

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room 3.102
Thompson Conference Center
2405 East Campus Drive
Austin, Texas

Thursday,
January 17, 2013
12:40 p.m.

MEMBERS:

J. PAUL OXER, Chair
TOM H. GANN, Vice Chair
LESLIE BINGHAM ESCAREÑO
LOWELL KEIG
JUAN S. MUÑOZ
J. MARK McWATTERS

STAFF:

TIM IRVINE, Executive Director

ON THE RECORD REPORTING
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P R O C E E D I N G S

MR. OXER: Good morning everyone or good afternoon everyone. It's a different chair from our usual approach in the mornings. I'd like to welcome you all to the January 17 meeting of the governing board of the Texas Department of Housing and Community Affairs. I trust you all had a safe holiday and we're looking forward to getting underway and having a good 2013 before us.

We will begin as we always do by roll call. So Ms. Bingham.

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Vice chairman Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Professor McWatters.

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here. That gives us six present. That's a full set; we have a quorum so we may safely transact business. So we'll be about our work.

So, first of all, let's stand and salute our flags.

(Whereupon, the Pledge of Allegiance to the United

States Flag and Texas Flag was recited.)

MR. OXER: Okay. With respect to the consent agenda, our first item, does any member of the board wish to pull any item from the consent agenda?

Tim, did you have a point on the consent agenda?

MR. IRVINE: Yeah, I believe Cameron would like to clarify on 1.

MR. OXER: Cameron?

MR. DORSEY: Yes. On Agenda Item 1 (i) we're recommending three HOME awards; however subsequent to posting of the board materials, one of those applications, the application for Champion Homes by the Spring, withdrew due to some eligibility issues and as a result we are recommending just the other two HOME awards

MR. OXER: I take it this doesn't require any further discussion apart from it's just -- we're clipping that one out.

MR. DORSEY: That's right.

MR. OXER: All right. So noted.

Any other comments from the board?

MS. BINGHAM ESCAREÑO: Move to approve the consent agenda with the one recommended change to Item 1(i).

MR. OXER: Okay. Motion by Ms. Bingham to approve the consent agenda as modified.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Is there any public comment?

(No response.)

MR. OXER: And there are none. All in favor?

(A chorus of ayes.)

MR. OXER: Okay. Opposed?

MR. OXER: There are none. It's unanimous.

All right. Just a quick matter of housekeeping since we're in a new location, a new location for our speaking. What'd we decide here, Michelle?

(Pause.)

MR. OXER: Okay. So those who wish to speak on any item, all the chairs are good except for that row right here in the front, right behind the table.

If you want to speak on an upcoming item, when we call the item come up and sit down. If you're sitting there when we're talking about it I'll assume you'll want to speak so sit when we're addressing that particular item.

MR. LYTTLE: Mr. Chairman.

MR. OXER: Yes, sir.

MR. LYTTLE: They're having some trouble hearing your voice on the internet so if you could speak well into those microphones, that would be good. Thank you.

MR. OXER: Is there any volume control on the back of this?

MR. LYTTLE: I'm not sure, to be honest with you.
(Pause.)

MR. OXER: Okay. Do we have any guests to welcome, Michael?

MR. LYTTLE: No, sir.

MR. OXER: Okay. All right. Let's get into the Action agenda. First item, or Item 2, actually.

Good afternoon, Patricia.

MS. MURPHY: Good afternoon. Patricia Murphy, Chief of Compliance. Item 2 is a report about the 2013 Income and Rent Limits, and it provides the opportunity for the public to make comment and possibly for the board to take some kind of --

VOICE: Can't hear you.

MS. MURPHY: -- action if appropriate.

(Pause.)

MR. OXER: Okay. Rather than continue, we need to have the audio portion of our program available to everyone, so everybody let's just sit tight for a second.

(Pause to turn on PA system.)

MS. MURPHY: Good afternoon. I'm Patricia Murphy, Chief of Compliance. Item 2 is a report about the

2013 Income and Rent Limits, and it provides the opportunity for the public to make comment and possibly for the board to take some type of action if appropriate.

The writeup itself goes into detail and provides examples, but in a nutshell this is the issue: Prior to the Housing and Economic Recovery Act of 2008, commonly called HERA, there was just one set of income limits for all the rent programs that TDHCA administers.

Those were the HUD Section 8 program income limits, and until 2010 HUD had a policy to adjust the Section 8 program income limits so that there would be no decreases. HERA created lots of changes to the income limits. Now there's a rural income limit; there's a HERA special income limit; there is the standard multifamily tax subsidy income limit and there's still those HUD Section 8 program income limits which now HUD allows to decline.

In addition to all these different data sets, HERA created a hold harmless provision so that even if the income limits are dropping, once a project is placed in service they do not need to implement decreased income limits. As explained in your writeup, the rent limits for these programs are directly tied to the income limit. You get the rent limit. It's just a calculation off of the income limit.

Under the Housing Tax Credit Program, there's

plenty of guidance on which income limit do you use to calculate the rent limit for the project. But under the Tax Exempt Bond program there is no rent limit so federally, to be tax exempt, you just have to have income restrictions.

But because of past policy decisions and Chapter 1372 of the Texas Government Code, many of our bond properties do have a rent limit. Staff has determined that some of the regulatory agreements we have entered into specifically state that the amount of rent they're permitted to charge is directly tied to the HUD program Section 8 income limit.

Now, remember at the time we entered into these agreements there was only one income limit. It was that Section 8 program income limit and when we entered into these agreements, that limit did not drop. But now HUD has changed their policy and those income limits have dropped in some areas of our state which would result in a decreased rent for some of our bond properties.

We've individually contacted affected owners, many of whom have expressed concern so this item is to make the board aware of this issue and provide the public the opportunity to comment. I believe there are several people who are interested in commenting but before you hear comment, are there any questions that I could answer for you?

MR. OXER: Questions from the board.

(No response.)

Okay. We'll take comments. I guess you're first.

(Pause.)

MS. BAST: I'm Cynthia Bast of Locke Lord. I'm here this afternoon representing five prominent developers who collectively own approximately 15 tax-exempt bond and tax credit properties that are being impacted potentially by this issue.

As I was preparing for my testimony today I asked them to give me some real economics as to what we would be talking about here if their income levels were to reduce to the Section 8 income levels such that their rents would be reduced accordingly. And the amounts that they gave me ranged between \$120,000 and \$160,000 of annual revenue loss. That's about eight to 14 percent of their total revenue.

It's a big number. That kind of loss, at a minimum, would likely create a debt service coverage default under the documents and create a covenant default, at worst could potentially create a monetary default that could potentially lead to foreclosure.

I had a conversation yesterday also with a prominent Texas syndicator who has a very large portfolio and has some properties that could potentially be impacted

by this. And we were talking about just practically what happens at the property level if you had this kind of revenue loss.

And the indication was that often owners will choose to -- their first line of defense would be to perhaps reduce on-site personnel or reduce social services to a bare minimum which would impact the tenants to eliminate preventative maintenance which could impact the asset and so also she indicated that investor-limited partners, depending upon the fund, may not have the reserves at the upper tier to come in and help out.

So this can be a very financially troublesome situation. Historically, bond deals have been much more vulnerable financially because they have much higher leverage than their 9 percent counterparts. Just last year I personally represented clients in about a dozen deals, tax credit bond deals, that were in workout mode.

We don't want to add to the list of vulnerable bond tax-credit deals that are in workout mode. So I believe that the solution I would seek from the board is to advise staff to prepare a blanket amendment that would be an addendum to each affected regulatory agreement, basically stating that notwithstanding anything in the regulatory agreement to the contrary, the intent is for the median income and thus the

rent to be calculated thusly, perhaps with reference to Section 142, although Ms. Murphy advises that there may be some additional nuances that could be problematic there.

But just a blanket statement that this is really what we intended, and I believe it is consistent with what was intended in the first place.

There are several other things that I'd like you to know as you are considering this issue. I went back and looked at the regulatory agreements for other issuers, local issuers, that were prepared by other bond counsel. Some of them had language very similar to TDHCA's language that said, median income refers to that developed by HUD under the Section 8 program.

Some of them were drafted, perhaps a little bit more flexibly, to simply refer to Section 142. They said, median income is as determined in accordance with Section 142 of the Code or they just simply made a reference to HUD and said, median income is as determined by HUD.

Presumably, those regulatory agreements that were drafted differently might not have this same problem because they are without the direct reference to the Section 8 program.

Yet, all of these regulatory agreements across this body are all attempting to implement a program to ensure that these qualified residential rental projects for which the interest

on the bonds is exempt for federal income tax purposes.

And to me it just does not make sense that the financial viability of a development could ride upon who the bond counsel was and what form they were using at the time because each form that was used at the time was used in absolute good faith with full intent for the conditions that we knew them at the time to be implemented throughout the life of the bonds.

So these developments are all part of a federal program. They're supposed to work consistently with one another and I believe that they should be treated consistently.

Similarly, you have to look at the fact that at the time TDHCA's regulatory agreement was referring to incomes as it relates to the Section 8 program, the tax credit LURA had a different definition of area median income, referring to, as determined by the Secretary of Housing and Urban Development in accordance with Section 42 of the Code. So two different programs TDHCA's administrating working together but the language in their two forms are not totally consistent.

Another thing that I want to point out is that in the regulatory agreement that TDHCA was utilizing, there is a provision that specifically acknowledges that there could

be a change in federal law and that if there is a change in federal law that changes can be implemented to this regulatory agreement.

Specifically it says that if the code is changed in such a manner that imposes more restrictive requirements, then the regulatory agreement shall be amended automatically to bring those more restrictive requirements in. If the code is amended to impose less restrictive requirements, then it is a permissive situation where you may amend the regulatory agreement if you receive an opinion of bond counsel that such an amendment will not impact the tax-exempt nature of the bonds.

So the point that I want to make there is that these bond regulatory agreements are in the public record.

