed, assuming that the 4  
22 percent program, the bond program and any other financing  
23 programs continue substantially unchanged, and that the  
24 actual cost of all aspects of the development do not  
25 materially deviate from the projections and assumptions

1 provided.

2           The determination notice is not a guarantee,  
3 and does not insulate in any way against possible changes  
4 in these assumed factors, including by way of example and  
5 not limitation, changes in interest rates, changes in  
6 syndication pricing, changes in development costs, and  
7 even changes to the very programs themselves, including  
8 legislation to alter or curtail any program.

9           Just how we want to wake up in the morning --  
10           (General laughter.)

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

13           MR. GOODWIN: Thank you.

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

17           (General laughter.)

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

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

22           MR. VASQUEZ: Move to approve.

23           MR. GOODWIN: Moved.

24           Seconded?

25           MS. BINGHAM ESCAREÑO: Seconded.

1 MR. GOODWIN: Moved and seconded. Any  
2 discussion, or any comments?

3 (No response.)

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

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (NO response.)

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

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

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

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

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

1 housing finance.

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

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

7 MR. GOODWIN: Any questions?

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

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

12 MR. GOODWIN: Okay.

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

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

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

25 MR. GOODWIN: Okay. Motion?

1 MS THOMASON: I'll make a motion.

2 MR. GOODWIN: So moved. Second?

3 MS. BINGHAM ESCAREÑO: Second.

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

6 (A chorus of ayes.)

7 MR. GOODWIN: Opposed?

8 (No response.)

9 MR. GOODWIN: Okay. The motion passes.

10 MR. SCOTT: Thank you very much.

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

13 MR. SCOTT: Thank you.

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

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

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

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

25 The Board approves the draft of the Amended



1 Multifamily Direct Loan Rule at the October 12 meeting  
2 that was published in the *Texas Register* for comment.

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

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

10 MR. GOODWIN: Do I have a motion?

11 MR. VASQUEZ: So moved.

12 MR. GOODWIN: Second?

13 MR. BRADEN: Second.

14 MR. GOODWIN: Moved and seconded. Any comments  
15 or questions?

16 (No response.)

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

18 (A chorus of ayes.)

19 MR. GOODWIN: Okay.

20 MS. HOLLOWAY: Moving on, Item 6(a) is  
21 Presentation, Discussion and Possible Action regarding the  
22 Issuance of Multifamily Housing Revenue Bonds

23 (Vista on Gessner) Series 2018. Resolution No.  
24 18-012 and a Determination Notice of Housing Tax Credits.

25 Vista on Gessner is located in Houston. It is an

1 acquisition and rehabilitation transaction of 805 units  
2 serving the general population.

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

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

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

14 Thank you, cedar pollen.

15 (General laughter.)

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

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

25 The project will be 100 percent cash

1 collateralized at all times, and payments will be  
2 guaranteed by Fannie Mae.

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

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

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

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

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

16 Staff recommends approval of Resolution 18-102  
17 for the issuance of up to \$50 million in tax-exempt  
18 Multifamily Housing and Revenue Bonds for Vista on  
19 Gessner, and the issuance of a determination notice of  
20 \$3,499,967 in 4 percent housing tax credits, subject to  
21 any underwriting conditions.

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

25 MR. GOODWIN: Okay. Do I hear a motion to

1 approve staff's recommendation?

2 MR. BRADEN: So moved.

3 MR. GOODWIN: So moved. Second?

4 MR. VASQUEZ: And seconded.

5 MR. GOODWIN: Okay.

6 Questions?

7 (No response.)

8 MR. GOODWIN: Any comments?

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

10 --

11 MR. GOODWIN: Sure.

12 MS. HOLLOWAY: This will be the second year we  
13 don't have confirmed numbers that our 4 percent of bond  
14 program has exceeded production on the 9 percent side.

15 Theresa, who had a flat tire so she can't be  
16 here, but she will be here later. How much I appreciate  
17 all of the effort that she puts in making sure that these  
18 deals run smoothly through the pipeline, and you'll note  
19 on the Consent Agenda there was a big bunch of  
20 determination notices. So --

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

23 (A chorus of ayes.)

24 MR. GOODWIN: Opposed?

25 (No response.)

1 MR. GOODWIN: Okay. Moving to 6(b)?

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

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

10 The carrier for allocation agreement executed  
11 on December 28 included a certification from the  
12 development owner that each building for which the  
13 allocation was made will be placed in service by December  
14 31, 2017.