Everyone is on notice that a change in federal law could impact how this regulatory agreement is utilized.

Now, I recognize that TDHCA does have a rule for amending regulatory agreements on a property-by-property basis. I do believe that in this situation it is appropriate to use a more blanket approach.

There are quite a few properties who are impacted here. I think it would be an administrative burden on the staff and the board to address each amendment separately, to attend multiple public hearings that would be required

by the rule and to prepare individualized recommendations.

In addition, the owners would have an additional economic and administrative burden to do this on an individualized basis. And again, the point is just these are two federal programs. They're supposed to work together, the tax credits, the bonds, and I think that there should be consistency across the state in how these developments are addressed.

So those are my comments and we'll hear some other things from my colleagues here and -- have and appreciate your time.

MR. OXER: Any questions from the board? Thanks, Cynthia.

DR. MUÑOZ: I have a question.

MS. BAST: Yes, Dr. Muñoz.

DR. MUÑOZ: Cynthia, do you know -- those numbers that you shared -- I know we're talking about a broader policy that would affect a great many possible projects but you mentioned a negative economic impact of 120 to \$170,000 annually, around there.

Have you shared those numbers with Tom? Do we have the sort of staff confirmation of both --

MS. BAST: I have not yet. I certainly can. This is something that I received actually just very recently as

I was preparing these comments trying to get my own hands around the problem.

DR. MUÑOZ: It might be helpful for them to also be able to say, yes, we've reviewed this and this does reflect the possible consequence for these projects and maybe others.

MS. BAST: Thank you.

MR. LITTLEJOHN: Mr. Irvine, members of the Board, Chairman Oxer. My name is George Littlejohn. I'm with Novogradac & Company. We're a national CPA firm. I just have a few bullet point items to -- I am in agreement with Ms. Bast that this situation needs to be rectified.

I also work with other partners who work in other states. I know that the State of California is addressing this issue as well and they're looking for comments from California developers and I think their approach is more of creating some type of statewide hold-harmless policy that would mimic federal law.

I agree with Ms. Bast that possibly an amendment process might be the easiest way. What's interesting about this is that this has no federal issue. There's no loss of tax credits. There's no compliance issue on the federal level.

The bond will not be tax exempt or taxable if you violate this issue. It is purely a statewide issue because

of the language in the regulatory brief and I believe staff wants to fix this because we -- everyone has to monitor a number of income and rent limits across the board anyway, certainly making this more complicated in no one's best interests.

So I've also talked to several of my clients who have bond deals and I don't have specific numbers but I know you can look at the rents and the income limits and thousands of dollars per month would be my guess as well, just simply because the income limits dropped on these one particular set of income limits that no longer apply to tax credits and bonds for federal purposes.

And I agree that we need a more flexible streamlined approach simply because it doesn't do any good to avoid thousands of dollars of loss in rent by spending thousands of dollars to get it fixed, specially when this is an unforeseen consequence. It's certainly no one's fault. The legislation just changed and the language changed.

Finally, on one other note, I would respectfully request that as you come to a solution that you ask staff to monitor for compliance, give a reasonable amount of time for this process to be, or this issue to be resolved, before rent has to be implemented or we start dropping rent right away because at some point you drop rent, you raise rent.

It becomes a very complicated process. We'd like to see an ability to sort of hold any compliance monitoring in suspension until the issue is resolved, one way or the other.

Thank you for your time. Any comments?

(No response.)

MR. OXER: Thanks, Mr. Littlejohn.

MR. FORSLUND: Good afternoon. My name is Brad Forslund. I'm a partner with Churchill Residential. I'm here to talk specifically about the impact to three of our properties if this was implemented. As you probably all know, tomorrow is the day actually that we would have to implement these rent changes. So today's a big day for us.

As I've mentioned, we've got three properties. Two of them are senior properties; one is a family property, all in the DFW area. The impact to our rents are very similar to what Ms. Bass had mentioned, anywhere from 10- to \$15,000 per month.

So what does that mean to us? What does that mean on the ground with these properties on a daily basis? One is it means that we would have to substantially cut back our capital expenditure programs. Each one of these properties are in their eighth to ninth year of a 15-year compliance period.

This is when Capex is starting to really

accelerate, major programs -- painting, wood replacement, those type of things. So you've got an accelerating capital expenditure budget and all of a sudden we're going to slash cash flow.

Two, we would need to substantially cut back our staff and services. We would try to meet the requirements of the LURA but that would be an undertaking in itself if this happened. But on these senior properties and we provide wellness programs, we provide transportation.

We do things that our goal is to lengthen the lives, or the independent stage of our seniors' lives. We do that at no additional cost to the resident. We think that if these programs were eliminated that the duration of stay would be shortened and they would become dependent on Medicare and Medicaid sooner.

On our family property, we've got a \$40,000 supportive services requirement by the City of Dallas. There's no way we'd ever meet that. We would not have the money to do that.

In the case of Pentacle, which that property is the -- that's a property that has -- it's making it but that's about it. We haven't had a management fee in three years.

If this were implemented we wouldn't be able to pay servicing fees, TDHCA compliance fees, nothing. It would be a severe

impact.

One other item is by doing this the value of that property now would be less than the debt. So that doesn't affect us so much today but at the end of year '15 when we're trying to preserve affordable housing and recapitalize, the value's not there to support it nor is the debt service. So likely these properties would be foreclosed out by the lender and it would drop out of the program.

And then going forward, and we're working on a bond deal right now, but with this policy future bond deals would not be feasible. Thank you for your time. Appreciate it.

Any questions?

MR. OXER: Any questions from members?

(No response.)

MR. OXER: Thank you.

MS. DULA: Good afternoon. I'm Tamela Dula at Coats Rose. And this is a moment you should savor. You have all of the attorneys and the accountants all in concert, not in opposition.

This is a totally unexpected situation. I went back and looked at the final rule with regard to the Section 8 termination of its hold-harmless policy and the final rule is predicated upon HUD's analysis of HERA and determination

that the multifamily tax subsidy projects were protected by HERA and therefore terminating the hold-harmless for Section 8 was not going to affect any of the tax-exempt bond or the low-income housing tax credit projects.

Unfortunately, in Texas, we have a disconnect here. The provisions for the tax-exempt bonds, the private activity bonds in Chapter 1372 of the Government Code, that establishes the priorities by which you go into the bond program, who's going to have the first choice in terms of getting a bond allocation.

There the maximum allowable rents are indeed tied to the income. It says in each priority level that the maximum allowable rents are an amount equal to 30 percent of whatever area median family income, minus an allowance for utility costs authorized by the federal low-income housing tax credit program.

So there was always an intent to make this connect properly between the tax exempt bond program and the low-income housing tax credit programs. Our difficulty is that we assumed in the documentation that Section 8 would go on forever but Section 8, in so far as the hold-harmless provision, has been terminated on the understanding that the low-income housing tax credit and tax-exempt bond projects were already protected by the changes enacted by Section 3009

of HERA.

I fully support Cynthia Bast's proposal. That would be the very best thing that we could do for all of these project owners who have bond allocations and are facing this economic crisis really for them. But in the event that that's not a possibility, I would propose that the board adopt a policy that you acknowledge that the federal change in HERA was intended to protect the low-income housing tax credit and the tax-exempt bond subsidies, that the state statutes with regard to prioritization of bond applications reflect the tying of maximum rents to the income levels that are pertinent for the subsidy, the tax-exempt bond program, which now, by virtue of HERA, has been established with a hold-harmless clause that is effectively statutory in nature so that your income levels will never go down below the highest level that you have, starting with September of 2008.

If you do that, then the problem is resolved, I think. It's better to have a global amendment because there you have a bond counsel opinion that supports your issue with regard to the tax exemption for the bonds and there are probably some bond owners that are out there that would feel much more comfortable in that situation.

But at a minimum, a policy change might be sufficient because this is solely a TDHCA issue, as I can

see it.

Do you have any questions?

MR. OXER: Questions from the board?

(No response.)

MR. OXER: Okay. Thanks.

Okay. One more.

MR. WRIGHT: Chairman Oxer, Board members. I'm Jerry Wright. I'm a lender with Dougherty Mortgage. I'll try to be very brief. I wholeheartedly support the blanket amendment that Ms. Bast put forward, but I want to lay out just one other issue, which is what we're facing this year is going to be very difficult for our portfolio and for the portfolio of our clients.

What we'll face next year will be worse and the following year will be worse yet again because this is a five-year moving average that will actually start decreasing more and more as the impact of the economic crisis from 2008 and '09 actually hits incoming years.

So what we see this year as decreases in revenue for properties will be magnified again in 2014 and again in 2015. The majority of the transactions that are impacted by this are transactions that were limited to residents of 60 percent of median income and the rents at 50 percent median income rent. So we're already talking about transactions

that have significant affordability.

Now we're going to talk about transactions that have significant problems coming into 2013, '14, and even '15 if we don't start to see median incomes increase over the coming years to try to level out some of the decreases that we saw in 2008, '09, and '10. And with that, again, trying to be brief, we're wholeheartedly as an industry in support of Ms. Bast's proposal. Thank you.

MR. OXER: Good. Thank you. Any questions for Jerry?

Okay. Patricia. I have a couple of questions. Are there any other questions from the board, members of the board?

(No response.)

MR. OXER: All right. This sounds like this is keeping our house in order, something -- an effort to keep our house where it doesn't reflect our relationship with HUD, the IRS, any of that stuff. This is straightening out our house to keep things going on our program.

MS. MURPHY: This is not a federal issue.

MR. OXER: This is not a federal issue. Is there anything in your shop that would preclude polling in advance the compliance monitoring requirements for these income limits until we can get a more definitive -- I frankly want

to have some more information. And my read is there's no action required today but it's your notice to us that this is an issue that's going to have to be addressed so we're going to have to do something about it.