15 On December 1, the Department received a  
16 request to extend the placement in service deadline under  
17 the requirements for credit returns resulting from *force*  
18 *majeure* events. This rule allows the development owner to  
19 return credits within three years of award, and have those  
20 credits reallocated to the development outside of the  
21 usual regional allocation system if all of the  
22 requirements of the subsection are met.

23 The owner has provided evidence of significant  
24 and unusual rainfall, along with labor shortages that have  
25 significantly slowed their progress to completion.

1                   Staff recommends approval of the Request for  
2 Treatment of Trails of Brady under an application of the  
3 *force majeure* rule, and that the placed-in-service  
4 deadline be extended until March 30, 2018.

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

7                   MR. CHILDRE: Yes, sir. This one.

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

10                  MS. THOMASON: So moved.

11                  MR. GOODWIN: Second.

12                  MS. BINGHAM ESCAREÑO: Second.

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

14                  (A chorus of ayes.)

15                  MR. GOODMAN: Okay. Opposed?

16                  (No response.)

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

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

22                  And I just want to come up here and just let  
23 you know that we're here: the developer, the construction  
24 company's here to answer any questions or give you any  
25 information that you need.

1 I want to say thank you to staff, and I really  
2 appreciate your recommendation. And that's all I have.

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

4 (No response.)

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

7 (No response.)

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

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

12 MR. GOODWIN: Second?

13 MR. VASQUEZ: Second.

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

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Thank you sir.

20 MR. CHILDRE: Thank you.

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

25 This development received an award of \$893,609

1 in 9 percent tax credits in 2015. The carryover agreement  
2 was executed on December 17th.

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

8 For purposes of this board item, the  
9 development owner is RISE Residential Construction. RISE  
10 and Green Extreme had reached a settlement on September  
11 30, 2016, that removed Green Extreme from the structure.

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

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

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

23 Once construction started, the owner claims  
24 that it was delayed 16 days by rain and was negatively  
25 impacted by a labor shortage. When requested by staff,



1 the owner did not provide specific evidence of how these  
2 events delayed construction.

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

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

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

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

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

25 MR. GOODWIN: So no staff recommendation?

1 MS. BINGHAM ESCAREÑO: No recommendation.

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

5 MS. BINGHAM ESCAREÑO: So moved.

6 MR. GOODWIN: So moved. Second?

7 MR. VASQUEZ: Second.

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

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

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

15 So a way of introduction, the RISE Residential  
16 Team has developed, successfully constructed and developed  
17 24 affordable properties, translating to 4,138 units to  
18 the State of Texas since 2003.

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

21 We're here today to respectfully request that  
22 extension of the 12/31/2017 placed-in-service deadline, for  
23 City Square Apartment Homes in Garland, Texas, due to the  
24 effects of several *force majeure* events including  
25 litigation, weather and labor shortages in Dallas County.

1           To set the stage, the time line is as follows:  
2 July 2015, allocation awarded; three weeks later, August 6,  
3 we purchased the land and building; \$5 million. Fast  
4 forward 13 months, September 2016, delayed one year due to  
5 litigation with our original nonprofit partner.

6           And in October we did, as Marty said, begin  
7 construction on the rehabilitation project.

8           So first, let's talk about litigation.  
9 Litigation as a *force majeure* event in the QAP. Conflicts  
10 arose in 2015 between RISE and our original partner, which  
11 impeded our ability to move forward while involved in  
12 litigation, and then with the nonprofit partner, they had  
13 threatened to return the credits to the Department against  
14 our wishes.

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

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

22           After months of negotiation, we finally agreed  
23 to pay the partner \$700,000 to walk away and finally allow  
24 us to close the transaction, which we did on September 30,  
25 2016, over one year behind our usual schedule, but in the

1 spirit of adherence to obligation.

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

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

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

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

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

24 Dewey Stevens will talk more into specifics to  
25 this development in a few moments.

1 Third, labor shortages. Labor shortages are  
2 defined in the QAP as event of *force majeure*, which allows  
3 for the extension of time.

4 Most of Texas has seen a severe shortage of  
5 labor availability. The hardest-hit areas in DFW were  
6 56,000 units that are under construction right now.

7 Our labor base isn't even close to being able  
8 to keep up. Where we would have had 60 skilled trades  
9 onsite, we may now have ten at a time.

10 A few relevant quotes from area publications:  
11 *Dallas Business Journal*, "In 2016, 75 percent of all GCs  
12 reporting an inability to completely staff construction on  
13 their projects. Dallas is in the top U.S. markets impacted  
14 by these factors, with 15 percent of the apartments delayed  
15 into 2018."