So what I'd like to add, see if you'd be able to put some more information together so we have some more to ponder. For an issue that is of this magnitude, I think we do ourselves and the State a collective disservice by hurrying into an action.

So the question is can we have some more information on this?

MS. MURPHY: I can get you any information you want.

MR. OXER: That you have.

MS. MURPHY: That I have, yes, exactly. I believe that, without some type of action today, that the rents we would monitor for would decline tomorrow.

MR. OXER: Correct.

MR. KEIG: Mr. Chairman.

MR. OXER: Yes, sir. Mr. Keig.

MR. KEIG: How many regulatory contracts do we have that it would affect?

MR. OXER: That it would affect.

MR. KEIG: Ballpark.

MS. MURPHY: 110.

MR. KEIG: Out of --

MS. MURPHY: There are 114 bond properties. I'm sorry -- it's 74. There's 114 bond properties. San Antonio and Brazoria County, there's no difference between the tax credit rents and the Section 8 rents off of that limit. Based on owner-reported data, there's 74 properties that are charging rents in excess of limits calculated off of the Section 8 program income limit.

MR. KEIG: So if we were to go down the road on a blanket amendment we at least have to do 74 contracts and potentially it might affect other contracts down the line so we'd have about 100, 110 contracts we might have to --

MR. OXER: Seventy-four today, another 35, 40 next time. Is that more or less right?

MR. KEIG: I would like to confer with our general counsel at some point if we could today.

MR. OXER: Okay.

MR. KEIG: I mean, now or later.

MR. OXER: This means we'll need to go into an executive session following this.

Madam counsel, do you have a suggestion?

MS. DEAN: Well, there may be some other issues that come up this afternoon that will also need executive

session so if you wanted to you could just table this one and gather up with it on whatever issues we have --

MR. OXER: Sure.

MS. DEAN: -- have one executive session and then come back in and take a vote on it.

MR. KEIG: Move to table until later in the --

VOICE: It's an informational item. Do we even have to table it? Is it information?

MS. MURPHY: Well, it's only action if you choose to take action. It's not scheduled necessarily to have to be an action item.

MR. OXER: The driver for the action is potentially, that if we do nothing, your compliance data requirements change tomorrow. Is that correct?

MS. MURPHY: Uh-huh.

MR. OXER: Okay. So what we're saying, if we do nothing, technically tomorrow all 114 of those properties are out of compliance, if they left their rents as they are. Is that right?

MS. MURPHY: About 74. Based on what the owners have reported. Some of them it wouldn't impact because they're not getting program revenues.

MR. OXER: Okay. Mark?

MR. McWATTERS: Is this working?

MR. OXER: Yes.

MR. McWATTERS: Okay. Patricia, a quick question just to make sure I understand this. I could be missing it, but is the goal here by the developers that if the Section 8 amount drops over the contractual rate of rent or whatever, the spread then will be paid by the tenants? In other words, the tenant will show up with a Section 8 voucher and some cash?

MS. MURPHY: No.

MR. McWATTERS: It's not. Okay. Then how does this work?

MS. MURPHY: The rent -- so it does not matter if the resident, the household themselves are receiving Section 8. The issue is, what is the maximum amount of rent that they can charge any tenant on the property.

It is much more of an impact for a household that does not have a Section 8 voucher. So if you are a household, and you don't have a Section 8 voucher, you go to one of these properties, your income has to be below a certain limit. And there is a maximum rent the property can charge you.

So when determining what is the properties maximum allowable rent, a lot of these contracts that we have entered into state that when you calculate how much rent is the maximum, go to this data set. Go to the Section 8 program

and calculate. And there has been a change in the federal law that now there is lots of different data sets that you could calculate a rent limit from.

But these contracts that we have entered into specifically state, go to the Section 8 income limits to calculate your rent. And HUD has been letting those decline.

So what we have heard is --

MR. OXER: Let me ask.

MS. MURPHY: Yes.

MR. OXER: If they have been letting that decline as a mechanism to have more housing available for more people, or what? What --

MS. MURPHY: It is for their program. So for the Section 8 voucher program, you know, if you can -- you know, the federal government has been helping pay your rent, you know, they are allowing those limits to go down to reach the lowest income. Is if you read their policy statement, what they are doing.

DR. MUÑOZ: Patricia, so is that sort of -- is that Section 8, whatever is available to people declines and the correspondingly maximum rent that the developments and projects can charge proportionately declines.

MS. MURPHY: Yes. Yes. So what we heard through public comment was that there be a big impact fiscally on

some of these properties. That they think a blanket amendment to the regulatory agreements to make them all consistent would be the best way to do it.

But what the amendment would say, Cynthia Bast mentioned something about tying the rent limits to the income limit that is applicable under 142(d). So in order to draft such an amendment, or instruct us as a Department, what do we monitor for, we would need a little bit more --

DR. MUÑOZ: Guidance.

MS. MURPHY: Yes. Guidance.

MR. McWATTERS: I am just trying to figure out, if the rent limits are dropping because people can afford to pay less, okay. If you can afford to pay less, you can afford to pay less. But there is an amendment to go back to the higher rate of rent, which people can't pay. So I am just wanting to make sure that that logic is flawed.

MS. MURPHY: There has been some interesting studies about rent burden and the housing tax credit program that we can share with you. Rent burden is certainly an issue.

MR. GANN: I am thinking that, if I may speak up, I am thinking that the reason that they'd limit, is increased the number of people in lower incomes that could rent the properties. But a lot of those properties are full or close to full.

MR. OXER: Go ahead, Juan.

DR. MUÑOZ: And, you know, my understanding is it may not necessarily be a flawed sort of logic. It may be very reasonable.

The issue though, is you have quite a few other projects already in place that made those proposals and developed these projects under a different set of criteria.

And so now this adjustment poses a particular threat to an arrangement established according to a different sort of income index and rent maximums and rent limits.

And so you know, I don't know that the federal government, you know, sort of decreasing the rent for Section 8 in that is altogether a lot. But the proportionate and immediate impact to the 74, potentially 110 projects would be.

MR. OXER: These projects are what age, generally, in that portfolio of 100 some odd? Two, ten years? Does it meet any --

MS. MURPHY: There is nothing that recent. We haven't been doing a lot of bond deals. There is some from the mid-90s, maybe through about 2005-ish.

MR. OXER: Okay. So when they were constructed, and the deal was put together, there was an economic model, financial model that said this is the rent that will support

that. And they actually based their investment CAPEX, long term planning, all certain revenue being generated from that property based on certain percentages of AMIs they would be able to -- that they people would be there for that rent. And that generated a certain amount of income.

When the IRS comes down, they want to make more of those properties available to the lower fraction of the -- or the lower income strata of the population. Is that what they are trying to do? And then you base that rent on that income. It just automatically hammers that down. Which, you know, makes that financial facility -- less viable. Cameron, weigh in.

MR. DORSEY: Yes.

MR. MUNOZ: Cameron, as you weigh in, and tell me, explain to me why this has to trigger tomorrow or today.

MR. OXER: Because it is a new year. And this is a --

MR. DORSEY: Okay. She can answer the date. By the way, Cameron Dorsey, Director of Multi Family --

MR. MUNOZ: And this is entirely a state sort of issue. Couldn't we postpone it?

MR. DORSEY: Do you want to answer that first, and then I will --

MR. OXER: Go to the date. Deal with the dates.

MS. MURPHY: I am sorry. What was the question?

MR. OXER: Why is tomorrow the date. Or what is the date tomorrow?

MS. MURPHY: Oh, right. There are revenue rulings and procedures that cover both the tax credit and tax exempt bond programs that state that owners can rely on a set of income limits until 45 days after HUD posts them. So tomorrow is the 45th day. That mean, income limits go into effect with property that you calculate rents.

MR. OXER: Okay.

MR. DORSEY: So, i was just going to address kind of part of the rationale for why a hold harmless exists. Previously existed for the Section 8 rental income limits, and was included in HERA. And why maybe it went away for the Section 8 voucher program.

It has long been acknowledged in many of these federal rental programs that are designed to subsidize the development of the deal that for underwriting purposes, it would make it increasingly difficult to project the long term financial viability of a transaction if the property was subject to this exposure in the out years of the rent limits decreasing.

MR. OXER: Right.

MR. DORSEY: And so for properties that got

development type subsidies, they said, all right. Look. We are going to allow the incomes and rents to go up, if incomes increase. But if incomes go down because of the significant financial impact to these kinds of transactions, we are not going to require that the rent and incomes applicable to those projects go down at the same time.

The Section 8 voucher program is quite different, because it doesn't tie. It is not a development subsidy. It is a tenant subsidy. And so it is not -- so when HUD changed the policy, in some respects it makes sense for a voucher type program.

But I think you know, if you looked at the HOME program, if you looked at some of the other programs that HUD administers that are more development side subsidies, they continue to recognize the importance of hold harmless.

So, and the federal government, in passing the Housing Economic Recovery Act, also recognized the importance of hold harmless to the tax credit programs specifically, by including in that legislation a specific hold harmless provision.

So and there is one other key thing I wanted to address. And Dr. Muñoz, you talked about maybe it makes some sense. You know, if incomes are going down, and folks can't afford this, then, you know, doesn't that make sense.

But the one important thing to note is the income

limit applicable is not going down. It is just the rent limit going down.

So let's say that there is a rent associated. Let's say that there is an income limit that says, you know, this household must make \$30,000 or less. And they make right at \$30,000. Okay. And at one time, there was a rent limit that tied to that. And so it ensured that a household at that level could afford that rent.

Now what we have is a situation where that \$30,000 income limit may stay the same. But the rent limit goes down.

It actually would continue to be affordable to that household.

In fact, it would even be more affordable. But it was presumably affordable at the higher level as well, because, you know, they can still rent to that person. Does that make sense?

(Simultaneous discussion.)

MS. MURPHY: So the income level is staying the same. It is the rents that are dropping.

MR. DORSEY: Right.