16 *Dallas Morning News*, "Dallas is undersupplied by  
17 18,000 to 20,000 construction workers today."

18 As far as timely notification, when we first --  
19 we did first notify staff in July of this year that we  
20 would likely need an extension based on these events. It  
21 was decided by staff that the best time to formally make  
22 your request was after the GC knew for sure when we would  
23 be substantially complete. In September we formally  
24 requested that extension, and resolved the nonprofit  
25 issues.

1           So to deny our request today, and recapture the  
2 credits would be terminal for us. We specialize in  
3 affordable development; we have no other outside pursuits,  
4 outside of the industry.

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

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

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

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

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

24           MS. FISHER: Sure.

25           MR. GOODWIN: -- I have one question. I think

1 you made the statement in there that litigation is seen as  
2 a *force majeure* item in the QAP. Is that accurate, Beau?

3 MR. ECCLES: It is listed amongst those things.

4 But --

5 VOICE: Please use the mic.

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

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

14 MR. GOODWIN: Okay.

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

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

24 MS. FISHER: It currently is. Yes.

25 MR. GOODWIN: When will it be -- what is your

1 schedule completion date for in-service?

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

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

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

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

15 MR. GOODWIN: With the eight months --

16 MS. FISHER: Yes.

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

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

20 MR. GOODWIN: Okay.

21 Other questions?

22 MR. BRADEN: Mr. Chair?

23 MR. GOODWIN: Yes?

24 MR. BRADEN: So was a lawsuit actually filed?

25 MS. FISHER: Yes.



1 MR. BRADEN: Who filed the lawsuit?

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

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

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

13 MR. GOODWIN: Other questions?

14 (No response.)

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

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

19 MR. GOODWIN: Sure. Okay.

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

22 Thank you.

23 MR. GOODWIN: Sure.

24 (Pause.)

25 MR. GOODWIN: Sorry, Kent.

1 MR. CONINE: Good morning, Board members. My  
2 name is Kent Conine, for those of you that I have not met.

3 I'm a builder-developer from the Dallas area, and past  
4 president of the National Association of Home Builders, and  
5 a past board members of TDHCA for some 15 years.

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

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

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

23 Typically when the single-family market is up,  
24 the multifamily market's down and vice-versa, and that's  
25 how the labor supplies have been able to accommodate the

1 demand, but both of them are hotter than a firecracker in  
2 the Dallas area.

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

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

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

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

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

25 So we have our kids not getting into the

1 industry, we have the foreign workers not there, and we  
2 have a huge demand going on at the same time.

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

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

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

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

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

23 Strictly, there is a construction labor  
24 shortage. Based on all these factors combined, I  
25 respectfully request that the Board grant the extension of

1 the placement in service date for the City Square Apartment  
2 Homes in Garland, and I'm here to answer any questions.

3 MR. GOODWIN: Any questions?

4 (No response.)

5 MR. CONINE: Thank you --

6 MR. ECCLES: Actually --

7 MR. GOODWIN: Oh -- Beau.

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

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

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

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

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

23 MR. CONINE: Sure.

24 MR. VASQUEZ: For clarification, just -- and  
25 again all due respect to your presentation -- but did you

1 just make an argument to this Board that we have a labor  
2 shortage because we do not have enough illegal alien labor  
3 force in the area?

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

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

12 But most of the foreign-born workers that we  
13 use, those numbers have -- are quantified on a national  
14 basis, and we're a half a million under what we were in  
15 2007.

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

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

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

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

1 construction industry.

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

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

7 MR. CONINE: You bet.

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

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

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

21  
22 Other issue is that the size of the project  
23 being reduced, say one to 80 units, the other to 46, is it  
24 diminished our ability to attract large contractors.  
25 Large contractors are going to go where there's 500, 600,

1 700 units.

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

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

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

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

23 A lot of them have been under the gun, we've  
24 closed deals and we've had five months to get it back in  
25 service, in South Texas. So we understand what is required



1 to do this and how to cobble things together; how to put  
2 pieces in place, and how to work the puzzle.

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

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

12 If I can get a \$1 a foot in Texas, I can get  
13 \$1.20 a foot in Florida, I'm heading to Florida. So as the  
14 economy expands in the rest of the country, we can expect  
15 to and see a diminishing of the labor -- in Dallas-Fort  
16 Worth and particularly the whole State of Texas.

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

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

23 MR. GOODWIN: Dewey, I'd like to hear you  
24 address Beau's question which is, relative to this project,  
25 can you point to labor shortages that have happened?

1                   Isn't that what you asked, Beau?

2                   MR. ECCLES:   Yes, in particular --

3                   MR. GOODWIN:   Not in general, but specifically.

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

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

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

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

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

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

25                   But the reality, if you see 50 or 60 people

1 onsite, I would consider ourselves to be fortunate. And  
2 we're often having to cobble together, bringing multiples  
3 to try to accommodate that shortage.

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

8 (General laughter.)

9 VOICE: Good point.

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

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

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

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

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

23 MR. GOODWIN: On this project?

24 MR. STEVENS: Yes, that's correct.

25 MR. GOODWIN: Okay. That's what I think we're

1 looking for --

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

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

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

14 They're going to Kent's job.

15 MR. GOODWIN: Okay.

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

18 MR. STEVENS: Sure.

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

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

25 MR. VASQUEZ: Are we not going to expect that

1 you guys are going to come back to us again with the same  
2 issues on these other projects?

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

7 As Kent alluded --

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

11 MR. STEVENS: I think we have accommodated for  
12 the labor shortages. Kent alluded to, we used to build in  
13 12 -- take a 200-unit project, we could build in 12, 14  
14 months. It's now 20 to 24 months.

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

17 MR. GOODWIN: Any other questions?

18 (No response.)

19 MR. GOODWIN: Thank you, Dewey.

20 MR. STEVENS: Thank you.

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

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

24 John Shackelford, here on behalf of the  
25 developer.

1           You know, sometimes as an attorney you touch a  
2 file and you do it sort of lightly; and in others you are  
3 all-in and you spend a lot of time with it.

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

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

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

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

22           Because you put the application in, you get to,  
23 you know, be awarded in July 2015, we think we're ready to  
24 go, and then the co-partner ends up deciding the terms  
25 weren't to their satisfaction, they changed attorneys, that

1 takes delay, so it created a lot of issues, totally beyond  
2 the control of RISE.

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

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

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

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

24 She would say, You guys going to be able to get  
25 your deal worked out? You guys going to be able to make

1 it? Just keeping her informed.

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

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

16           He said, Let's wait until you guys can move to  
17 get Green Extreme Homes out of the transaction completely.

18           We then set about doing that. Staff was great working  
19 with us; you guys approved that in September 2017.

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

24           And what they ended up doing was writing a  
25 check for \$700,000, which I'm sure several people sitting



1 behind me are thinking, My Gosh. They wrote a check for  
2 \$700,000 to have these people go away.

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

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

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

17 MR. GOODWIN: Okay. Any questions?

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

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

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

24 MR. SHACKLEFORD: I think TX Garland Apartments,  
25 L.P., which is a Texas limited partnership that our law

1 firm formed, we formed the general partner entity.

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

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

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

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

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

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

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

22 MR. BRADEN: Right. I understood that.

23 MR. SHACKLEFORD: Right.

24 MR. BRADEN: But why isn't this just a fight  
25 among the applicants' control parties; why is that beyond

1 the control of the applicant if their owners are fighting?

2 I mean, I understand it's not fair to the one,  
3 to RISE. But they were fighting among themselves,  
4 and the -- from our perspective, the applicant is the  
5 applicant.

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

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

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

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

24 We couldn't get the abandonment, so we couldn't  
25 go vertical. All we could do was the demolition.

1 MR. BRADEN: So you're saying -- so originally  
2 it was a fight between the owners, but at some point they  
3 settled, and the applicant -- the current applicant, it  
4 wasn't -- it's not a fight between the owners of the  
5 current applicant, but the delay was caused when they were  
6 both controlling the applicant.

7 MR. SHACKLEFORD: Correct.

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

10 MR. GOODWIN: Other questions?

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

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

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

24 So it has significant consequences. I think  
25 Ms. Fisher used the term, "terminal." So essentially

1 that's what it is.

2 MR. VASQUEZ: The two projects?

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

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

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

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

18 MS. FISHER: Sure.

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

22 MS. FISHER: They did not. This was their first  
23 bite, and we were really excited about it. I mean, because  
24 they were very successful in the -- you know, the energy  
25 realm, they had great -- subpaneling, was that it? --

1 subpaneling of -- you know, add that into -- incorporate  
2 that into the Garland project and its great cost savings.

3           Anyway, we were very positive about that  
4 partnership, and because it was their first round, I just  
5 think that they weren't ready. And it just didn't work  
6 out.

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

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

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

25           And as you see here, we gave them quite a bit of

1 money for actually doing nothing, ultimately, so the deal  
2 would have been better if they had stayed in.