MR. OXER: All right. Here is what we are going to do. There are some more questions we want to address. Mr. Keig's -- there is a legal issue. We are going to hold this. We are going to table discussion on this item until

later.

There are very likely going to be a couple of other items that we will wish to have some input from our counsel.

So we will go through all of the rest of this. Hold this one as it is. Go to Executive Session and come out, and make a decision on it. Does that satisfy? Does anybody have any questions about that?

(No response.)

MR. OXER: Okay. Any recommendations? Does that meet your interest, Mr. Keig?

MR. KEIG: Yes.

MR. OXER: Muñoz, can you live with that? Okay. All right. Thanks. Okay. Item Number 3 here, it looks like. A verbal report from the Audit Committee. Hi, Sandy.

MS. DONAHO: Hi. Good afternoon, Chairman Oxer and Board members. For the record, I am Sandy Donoho, Director of Internal Audit.

With your indulgence, I would like to propose we get Item 3(b) out of the way first. That is our report from the State Auditors Office. And it has been a long wait for them. So if we can get them up here first, I would appreciate it.

MR. OXER: That is something I can do unilaterally, so granted.

MS. DONAHO: As you know, the Department's governing statutes require an annual audit of the Department's books and accounts, audit of the Housing Trust Fund and an audit of the financial statements of the Housing Finance Division, and the supplemental bond schedules which are required by the Department's bond indentures. So I would like to introduce Verma Elliott and Tony Rose from the State Auditors Office to talk to us about the results of those audits.

MS. ELLIOTT: Good afternoon, Chairman and Members. I am Verma Elliott. I was the audit manager for the financial statement opinion audit of the Housing and Community Affairs department. With me is Tony Rose. And he is going to go over a few items about the audit.

MR. ROSE: Mr. Chairman, members of the Board, my name is Tony Rose of the State Auditors Office. And I was the assistant project manager of our 2012 financial audit of the Department.

As a result of our audit, we issued clean or unqualified opinions on the financial statements of the Department, the financial statements of its Revenue Bond program Enterprise Fund, and the Department's computation of unencumbered fund balances of the Housing Finance Division for fiscal year 2012.

In addition, we tested the Department's compliance with the Public Funds Investment Act and issued a letter stating that we identified no instances of non-compliance with the Act. We also performed agreed upon procedures on data submitted to the Department of Housing and Urban Development's real estate assessment center system.

In accordance with auditing standards, we issued a report on internal control over financial reporting and on compliance with other matters, and stated that we did not identify any deficiencies in internal control over financial reporting that we considered to be material weaknesses or instances of non-compliance.

Finally, to comply with auditing standards, we have prepared a communication of certain information related to our audit to those charged with governance, which includes you. And that was sent out via email on December 21st. I would be happy to answer any questions you have about our audit.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: So we did good, basically. Congrats to everybody that was involved in that. That is always nice when they get a gold star on the audit. Let's see. Is there an action item here? Let's see, we accept. We have to accept

that audit. Is that what that is. Okay.

MR. GANN: I so move.

MR. OXER: Okay. Motion by Vice-Chairman Gann to accept the report and audits.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. Is there any other public comment?

(No response.)

MR. OXER: Any other comment from staff?

(No response.)

MR. OXER: Has the Board got anything to say?

(No response.)

MR. OXER: Therefore, all in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

Thanks.

MS. DONAHO: Thank you.

MR. OXER: We like good news.

MS. DONAHO: Okay. Back to the report from the Audit Committee. On the consent agenda, today, you approved our audit charter and Board resolutions. Audit standards require that we update these every year. We made some minor

changes to those. Our Internal Audit peer review, we also talked about that.

Internal audit standards, and the Texas Internal Auditing Act require we have a peer review every three years.

Our peer review was performed by representatives from the state agency Internal Audit forum. Bill Aller and Trey Wood from the Department of Motor Vehicles. We appreciate their efforts in doing our peer review.

We received a rating of pass, which is the highest possible rating. The other ratings are pass with deficiencies and fail. So there is not a lot of wiggle room there.

In addition, they didn't identify any areas for improvement, and that is very unusual. So we were happy with those results. We talked about the six audits that we have on the plan this year. We have completed two of those. We have two underway and two we haven't started yet. But that means we are on target to complete our plan as scheduled.

We have a number of non-audit requirements that we also completed. The revision to the charter and the Board resolutions updating policies and procedures and completing our peer review.

We also talked about an audit of program services that Internal Audit recently completed. This was a very good

audit; we had no findings and no recommendations. I think they are doing a good job in that division.

We discussed four external audit reports from last year, that we received final reports on. One was a Comptroller opposed payment audit. One was a FEMA closeout monitoring of the alternative housing pilot project, which is the Heston project. We are glad to see the last of disaster recovery go away.

MR. OXER: The last disaster of the last recovery of disaster. It is the last disaster to go away. Right?

MS. DONAHO: Pretty much. And a HUD technical assistance and monitoring review of the HOME program's uniform relocation act. And finally, a HUD technical assistance and monitoring review of the HOME program.

We talked about prior audit issues, of which we have 30 that we are tracking. And broad complaints of which we received 36 so far. Are there any questions on the Audit Committee meeting?

(No response.)

MR. OXER: No comments from the Board? Any other? So we are accepting your verbal report, or is there an action for this?

MS. DONAHO: I don't believe there is an action item.

MR. OXER: I think it is just a report item.
Correct?

MS. DONAHO: Right.

MR. OXER: Good. Thanks, Sandy. Okay. Let's go to Item 4 here.

MR. GANN: I would be glad to take it for you. Mr. Chairman, the Strategic Planning and Budget Committee did meet in this very room at 10:00 this morning. We covered five items.

And most of those were report items. But four of those items were discussed at length. And I would like to bring Brooke and her cadre up to discuss those individually.

MS. BOSTON: Thank you. Brooke Boston. I will -- there were five items that we discussed at the Strategic Planning and Budget Committee meeting this morning. One was adoption of the minutes from the prior meeting.

Two of the items are relating to action items that you will see further on this agenda. So I won't get into those a whole lot. We will be able to talk about the committee's recommendation out to the Board as part of the staff discussion for that item. Those relate to the use of discretionary CSBG funds, as well as the Neighborhood Stabilization Program.

The other two items that we discussed were the

beginning of a process to discuss the formula that we use to allocate 90 percent of our Community Services Block Grant funds. Community Services Block Grant is one of our programs that we use that lets organizations, community action agencies kind of serve as some administrative glue and outreach and services for persons in poverty.

And they -- we have used a formula; 90 percent of the funds go through formula to these organizations. And so, over the years, we have worked with membership community action agencies and TACAA, the Texas Association for Community Action Agencies on that formula. And we have tweaked it here and there in the past.

For a variety of reasons that we will talk about more over the next month, we are suggesting that we at least revisit and talk about and begin a public input process for changing that formula. There are a lot of federal regulations around how those organizations are funded, and how the process that they would need to go through, or that we would need to go through if any of those organizations has part of their funding reduced.

And it is possible that depending on how the formula would change, some would see an increase and some might see a decrease. And so we are making sure that we are starting this very early.

The earliest we are talking about seeing an actual change in the budgets that the organizations would receive would be for 2014. But we wanted to start now to make sure that there is a lot of room for Board dialogue, all of the federally required hearings. That we have chances to run through roundtables with the Community Action Network and talk through how different variations of the formula could impact them.

Looking at what we talked about with the committee quite a bit was trying to make sure that we feel like the impacts on the organizations are understood, while also maximizing the impact of the dollars. So essentially, that wasn't something that was being acted on by the full Board today.

But with that committee's nod and okay with us moving forward, we now will come to the Board several times over the next six to twelve months with different action items, which will include among other things draft proposed rules.

Then we will have public comment. We will have several hearings. At some point, we will have a final rule adoption.

And also in that process, we will have an adoption of a plan that would go to the United States Health and Human Services. So there is a long way ahead of us.

But because it is really important that everyone's voice gets heard in this, and that the formula is really well critiqued, whatever we decide to do with it, we wanted to kind of get it in front of everybody now. Any questions about that part?

(No response.)

MS. BOSTON: Okay. The other --

MR. OXER: It is just a comment. So we are essentially telling you to take action to address your activities, interests and efforts in addressing this portfolio of issues in a manner that is consistent with our regulatory responsibility.

MS. BOSTON: Right.

MR. OXER: I like it.

MS. BOSTON: And then the one other item that we discussed that is also not as in a full board agenda item, was a new proposed salary compensation plan that we are planning on using internal to the Agency. It is a new approach that is governed by essentially kind of an Excel spreadsheet tool, that our financial administration and HR folks came up with.

And it essentially, in a nutshell, it makes sure that when there are ever salary decisions made by a specific division, that they are looking at the long term application

of that division, on the budget of that decision. So for instance, one of the examples we gave this morning is that if in a given year you have some savings for some reason and a couple of other line items, you don't say oh great. I am going to give a bunch of salary increases.

But then the next year, you don't necessarily have those savings. But you have now increased your base salary line item. It is that, you know, before you can make an increase to a salary line item, you really need to be looking at the long term impact on the salary line item, and make sure it is something that you can support.

And the financial administration and David Cervantes actually came up with a specific tool to help the directors understand how to do that. And so because it is something pretty new for us, there has always been a financial review.

Don't get me wrong. There has been a pretty thorough process to get a personnel action approved. But this pushes that financial perspective on it down more to the directors and managers level. So that is new and exciting and something we talked about.

And then like I said, the other two items, we'll actually discuss in more depth when we get to those actual Board agenda items.

MR. OXER: Good. Are there any questions from the Board?

(No response.)

MR. OXER: Okay. Are there any questions. We have no public input or questions, so thanks. Is there anything else on that, Vice-Chairman Gann?

MR. GANN: No.

MR. OXER: Great. Okay. That is that item. Okay. Dr. Muñoz, on the loan policy.

DR. MUÑOZ: Okay, so on the -- just a quick summary. And I will ask Tom if he would like to come up and add some texture to my summary. On the 13th, at 1:00, we had a meeting of the Loan Policy Committee. We had a very spirited discussion.

We had a summary of the history of the loan policies of the Agency. We had a PowerPoint also, that Tom provided.

And in the end, both the committee members, McWatters and I, Professor McWatters and I asked that the subsequent meeting, we would be provided a summary of regulatory procedures and loan policies that are codified in statute, so that we would have those available to us, as we determine the best direction for new policies.

We asked staff to come to future meetings with loan policy recommendations that are prioritized. That in

their perception are those that need to be address more immediately than others, perhaps.

And most importantly, we ask that these priorities be informed by public comment. That ultimately, we develop some sort of policy. I refer to it as a framework, or policy guidebook of some kind. A manual of some kind that can be used in the future to inform our decisions.

But also that is written in a serviceable language for developers and prospective developers and syndicators and just the general public can comprehend. Not written in such a terse and inaccessible language that nobody can interpret it. And so, Board members included.

And we create something that is helpful in guiding and informing our own judgment and opinions and understandings of the implications and consequences of the loan policies that would be established by this Board. That is my summary. And I will invite Tom to improve on it.

(Simultaneous discussion.)

MR. OXER: So it has been a while since you got a grade and didn't give them out.

DR. MUÑOZ: That is right. And I never got one that good before.

MR. OXER: Are there any questions from the Board? The -- Professor McWatters? As a member of the committee,

did you have anything that you care to add to that? I know you are not shy and will speak up.

MR. McWATTERS: Dr. Muñoz, another gold star.

(Simultaneous discussion.)

MR. OXER: Part of our intent, or my intent in the discussion with Tim was to make sure that whatever we have in these loan policies, are going to function essentially like a bank. It needs to be codified, clarified and defended in terms of a history of the policy and why it is in place like that.

So I appreciate your efforts in that behalf, Juan, and look forward to seeing this eventually. So all right.

Are there any comments on that item?

(No response.)

MR. OXER: Good. Okay. Number six. Michael? And this will be one of those items, I assume, that Brooke was referring to.

MR. DeYOUNG: Yes, sir. Michael DeYoung, Community Affairs Division Director. Members of the Board Item 6 pertains to the allocation of the CSBG discretionary funds. As a review the State of Texas has discretion in how we administer approximately 5 percent of our CSBG award annually. And this year, that figure is approximately \$1.4 million.

Now historically, as a state, we have allocated the awards towards several different initiatives. They are contained in your Board writeup. And staff is recommending a desire to kind of change the way we have administered these funds. We want to focus on special needs populations.

Each year, or each biennium, and really target the funds to try and get as much impact as we can during that two year period. So that staff is recommending that we would focus on the special needs population, and really target this year.

Now there is a table in the third page of your writeup that I want to review with you, and for you. The first line of that table on page 3 of your writeup is the data warehouse project. This is a project that you have previously approved and have gone on to the LBB as a Request for Budgetary Authority for TDHCA to spend a half a million dollars on an HMIS data warehouse. HMIS is the Homeless Management Information Systems. As a quick overview, there are six different systems used in the State to track homeless populations. The issue is, that none of them talk to each other. We are proposing a solution that would for the first time ever take all of that data, aggregate it statewide, so that we can start to look at what is going on in the population of homeless individuals. And if some, for instance, now,

if someone exists a shelter in Dallas, and they reenter in Houston, we may never find that out. This database will allow us to track that activity and find out, is this person actually transitioning out of poverty, or are they merely being relocated to another city with another system and no one is picking up on it. So that is already been approved by the Board, and we are moving forward. The next four figures you see in your Board item on page three are staff's proposals to for your consideration. At the strategic planning and budgeting meeting this morning, we had a discussion about each of the funds, and talked about some possible changes to that. Dr. Muñoz, I have to apologize. As we talked this morning, I stated a figure of 300,000 for migrant seasonal farm worker projects for 2012. And I -- staff gave me the proper figure, but I didn't read down. There is an additional line of \$125,000 that were dedicated to Native American populations. So the total would have been \$425,000. This morning, we told you the total was \$300,000. I apologize for that.

During that strategic planning meeting, there was a proposal to amend staff's recommendation to reflect 300,000 in the local homelessness innovations and possible interplay with community action agencies. You see it in your Board book. It is \$400,000. The \$100,000 was added to the

transitional funds for migrant seasonal farm worker and Native American populations. So it moved from 100,000 to 200,000.

But in light of the -- my error in correcting the figure, I think it might warrant some discussion from where we were this morning, if there needs to be further modification.

MR. OXER: So how did it wind up?

MR. DeYOUNG: So what is that?

MR. OXER: So how did it wind up? Where are we at on it now? Based on what we expected this morning, and what you have come up with.

MR. DeYOUNG: This morning you had -- the \$500,000 is the same for the data warehouse. You had \$300,000 for statewide homeless. That doesn't change. You had 300,000 for local homelessness innovations, down from the 400. And you increased transitional funds from migrant seasonal farm workers from 100 to 200. And then disaster relief stays untouched at 100.

MR. OXER: And the corrected numbers that you have there?

MR. DeYOUNG: The corrected number pertains more to what we had set aside last year. I told Dr. Muñoz we had only done 300,000 for migrant seasonal farm workers and Native

Americans. That figure is actually 425,000.

MR. OXER: Okay.

MR. DeYOUNG: But it would have been 100,000. It would have gone from 425 down to 100. It would have gone from 425 to 100. And it is now, based on the recommendation of this morning, that 200,000. And that still can be discussed.

MR. OXER: Okay. Are you okay with that, Juan?

DR. MUÑOZ: Yes.

MR. OXER: Okay. Any other questions from the Board?

MR. KEIG: Yes. I realize this may be a moot issue, because the number has already been submitted to the LBB. But what is the 500,000 generally going to? Are we paying a contractor to work up a system?

MR. DeYOUNG: Yes. We would be doing the design requirements in house. And then going out to bid for a third party contractor or hiring of staff, temporary staff to come in and program the system. I don't know that we will define it either way in the RFP.

We will try to figure out which is the most effective approach. There is -- we are optimistic. The \$500,000 figure is the highest estimate we have received. We have verbally heard estimates starting as low as near

\$100,000. But it is difficult when you don't have all of the details to get a great bid.

So we have bids from 100,000 all of the way up to 500,000. We requested authority at the maximum and anticipate that we could beat that figure.

DR. MUÑOZ: I have a follow up question.

MR. DeYOUNG: Sure.

DR. MUÑOZ: What if it doesn't come to that \$500,000 amount. What would you do with the balance?

MR. OXER: Right.

MR. DeYOUNG: Well, in the Board writeup, you will see that we will come back. In the event the Department does not have sufficient eligible applications to fund one or more categories, we can come back to the Board. I would assume we would come back to the Board with a recommendation for any funds that aren't spent.

MR. OXER: If instead of the 500,000, if you only spent 200 for your contractor for example, and you say hey, we have got an extra 300. We will put it on, we recommend you put it on this. Okay, Juan?

DR. MUÑOZ: Yes.

MR. OXER: Okay.

MR. KEIG: Are the current funds for migrant seasonal farm worker and Native American populations, are

they separate? Is it two separate pots, or is it all in one?

MR. DeYOUNG: We have always treated them as two separate pots. In this proposal in front of you, they are combined into one.

MR. KEIG: Right. And so currently, how does that break out?

MR. DeYOUNG: Well, last year, it was 300,000 in three awards to migrant seasonal projects.

MR. KEIG: Okay.

MR. DeYOUNG: And one award for Native American projects.

MR. KEIG: 125.

MR. DeYOUNG: One award for 125.

MR. KEIG: All right.

MR. DeYOUNG: And that has -- the 125 has been a historical -- there has only been one project each year at 125.

MR. KEIG: One more question?

MR. OXER: Sure. That's what lawyers always say: Just one more question.

MR. KEIG: Could somebody apply for homelessness funds, making the argument that the seasonal farm worker is a homeless person?

MR. DeYOUNG: Yes. I mean, they -- if there's always a question from a lawyer, there's always another lawyer to respond.

Come on up, Megan.

MS. SYLVESTER: Ideally one of the points in targeting homelessness --

MR. OXER: And tell them who you are.

MS. SYLVESTER: I am sorry. Megan Sylvester, Legal Services.

One of the points in targeting homeless funds for this biennium is so that we can leverage some federal funds that we are currently leaving on the table. And therefore we would have to design projects -- our funding opportunities to serve projects that would meet the federal or HUD's definition of homelessness.

DR. MUÑOZ: Megan, potentially leverage? Potentially leverage or definitively?

MS. SYLVESTER: Well, I can never say what the federal government is going to do definitively. We definitively, under the model of the continuum of care funds right now, would be -- we definitively are leaving a portion of funding on the table. But each year, they release a NOFA with requirements.

And so I can't tell you -- and that program is

operating under an interim rule right now. I can't tell you for a certainty what the final rule is going to be. And I can't tell you for a certainty that the continuum of care program will continue to operate in the future the way it is currently.

DR. MUÑOZ: Because our focus -- because the focus on this subject is with the expectation of leveraging and receiving additional dollars.

MS. SYLVESTER: Correct.

DR. MUÑOZ: But there is some doubt.

MS. SYLVESTER: There is always some doubt when you are dealing with --

DR. MUÑOZ: But there is no doubt in where we are going to focus our dollars: homelessness.

MS. SYLVESTER: Correct. With homelessness. Yes. It is just the -- potentially portions of activities that were priorly served with migrant farm workers, if that population meets HUD's homeless definition or could be served. Is that good?

MR. OXER: So essentially we are going to use the most expansive definition we can to benefit the programs for our state.

MS. SYLVESTER: (No audible response.)

MR. DeYOUNG: She says yes.