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

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

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

8 MS. FISHER: They changed their minds.

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

14 MS. FISHER: Right.

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

17 MS. FISHER: Uh-huh. Uh-huh.

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

20 MS. FISHER: Yes.

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

25 MS. FISHER: Uh-huh.

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

5 MS. FISHER: Uh-huh.

6 MS. BINGHAM ESCAREÑO: So --

7 MS. FISHER: I see your concern.

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

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

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

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

24 So as you can see, they were doing things that  
25 were out of our control, trying to interfere with our



1 ability to just do what we promised you guys that we would  
2 do. And it was based on litigation --

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

5 MS. FISHER: Sure.

6 MR. VASQUEZ: Okay. Could I ask our counsel --  
7 Look, all right -- well, maybe one of the two-part  
8 question.

9 MR. ECCLES: Okay.

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

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

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

22 Is there any way we can go and ask -- get an  
23 opinion from someone else, saying, like to determine  
24 general -- asking is this -- does this even qualify as  
25 litigation, as conceived under this *force majeure*.

1 MR. IRVINE: The answer is no, unfortunately.  
2 The placed-in-service deadline is this month, and once they  
3 go beyond that, they are at risk of not being able to claim  
4 the credits.

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

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

9 (General laughter.)

10 MR. VASQUEZ: -- and it's not, can we --

11 MR. GOODWIN: And the second --

12 MR. VASQUEZ: Give it back to our counsel. And  
13 it's not -- is this truly what was the intention of the  
14 word, litigation, under *force majeure*.

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

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

20 MS. THOMASON: Second.

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

23 (A chorus of ayes.)

24 MR. GOODWIN: So we will move into Executive  
25 Session, the Board will go into Executive Session pursuant

1 to Texas Government Code 551.074, for purposes of  
2 discussing personnel matters, for the purposes of receiving  
3 legal advice from its attorney, which we will do.

4 So we'll be back in 20 minutes.

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

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

11 So we will reconvene.

12 THE REPORTER: The mics are dead.

13 MR. GOODWIN: They're on.

14 THE REPORTER: They're coming back on.

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

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

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

22 MR. SHACKLEFORD: Correct.

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

25 MR. SHACKLEFORD: There's a GP entity in the

1 limited partnership. TX Garland's Apartments, LP is the  
2 actual applicant.

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

5 MR. SHACKLEFORD: Yes, sir.

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

9 MR. SHACKLEFORD: No.

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

13 MR. SHACKLEFORD: Correct.

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

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

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

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

25 MR. BRADEN: So the litigation that we're

1 talking about -- again, we're talking technically -- is  
2 actually by a third -- well, an unrelated third party that  
3 caused this litigation of the current applicant.

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

8 MR. BRADEN: Okay. That answers my question.

9 MR. GOODWIN: That answer your question?

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

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

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

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

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

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

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

23 MR. SHACKLEFORD: There were multiple  
24 defendants. Yes. The partnership, general partner entity,  
25 RISE Construction, there was -- there were about, as I

1 recall, five to seven defendants in the lawsuit.

2 MR. ECCLES: Okay. Thank you.

3 MR. GOODWIN: Okay?

4 Any other questions?

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

7 MR. GOODWIN: Okay.

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

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

12 MR. BRADEN: I'll second that.

13 MR. GOODWIN: Okay. Your motion is seconded.  
14 Any other discussion?

15 (No response.)

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

18 (A chorus of ayes.)

19 MR. GOODWIN: Opposed?

20 (No response.)

21 MR. GOODWIN: It is passed.

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

23 (Pause.)

24 MS. HOLLOWAY: Item 6(c) is, Presentation,  
25 Discussion and Possible Action to Adopt the 2018

1 Multifamily Programs Procedures Manual.

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

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

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

14  
15 There is a change to the manual since it was  
16 published in the Board materials, hard copies have been  
17 provided to the audience and all of the Board members.

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

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

25 Applicants are notified of any changes via

1 ListServ announcement. Staff recommends that the 2018  
2 Multifamily Programs Procedures Manual be approved.

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

5 MR. VASQUEZ: Yes.

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

8 MR. VASQUEZ: So moved.

9 MR. GOODWIN: Second?

10 MR. BRADEN: Second.

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

13 (A chorus of ayes.)

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

15 MR. DE LA VALINT: Good morning, Board members.

16 Don De la Valint, DMA Development. Long-time listener,  
17 first-time caller, so I apologize if I stammer a little  
18 bit.