And let me go into a little bit more in depth. There are continuum of care funds. We talked about this, this morning. There are funds available to every community in the country to address issues of homelessness.

Texas as a state has left approximately \$15 million on the table. One of the initiatives that you see in the data warehouse and in the statewide homelessness efforts and the focus of this writeup is to try and, as much as we can, leverage and go get those dollars over the next few years.

Additionally, as we get better data about the homeless population here in Texas, that could reflect even a higher allocation for the state, statewide. So --

MR. OXER: But it is a higher quality --

MR. DeYOUNG: We know we are not getting all of it. It may be even more if this works out well. So you are looking at a figure of hopefully \$15 million more.

MR. OXER: So it is 15 million of upside and nothing on the downside, and we gather better data.

MR. DeYOUNG: Correct. We have a better ability to analyze that data, and find out what is working, what is not working. Where should we be targeting our grants.

MR. OXER: Right. Good. Okay.

MR. DeYOUNG: So with that --

MR. OXER: What is the action on that?

MR. DeYOUNG: The staff recommends as presented in Item 6 that was amended by the Strategic Planning and Budgeting subcommittee to reflect a shift of \$100,000 from local homeless initiatives in your writeup and an increase of that same amount to the transitional funds for the migrant seasonal farm workers and Native American populations.

We are asking your review and approval.

MR. OXER: Which the Strategic Planning and Budgeting Committee recommended approval of this morning.

DR. MUÑOZ: Move staff recommendation.

MR. GANN: Second.

MR. OXER: Good plan. Okay. Dr. Muñoz moves staff's recommendation and Vice-Chairman Gann seconds. Is there any comments from the public?

(No audible response.)

MR. OXER: Got one more.

MR. MARTIN: Thank you. I will make this very brief. My name is Ken Martin. I'm the Executive Director of Texas Homeless Network. I want to applaud the staff and the Board for looking at this issue in depth. Homelessness is a problem that can be solved. We know that.

And I wanted to make myself available in case you have any questions about this. I have worked with continuum

of care for about 16 years now. To answer your question about migrant and seasonal farm workers, typically, if they are housed when they are working, they are not considered homeless under HUD's definition.

MR. OXER: If they are housed in a fixed structure --

MR. MARTIN: Correct.

MR. OXER: -- you know, as opposed to a mobile structure.

MR. MARTIN: Correct.

MR. OXER: And those fixed structures would be made available in the area of their work, as opposed to something farther away.

MR. MARTIN: Absolutely.

MR. OXER: Okay. Any other questions from the Board?

(No response.)

MR. OXER: Any other comments?

(No response.)

MR. OXER: There appear to be none. Motion by Dr. Muñoz to accept staff recommendation as modified by the Strategic Planning and Budget Committee. Second by Vice-Chairman Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous. And we are off on that one. All right. I am anticipating that Item Number 7 is going to take a little while to mill and grind on, so we will take a ten-minute break. Stand up. Pit stop. Be back here when that clock says 20 after 2:00.

(Whereupon, a short recess was taken.)

MR. OXER: We'll get underway again.

Item Number 7. Cameron.

MR. DORSEY: All right. Item Number 7 is an item to discuss and possibly allow the Board to take some action regarding a couple of QAP -- 2013 QAP issues. I am going to kind of break them down, and walk through each separately.

And at the end of each, I will stop and just see if you have any questions before I move on to the next one, so that we don't kind of start mixing stuff up. I am however, I am having Megan Sylvester sit up here so she can kick me if I start saying something wrong on the second issue that I will discuss.

So the two issues relate to the first, the disaster declarations point item in the QAP. And then second, to the term general population and its use and implementation in the 2013 cycle. Disaster declarations first.

So under Section 11.9(d)(5) of the QAP, is a point item for those Applicants that propose a transaction located in an area for which a disaster declaration under Section 418.014 of Texas Government Code was issued in basically the last 24 month period. This scoring item is the tenth highest scoring item. That also means that it is part of that top ten statutory scoring criteria that we frequently talk about.

Specifically, the portion of the statute is Section 2306, 6710(b)(1)(j). J would be the tenth item in the list of those top ten. I am going to go ahead and just read what statute says. And then I am going to read the point item itself. Just so it is in your Board materials. But I will go ahead and read it into the record here.

So the statute says, that it directs us to develop a scoring criteria to score and rank applications. And the specific one relating to disaster declaration states: whether at the time the complete application is submitted or at any time within the two year period preceding the date of submission the proposed development site is located in an area declared to be a disaster under Section 418.014. Now that is the basis for the QAP scoring item.

The QAP further refines and implements that item. It reads an application may qualify to receive up to eight points for this scoring item. An application will receive

seven points if, at the time, the complete application is submitted, or at any time within the two year period preceding the date of submission the proposed development site is located in an area declared to be a disaster under the Texas Government Code Section 418.014. In parentheses, it says, this excludes disaster declarations that are preemptive in nature.

There is also a further refinement that states, an application will receive eight points -- that first set was seven. However, an application will receive eight points if the disaster declaration within the two year period preceding the date of submission is localized. In other words, if the disaster declaration does not apply to the entire state.

Now there -- this is the first year where we have provided a couple of refinements in this point item. The first is this concept of a preemptive declaration.

And the second is this concept of having a lesser point value associated with a state wide declared disaster.

In other words, one in which is stated to encompass all 254 counties of the state, versus one that is more localized. In other words, less than 254 counties.

The biggest issue that is at play is the implementation of that word preemptive. So the first thing

I want to do is just explain a little bit about why we included that word. The basis -- here is kind of the classic example.

The Governor issues a disaster declaration under 418.014 for the imminent threat of a hurricane hitting the Texas Coast. This type of situation has occurred before. And this is prudent, because it allows for the mobilization of resources prior to the disaster actually occurring or affecting the State such that a response, when it does hit, is very quick and immediate.

However, the question is, do we want to reward an applicant points if that hurricane doesn't actually hit, but veers away and doesn't hit Texas, and doesn't affect Texas.

And when we were thinking through this point item, we said, you know what? That doesn't actually make sense, to award points to such an application since the disaster never actually occurred.

So we used this language preemptive. Initially, when we provided guidance on the item, on how this scoring item would be implemented, we limited -- we based the guidance purely on the language of the disaster declaration themselves.

And so and for example, some emails, and some phone conversations as well as the application workshops, staff

provided the development community guidance, that if the declaration itself referred to the disaster as occurred, then it would be eligible for points under this item because it was not preemptive in nature. However, if it used terminology such as imminent threat of disaster, then it would not be eligible for points under this item. So staff put that guidance out there.

The guidance was put out in probably in early November through early December. Kind of the culmination in the provision of that guidance was, the application workshops in which three were held in early December. Since staff provided that informal guidance, and I say informal for a couple of reasons.

One is, because we are very careful to condition any guidance we have on the fact that I am not the decider; that you are the decider, the Board. And so any guidance I have, is obvious -- that I put out is obviously subject to the Board having a similar interpretation.

There is also a QAP provision at the beginning at the QAP and at the beginning of the multi family rules.

That basically reiterates that point. It is called applicant responsibility and due diligence, and basically, the applicant must be responsible for understanding that staff guidance is generally limited and that it is always subject

to the Board's interpretation. And this is case in point.

We got a lot of phone calls about this item. And we got -- as we -- as time passed, we started researching the item a little bit more. And we got a little bit concerned about how that was interpreted, that initial guidance. And we felt that it needed to be changed.

And as a result, on January 4th, we put out an email. Now mind you, this is two business days prior to preapplications coming in. We put out guidance in a Listserv email that said effectively, that we believe that more well, I left out an essential part.

So based on that initial guidance, there were three counties that would be able to receive eight points under that initial interpretation as staff provided the guidance.

Dallas, Tarrant and Kaufman. And it was based on disaster declaration. We have, from April 5, 2012 that dealt with some tornadoes that affected that three county area.

Every other declaration, including the wildfire declarations that were associated with some of the wildfires such as the Bastrop wildfire. Were all written in a nature that on its face, appear to be preemptive. However, staff got increasingly concerned after we put that guidance out there that well, the declaration itself may use terminology

such as imminent threat.

However, wildfires actually did happen. And so that was a concern for us. And so what we did was, we sat down, and we discussed it further. And we felt like we needed to basically put out revised guidance. That revised guidance provides the ability for basically every applicant in the State to access the twelve points, or I am sorry, the eight points.

The reason is, because we have got a couple of disaster declarations. One related to the droughts that have affected Texas and one related to wildfires that have affected Texas. Both, like I said, were under the previous interpretation, preemptive in nature.

However, under both, drought has in fact affected the state quite tremendously, as has wildfires have as well.

There were several wildfires throughout the state, over the past two year period. So we put out that revised guidance to ensure that we accounted for the fact that sometimes these declarations come out ahead of time, because they are designed to mobilize resources quickly.

But if the disaster actually does happen, then we need to recognize that, and allow points for that. So we went that Listserv out on January 4th. And we indicated in the Listserv that due to the late date of the guidance,

again, it was like two business days before the preapps were due, we would allow for corrections to folks who self scored in their preapplications, to account for the change in guidance.

Obviously, we are reasonable folks who recognize that not everyone would just sit down and look at their email that day, and be able to go and change their preapp to get it resigned and what have you. And so we said, look. We are reasonable. We will let you correct this, through the administrative deficiency process.

So that is the basic situation we are dealing with.

I think the concern that some of the folks behind me and will speak in a moment have is that they have changed their development, that their site identification process, you know, identifying sites that they would like to submit preapp score after that initial guidance to avoid urban region three counties that were not Dallas, Kaufman or Tarrant, because there was this eight-point differential between those three counties and sites in in the other three counties just because of that three county disaster declaration related to the tornados.

And the change in guidance allowed for all applications in urban region three to access eight points.

And so their concern is, we changed our site selection process

based on that guidance.

To that, I think, you know, it is staff's perspective that the original guidance was not given to just a select number of applicants, nor was the subsequent and current guidance. We made the new guidance available to everyone at the same moment.

And it was not prejudicial in the sense that we do not restrict the service area of any applicant. Any applicant can choose where they want to go develop deals. And as a result, everyone was subject to the same knowledge at the same time. If someone decided to change their development strategy, that was purely their choice. Not a requirement of us.

So that is basically, that issue in a nutshell.

The reason that it is appearing on your agenda is to make you aware of that change, and because as it concerns expressed by applicants, however, without the Board's -- if the Board chooses not to take action, we will continue with that revised guidance that we have issued, that would allow access to eight points for all applicants statewide. So any questions before I summarize the next one, and then --

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Okay. And in this event, we would

allow eight points for everybody. So in effect it becomes a threshold item.

MR. DORSEY: Effectively right. It is not a differentiating item.

MR. OXER: Right.

MR. DORSEY: And we got there about with the rule as a guide, as well as simply backing up and looking at the situation and saying does it make sense for the outcome. When you look at outcomes, does it make sense for applications in these three counties to have an eight point differential purely because of this tornado declaration, when there were in fact wildfires and drought that affects large areas of the state.

And I think that Scott's conclusion was that no, that does not. We need change guidance, based on both the rule and that kind of logical outcome based thought process.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Any comments? I tend to believe that while we try as hard as we can, to put this to something that makes sense, and we can carve a bright line on rule. Okay.

Ultimately, this has got to make sense, and some defensible logic that we use to apply to this. So with that comment,

it appears that there are -- do you want to take these one at a time. Cameron?

MR. DORSEY: We can do that. Were you going to suggest that, Tim?

MR. OXER: I think it would be useful. Let's do that, because I want to hear the comments on these. And folks to be able to hear that. Give you a break. You don't have all of those lasers in your back anymore.

MR. McWATTERS: Cameron, let me ask a question.

MR. OXER: Go ahead.

MR. McWATTERS: What is the rule for next year and the year after?

MR. DORSEY: We have obviously not -- this rule could apply as currently written next year. However, you know, we generally cut through an annual rule making process, and could make modifications to that rule. We have looked at some additional possibilities that would tie the points to actual units destroyed since that really would probably best align with the concept of --

MR. OXER: The full economic --

MR. DORSEY: Providing housing in response to housing being destroyed makes kind of the most sense.

MR. OXER: Right. Okay. Hold still a second,

because we have to have a Board action before we hear public comment.

MR. McWATTERS: Yes. One more question.

MR. OXER: Okay.

MR. McWATTERS: Was the 254 county eight points, was that based because the drought itself basically affected every county, or was it just a matter of saying, you know, we don't really know. So we are just trying to level the playing field here.

MR. DORSEY: Well, it wasn't based on the latter. It was based on this; there were multiple disaster declarations related to drought and wildfire that were localized or rather, not statewide in the sense that they were 200 or 236 counties.

But when you overlap the various ones that have been issued in the past two years, you end up with coverage for every county in the State. There were also 254 county declarations. However those would only provide for seven points, because they are statewide in nature.

In terms of not being tied to and maybe this is your point, for example. If a disaster declaration was issued for 252 counties and a fire happened in one of them, why would we just allow points for one.

And that would be, I think, the most difficult

interpretation, based on the pure language of the rule itself, because it doesn't say you can look within a declaration and pull out specific counties that were affected if the declaration itself says these are the applicable counties. Then it is hard to parse that out.

In addition to that, you may get into issues where it is like well, does that fire over there constitute a fire that is big enough to be a disaster versus this one over here that was very -- you know. You get into some issues like that.

MR. OXER: Okay. So we are trying to put a rule in black and white. And there is a whole lot of shades of grey in this, of what could conceivably occur.

MR. DORSEY: Right.

MR. McWATTERS: So if there is a declaration, and the only declaration issued says imminent, and no other declaration is issued, then somebody within this Department has to make a decision whether or not a disaster really occurred.

MR. DORSEY: Yes. Which is not the most comfortable position to be in.

MR. McWATTERS: Okay.

MR. DORSEY: Except in hindsight, it is not that difficult to come to that conclusion. I don't think anyone

would argue that the Bastrop wildfire was not a disaster. More would anyone argue that that was the case with tornados.

So in hindsight, it is actually relatively easy to implement. On a prospective basis, I think, you know, some refinement to the language would be beneficial.

MR. OXER: Okay. Any comments from the Board? Additional comments?

(No response.)

MR. OXER: We need a motion, and staff recommendation on this particular item is --

MR. DORSEY: To basically support the decision that we have put out in the --

MR. OXER: Continue to refine the guidance?

MR. DORSEY: Well, in the revised guidance that is reflected in your Board book and in the writeup itself. That 200 -- all applications in the state would have access to the full eight points under this item.

MR. OXER: Which in effect, for this round, take that out as a differentiating item.

MR. DORSEY: That is right.

MR. KEIG: So moved.

MR. OXER: Okay. Motion by Mr. Keig to move staff recommendation to allow disaster recommend -- or disaster

declarations for all 254 counties.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Okay. We have some public comment that is warranted here. So, good afternoon.

MS. KAPLA: Good afternoon

MR. OXER: So far.

MS. KAPLA: Good afternoon, Board members, Mr. Chair. Thank you for the opportunity to speak today. My name is Stacey Kapla. I am the development director here in Austin for Herman and Kettle Properties. And I am here to speak briefly about this disaster area item.

This year staff did a remarkable job of maintaining an open and transparent dialogue with the development community as the Department's policy and priorities evolved.

And throughout the QAP process, staff consistently sought feedback from developers and gave thoughtful and consistent guidance. And as a result, we were able to plan early and begin seeking out sites and areas that we felt were shaping up to be competitive.

So the declared disaster area scoring item change was available in the draft QAP that was published prior to the November 13 Board meeting, as Cameron mentioned.

And at that time, many of us sought out

clarification on the ramifications of this change. Staff indicated that only those three counties in that region would get those points, unless there was a declaration that they did not know about.

Additionally, staff indicated that if there was a preemptive declaration that later did have a disaster event, an applicant could prove up that event and get the points.

This item passed at the November Board meeting with no discussion or debate. At that point in mid-November, I, like Cameron said, made the strategic decision to turn my focus to the sites that I was looking at that were in those three counties because this was such a differentiating point factor.

One month later, as I'm still negotiating site control, and trying to get my, you know, municipalities on board, at the three different application workshops, staff announces it continues with their consistent guidance that they had been giving since November.

And there was some shock and there were some gasps in the application training sessions, which surprised me, because this is not -- it wasn't new. It was information we had had for over a month.

Now, I realize development is a risky business.

And I realize that staff has every right to revise their interpretations, you know, based on new information, based on feedback.

But I just feel like the development community had ample opportunity to respond to this change before the draft QAP was approved in November and before these application workshops.

And the fact that the interpretation changed as a result of -- and I am quoting this from the Board book -- "inquiries from applicants and their advisors" sadly goes against the spirit of what otherwise seemed to be an incredibly transparent process.

Had this interpretation been worked out sooner, I wouldn't have -- I would have considered, you know, going back to the other sites that I was working on in those other areas. But the lateness of the referral made it impossible to change, because we had already done our notifications.

To be clear, I am not here to whine. I wrote that down to make sure I said it. Rather, I am simply pointing out an effect of this last-minute change.

While I am sure that some developers are certainly pleased with this outcome, there are those of us that carefully followed the QAP, followed the process, and trusted staff's consistent and ongoing guidance. And now we are at a

competitive disadvantage.

I propose that a more fair approach would be for staff to return to their original position, which includes the option for an applicant to match up a preemptive declaration that later had a significant disaster event with evidence of the event to get the points. I am certain that any developer that this applies to will be able to find the supporting evidence and documentation to provide that backup and get their scores.

Thank you for your time.

MR. OXER: Mr. Keig.

MR. KEIG: How are you at a competitive disadvantage if we go forward with this and pass this?

MS. KAPLA: So I had had -- I identified sites that were -- that would have received these extra eight points, or these eight points for this disaster item.

MR. KEIG: Yes. And I guess my point is you're not at a competitive disadvantage. You just do not have the advantage that you thought that you were going to have.

MS. KAPLA: Which I see as a competitive disadvantage.

MR. OXER: Hold on. Any other questions?

(Pause.)

MR. OXER: We're happy you are here, Sarah. Okay.

All right. And so essentially you picked out a site, that you thought, because of this disaster declaration, you are going to get eight more points than somebody else in your area.

MS. KAPLA: So I focused resources on those sites.

MR. OXER: Focused resources on going at it, and all of a sudden, what staff is saying, or what we are saying -- because the staff is speaking for us, so that you know.

MS. KAPLA: Right.

MR. OXER: They don't make the decisions, you know.

MS. KAPLA: Right.

MR. OXER: We take the heat, okay. Just a minute. Hold on.

MS. BINGHAM ESCAREÑO: Mr. Chair, and I guess the observation would be you could have passed on other sites that might have had attributes that would have gotten you points that would have distinguished that development, but you hedged your choice on the disaster area.

MS. KAPLA: On the language change and the guidance. Yes.

MR. OXER: I have a procedural question with respect to the timing on the QAP. Because of the time that

the QAP is actually issued -- you're welcome to stay there, Sarah; it just wasn't your turn yet. From the time the QAP -- I know you'll be there.

From the time the QAP is signed off on, which is what date? December 1. And then there is a four- or five-week period, you have got to pick out a site. And you have been thinking about this before, I assume.

MS. KAPLA: Oh, we've all been out there since July.

MR. OXER: Scouring, I am sure. Okay. So then the question becomes, can you get all of that done in five weeks, or would it help you to have 57 weeks?

MS. KAPLA: Fifty-seven weeks.

MR. OXER: Okay. Well, that is one of the reasons we're looking at potentially going to a two-year QAP.