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

24 The first one has to do with a self-score in the  
25 preapplication document. Currently, the preapp planning



1 document that's posted online requests that the readiness-  
2 to-proceed item is self-supported by applicants, which is a  
3 five-point scoring item, and normally under regular  
4 circumstances wouldn't be such a huge deal, but there was  
5 also a change in the QAP, for preapp participation points,  
6 where your score can't change by more than four points up  
7 or down.

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

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

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

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

1 disaster area because of the two-year look back.

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

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

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

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

1 application is due.

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

4 MR. GOODWIN: Any questions?

5 (No response.)

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

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

13 MR. GOODWIN: Okay.

14 MR. DE LA VALINT: Thank you.

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

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

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

25 I think we were hoping to get a little bit more

1 clarification and maybe -- my concern about the -- some of  
2 these things may be submitted, or they may not, or  
3 something else can be submitted, is going to bring us back  
4 to being in July, arguing about whether or not what we've  
5 submitted meets what you wanted.

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

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

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

20 MR. GOODWIN: Thank you.

21 Any questions for Sarah?

22 (No response.)

23 MS. ANDERSON: Thank you.

24 MR. GOODWIN: Okay. Marni, could you address  
25 Sarah's comments?

1 MS. HOLLOWAY: Certainly. And I believe all of  
2 you are aware that this readiness to proceed item was  
3 actually added by the Governor to the QAP. So we are --  
4 working through what it is, and it's something that's new  
5 to us.

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

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

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

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

24 Yes, that will be due with the application; it  
25 will not be due in October.

1           As regards the preapp, I understand the concern  
2 regarding the change in the QAP and the variation of the  
3 four points, and what happens if you -- opt to not take the  
4 readiness to proceed points.

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

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

14           MR. GOODWIN: Okay.

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

18           MR. GOODWIN: Questions or comments from Board  
19 members?

20           (No response.)

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

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

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

25           VOICE: And that's actually a point that I do

1 want to qualify. And I think Marni there was a change  
2 regarding this item, wasn't there?

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

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

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

12 MS. HOLLOWAY: Uh-huh.

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

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

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

25 MR. GOODWIN: With that legal clarification, I

1 hear a motion to approve the procedures manual?

2 MS. BINGHAM ESCAREÑO: So moved.

3 MR. GOODWIN: Moved. Second?

4 MR. VASQUEZ: Second.

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

7 (No response.)

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

9 (A chorus of ayes.)

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

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

15 Application 17107, the Residence at Wolfforth,  
16 was awarded \$664,709 of competitive tax credits, and a  
17 \$500,000 award of HOME funds during the 2017 cycle.

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

25 Seven mobile homes were located on the property



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

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

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

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

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

24 This section goes on to say, "if they have  
25 returned their funds or have failed to take necessary

1 action specified in one or more agreement with the  
2 Department, where the failure resulted in the Department's  
3 failure to meet federal commitment and expenditure  
4 requirements."

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

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

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

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

25 As explained in the executive director's denial

1 of the appeal, it is not possible to know at the time of  
2 return, how it will or will not impact the Department's  
3 meeting of HUD deadlines.

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

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

13 (No response.)

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

17 MS. BINGHAM ESCAREÑO: So moved.

18 MS. THOMASON: Second.

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

21 (A chorus of ayes.)

22 MR. GOODWIN: Okay. Before you start, I'm  
23 going to ask Tim to give us kind of a rundown of the time  
24 line, to see if the issue that you and I have discussed as  
25 it relates to this and when we would be penalized if we had

1 not committed those HOME funds, so all the Board members  
2 understand what we're dealing.

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

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

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

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

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

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

21 (Conversation off mic.)

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

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

25 So the 2017 NOFA under which this application

1 received an award, included 2016 program year HOME funds.  
2 So if the two-year commitment deadline from when we got the  
3 2016 allocation of HOME funds, so it would have been July  
4 2018 that we would have to commit these funds.

5 MR. IRVINE: So we have until next summer.

6 MR. SINNOTT: Right.

7 MR. GOODWIN: So if these funds are returned,  
8 and if we don't have them allocated by July 2018, then we  
9 would know that the second aspect of this -- and what is  
10 the penalty to the Agency, for --

11 MR. SINNOTT: If we don't meet our deadlines we  
12 would lose the funds.

13 MR. GOODWIN: We'd lose the funds. Okay.

14 MR. SINNOTT: We'd lost the funds, potentially.  
15 Megan, instead of wincing, could you please come  
16 to the microphone?

17 (General laughter.)

18 MS. SYLVESTER: Megan Sylvester, Legal Services.  
19 It is slightly more complicated than that. While our  
20 action plan from 2016 puts these funds into multifamily,  
21 when we go to award the funds, we will award the funds with  
22 the earliest fund year that we have available, as long as  
23 this as an eligible activity under the action plan.

24 So while it could have been >18, that is the  
25 most logical outcome, it also could be a different date,

1 depending on where we are at that time that we have to  
2 commit the funds; which is why it is very difficult to say  
3 that any one action would cause a loss of the commitment  
4 deadline, because commitments are made as we enter into  
5 them, and it may be one year of funds, or a different year  
6 of funds.

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

11           MR. GOODWIN: Any questions?

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

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

16           MR. IRVINE: Could conceivably run out another  
17 year.

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

20           MR. GOODWIN: Okay. Sorry.

21           MR. MARKS: Thanks for giving those  
22 clarifications. My name is Scott Marks and I'm with Coats,  
23 Rose, and we also have Brett Johnson with Overland  
24 Property roup, who can speak to you about more of the  
25 details on the ground if you have questions about that.

1 Overland's appeal to the Board is really focused  
2 on whether a penalty, as appropriate, essentially de-  
3 barring the developer from the program for two years. When  
4 funds were returned before commitment for the funds was  
5 even received from the State, there is no commitment signed  
6 by the developer, or even received by the developer for the  
7 funds, and now those funds can be used for more urgent  
8 needs such as disaster recovery.

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

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

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

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

25 Now, I actually don't think that rule is

1     ambiguous. I think that's what it's telling the community  
2     and you know, what it suggests is that where there is this  
3     possibility that the State could lose federal funds, then  
4     we'll take this very, you know, heavy-handed action of  
5     putting the developer in the penalty box for two years.

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

11            Nine million dollars -- TDHCA reprogrammed  
12    \$9 million to disaster recovery, which is a happy outcome.

13     We have some tremendous needs in the state for disaster  
14    recovery. So this pot of funds where the \$500,000 was  
15    coming from, \$9 million was reprogrammed by the State to  
16    disaster recovery.

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

23            And I really can't think of a reason why the  
24    500,000 cannot be reprogrammed to disaster recovery, just  
25    as the \$9 million was programmed for that purpose.



1           Second, precedent. Saralita Senior Village.  
2 There was some discussion in Marni's presentation on  
3 Saralita Senior Village. Let's go back to the policy.

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

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

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

23           And finally, the public policy purposes. As I  
24 pointed out, this application round was undersubscribed.  
25 It doesn't make sense to me that one of the very honorable

1 developers with an excellent track record in the State that  
2 has 11 tax credit developments in Texas, and almost 50  
3 around the country, and hasn't had any compliance problems.

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

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

11 MR. GOODWIN: Good. Questions for Scott?

12 (No response.)

13 MR. GOODWIN: Thank you, Scott.

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

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

25 Or, the Department may prohibit the applicant

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

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

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

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

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

25 MR. MARKS: Well, I think that first of all in

1 all the correspondence we've received from the Agency and  
2 in Marni's presentation, it's failure to take action by the  
3 developer that's really leading to the possibility of a  
4 penalty here.

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

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

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

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

1 penalty.

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

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

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

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

20           MR. ECCLES: Okay. Thank you.

21           MR. GOODWIN: Paul, you had a question?

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

25           MR. MARKS: That is correct.

1 MR. BRADEN: -- right.

2 MR. MARKS: -- it's permissive.

3 MR. BRADEN: It's permissive.

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

6 MR. BRADEN: Right.

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

9 MR. BRADEN: Okay.

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

12 MR. GOODWIN: I'll entertain a motion.

13 MR. BRADEN: And let me --

14 MR. GOODWIN: Okay.

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

17 MR. GOODWIN: Okay.

18 MS. HOLLOWAY: Yes.

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

22 MS. HOLLOWAY: Yes. That is true. The direct  
23 loan award letter had not gone out, the commitment notice  
24 on the tax credits had. That commitment notice had a  
25 condition, and it's included in your Board materials, that

1 this applicant provide us with evidence of their compliance  
2 with URA, because of the HOME funds.

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

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

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

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

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

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

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

25 MR. MARKS: We'll work as hard as we can to --

1 MS. HOLLOWAY: Yes, absolutely.

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

4 MS. HOLLOWAY: Yes.

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

10 MS. HOLLOWAY: Uh-huh.

11 MR. GOODWIN: Any other questions?

12 (No response.)

13 MR. GOODWIN: A motion?

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

15 MR. GOODWIN: Okay.

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

18 (General laughter.)

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

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

24 MR. GOODWIN: Okay.

25 MR. BRADEN: Second.



1 MR. GOODWIN: Second. Any questions or  
2 discussion?

3 (No response.)

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

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

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

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

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

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

21 In addition, we anticipate that approximately  
22 \$8 million of National Housing Trust Fund will be available  
23 in the coming months. When the NHTF Grant Agreement is  
24 executed, we will amend the NOFA to include those funds,  
25 bringing the total to more than \$36 million.

1           The funds have been divided into set-asides for  
2 supportive housing and soft repayment, CHDO and in the  
3 general group as we have done in the past, but in addition  
4 we have created a priority for applications seeking to  
5 rehabilitate or reconstruct properties damaged by Hurricane  
6 Harvey.

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

11           The maximum supportive housing request will be  
12 \$1 million, and in the general set-aside the maximum will  
13 be \$3 million for new construction, and \$2 million for  
14 rehabilitation.

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

17           MR. GOODWIN: Do I hear a motion?

18           MS. BINGHAM ESCAREÑO: So moved.

19           MR. GOODWIN: Second?

20           MS. THOMASON: Second.

21           MR. GOODWIN: Any discussion or questions?

22           (No response.)

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

25           (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: No one?

4 (No response.)

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

7 MR. GOODWIN: Andrew's coming up?

8 MS. HOLLOWAY: -- about the awards.

9 MR. GOODWIN: Okay.

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

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

18 This application is being recommended for  
19 neighborhood stabilization program income award of  
20 \$3 million from the general set-aside of the 2017-1  
21 Multifamily Direct Loan NOFA.

22 This award will be structured as a construction  
23 loan only, that will be repaid upon conversion to permanent  
24 financing, similar to Bridge at Cameron, another deal here  
25 in Austin from the same development group that was

1 recommended for a direct loan award in October.

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

6 With that, staff recommends approval of the  
7 issuance of the determination notice for \$1,423,942, in  
8 4 percent housing tax credits, and \$3 million in NSP-1  
9 programming funds from the 2017-1 NOFA.

10 MR. GOODWIN: Okay. Any questions?

11 (No response.)

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

14 MS. BINGHAM ESCAREÑO: So moved.

15 MR. GOODWIN: Moved. Seconded?

16 MR. BRADEN: Second.

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

19 (A chorus of ayes.)

20 MR. GOODWIN: Opposed?

21 (No response.)

22 MR. GOODWIN: 6(g).

23 MR. SINNOTT: So 6(g) includes two direct loan  
24 awards. The first is the Works at Pleasant Valley Phase  
25 II, it's another new construction deal here in Austin.

1                   This application is being recommended for a  
2 National Housing Trust Fund award of \$1.5 million from the  
3 Supportive Housing Soft Repayment set-aside of the 2017-1  
4 NOFA.

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

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

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

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

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

21                   MR. BRADEN: So moved.

22                   MR. GOODWIN: Second.

23                   MS. THOMAS: Second.

24                   MR. GOODWIN: Moved and seconded. Any  
25 questions?

1 (No response.)

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

3 (A chorus of ayes.)

4 MR. GOODWIN: Opposed?

5 (No response.)

6 MR. GOODWIN: Okay. Andrew?

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

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

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

20 With that, staff recommends approval of  
21 \$2 million in HOME funds from the CHDO set-aside, for  
22 Poesta Creek Apartments.

23 MR. GOODWIN: I will entertain a motion.

24 MR. BRADEN: I move to accept staff's  
25 recommendation.

1 MR. GOODWIN: Second?

2 MS. BINGHAM ESCAREÑO: I second.

3 MR. GOODWIN: Moved and seconded.

4 Any discussion?

5 (No response.)

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

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: Thank you Andrew.

11 MR. SINNOTT: Thank you.

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

16 Any public comments out there?

17 (No response.)

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

21 These people have done a wonderful job --

22 (Applause.)

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

25 (Applause.)

1 MR. GOODWIN: No further business, I would --

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

3 MR. GOODWIN: The Board to stand?

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

7 (Applause.)

8 MR. GOODWIN: Always take offense to those  
9 comments about my weight.

10 (General laughter.)

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

13 And I will entertain a motion to adjourn.

14 VOICE: So moved.

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

16 (A chorus of ayes.)

17 MR. GOODWIN: We are adjourned. See you next  
18 year.

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



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C E R T I F I C A T E

MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: December 14, 2017

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

12/20/2017  
\_\_\_\_\_  
(Transcriber) (Date)  
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