MS. KAPLA: Yes.

MR. OXER: That gives you another year in there to make all those preparations and do your community discussions, so that we don't have this NIMBY fight. You know, you get a little bit more traction on talking people into what you're actually trying to do.

And I am using this as ammo to provide for a fight we're going to have later. Okay.

Mr. Keig, do you have a question?

MR. KEIG: (No audible response.)

MR. OXER: Okay. Thanks for your input.

MS. KAPLA: Thank you.

MR. OXER: All right.

MS. CARPENTER: Chairman Oxer and Board, my name is Alyssa Carpenter. I have been a tax credit consultant for six years. This is actually my first time speaking before you today, so I apologize if I am a little bit nervous. But I have my paper here to keep me on track.

I am here to speak on this declared disaster point item. An issue here, as Cameron explained, but I am going to explain it again, since it is on my paper, is that staff made a significant language change for the final version of the QAP. They provided written and verbal guidance on this item in November and December and then recently reversed the interpretation on January 4, which was, as Cameron said, two business days prior to the deadline for the preapplication.

I would like to present my experience with this point item and staff, so you can understand where we are coming from, from those of us who did receive guidance on this, tried to follow this guidance, and how we have been harmed by this, and how we feel that this actually is a bigger issue as far as what we can and cannot believe when we hear stuff from

staff.

Background here: As Cameron explained, this is an item that has been in the QAP for a couple of years; it is a statute item. In the past, all 254 counties have always received this points. And it's because of the various fire and drought disaster declarations that sometimes includes the entire state, sometimes included half the state.

But everyone was always covered. Everyone always got these eight points. It was a non-issue. Prior to the final QAP being posted -- and so this went up on the website around November 9 -- staff actually added a small but significant change, which was this preemptive language that said this excludes disaster declarations that are preemptive in nature.

Reviewing this QAP, I noticed this immediately, and we emailed Cameron to get more clarification on this. Based on my research of this point item already, I knew that most of the disaster declarations, except for one, included the words "imminent threat," which sounded preemptive to me.

And so I emailed Cameron, and I asked exactly how this would work for areas like Bastrop. I specifically said this: How does it work for an area that is under a preemptive declaration for fire, had a fire, but they didn't get a new

declaration because it was already under an existing declaration for fire, so there was no new one released by the Governor's Office because one already existed.

At that time, Cameron responded -- and I have these emails. And actually, I would like to pass them out. I have enough for everybody per the requirements. I do; 150 copies.

MR. OXER: Is your last name Pandora?

MS. CARPENTER: Sorry?

MR. OXER: Is your last name Pandora?

MS. CARPENTER: The reason I printed these out is because I felt like the Board summary on this was a little misleading, but Cameron did explain this. The Board summary said that they provided verbal guidance on this.

And this is proof that I actually had written guidance on this exact issue, discussing these exact points about Bastrop, about disaster, drought areas that maybe had water rationing, crop failures, whatever. I mean, the reason I asked this was because of the way the QAP read, preemptive and, you know, issues where there was actually a disaster that occurred. I'll wait for the emails to be passed out.

(Pause.)

MR. OXER: Suffice it to say from the email, there has been communication back and forth.

MS. CARPENTER: Yes. And the reason I have these emails is because it's three pages of emails. The first email is where we asked about Bastrop specifically, and how, what we would do, since it is under preemptive declaration.

At that point, and this is on the second page of the emails, staff responded, if the declaration is preemptive to begin with, but then a disaster actually occurs, we will allow points under this item. That's great. Fine. Then I asked staff again -- this is still on November 9, and mind you this was prior to the QAP being approved by you all.

I asked, how would one confirm that a disaster occurred? There are a lot of drought declarations, and I know towns have water issues and rationing. One could probably argue that could be an event worthy of a disaster declaration. I would really appreciate it that the Department release a list of qualifying counties, or else this will turn into a subjective scoring item with Board appeals, especially since the points are significant.

And as Cameron mentioned, this is eight points. For a self score, it is roughly 100 points, so it is a huge amount of points right here.

Cameron had not responded to that. So I asked again. And on November 12, which is still a day before the Board meeting when this was approved, Jean did some research.

And it seems pretty clear, based on the recitals whether the disaster is preemptive, I would need to see specific declaration that you are referencing. But if it uses the terms like "threat," then it is probably preemptive.

The one that Jean found that references a specific disaster that already occurred was the one for the tornados in North Texas. It references a specific date of the disaster itself. The Governor of Texas does hereby certify that the severe storms and tornados that occurred on April 3, 2012, have caused a disaster in Dallas, Kaufman and Tarrant Counties in the State of Texas.

My response, still on November 12, yes, that is the only one that I found that seems like it would qualify under the newly proposed language. So that is why I wanted to confirm this.

The other proclamations deal with drought and fire threats. But you said that if a disaster actually occurred, then one could claim points even if the proclamation was preemptive.

How would one prove that a disaster actually occurred, or is the one you referenced below the only one that will qualify, in which case I think that should be

confirmed in the materials of the QAP. The one below is that three-county declaration. At that point, Cameron responds, This is the only one we have found that qualifies under the proposed language.

So in the emails, you know, staff did do research on this, according to this email. I brought up Bastrop. I brought up drought. I brought up water rationing. And staff stuck to the literal interpretation of the QAP, which was that the proclamation could not be preemptive in nature.

Again, this is the day before the Board meeting when this was approved. So we went with this guidance. I have it in writing. What we learned -- I have been doing this for six years.

DR. MUÑOZ: I've got a question

MS. CARPENTER: Yes. Go ahead.

DR. MUÑOZ: But it is also says, it is up to you.

MS. CARPENTER: It is up to me. And I will go into this.

DR. MUÑOZ: So you know.

MS. CARPENTER: I sent some other declarations.

DR. MUÑOZ: It also has the caveat, This is the information that I have available at the moment.

MS. CARPENTER: Absolutely. And there are some

other emails about this, where it wasn't the declaration they talked about in the summary. It was another one that talked about fire and drought that had a little bit different language. It is still in the threat language, but it had some other -- you know, it was a little bit squishier.

DR. MUÑOZ: I suppose the point I'm making is, you know, the guidance isn't perhaps as definitive and unequivocal as you might intimate. It says, but it is up to you. And you know --

MS. CARPENTER: Correct.

DR. MUÑOZ: My understanding is limited to the information I have available at the moment.

MS. CARPENTER: Correct. But I guess I expect staff to look through the disaster declarations as they said they did when they did some research on this item. And again, a subsequent email to this was when I asked --

DR. MUÑOZ: The day before a Board, a great deal of information is compiled to review, to study.

MS. CARPENTER: Uh-huh.

DR. MUÑOZ: Testimony the next day, you know.

MS. CARPENTER: Understood, absolutely. I agree. Moving on, though, three weeks later -- so this was three weeks after this, after the QAP was approved, we had the Austin application workshop and subsequently the Dallas

and Houston workshops. And the Austin was on December 4.

Here again, in all three workshops, staff confirmed that these three counties would only be getting eight points, based on the preemptive language of the QAP.

So this is three weeks later. So I understand Board meetings. Stuff gets lost in the shuffle. I definitely understand --

MR. OXER: Not much. Trust me. Not much.

MS. CARPENTER: Three weeks later, staff confirmed it again. And Cameron said it's verbal, and that's fine. However, it is a TDHCA-sponsored application workshop that is available to -- I mean, Cameron said that the email that went out was to everybody -- well, the email advertising the TDHCA application workshops went out to everybody as well, so anybody is free to come to those workshops as well.

And this is a TDHCA-sponsored activity, where Cameron again confirmed these three counties are the only ones who are going to get any points and everyone else is getting zero. And the Austin workshop was taped. I don't know if staff has that tape.

MR. OXER: We don't think there is a doubt that that is what happened.

MS. CARPENTER: Okay.

MR. OXER: You don't have to go to quite such

detail.

MS. CARPENTER: Okay.

MR. OXER: You know, we got copies of those too.
So let's assume that that was correct at the time.

MS. CARPENTER: Okay.

MR. OXER: But you are going to have to recognize that this is not a fixed and final definitive -- we have got to make some decisions up here.

MS. CARPENTER: Absolutely.

MR. OXER: Okay.

MS. CARPENTER: Absolutely.

MR. OXER: And sometimes we have to make some decisions -- and I've got to tell you, if you have been here any of last year, in the six years you have been doing this, you just need some people down there crying where you are, and some of us up here doing the same thing, because some of these decisions hurt.

Now sometimes they don't feel good and I know it is going to hurt. And maybe we have some things that we do that a lot of people out there are going to be really unhappy with, you know.

I remind everybody here that the three admonitions that I got when I got this job, when I accepted it, you know, which by the way, pays remarkably well: It's going to be

really hard work. Nobody is going to appreciate what you are doing. And every decision you make is going to piss off somebody.

Okay. Now I figure if half of you are not pissed off out there, we're not pushing hard enough. Okay. This is going to be one of those things. Somebody is going to be unhappy with this decision.

MS. CARPENTER: Understood. I understand.

MR. OXER: I am just -- I get your point. And I take your meaning, that, yes, we did say all of those things.

But every one of those are open to final interpretation by this gang up here.

MS. CARPENTER: Absolutely. And I will skip to kind of the issue we had here, was that this issue had been going on three weeks from November, to December 3. The guidance came out January 4. The issue here is a timing issue.

If staff had been grappling with this issue earlier and we didn't get confirmation at the application workshops, we would have stayed in areas like Denton and Collin counties that had higher scoring sites, because we did have sites. We had the cities. We had the sites that were higher scoring than the sites that we had in Dallas, Tarrant and Kaufman.

And the issue is, for this information to be released on January 4 made it too late for us to go back, because by December 17, to be eligible to submit a preapplication, you have to send out a request for neighborhood organizations to any city or county where you are looking to put a project.

And eight points was so significant, based on the guidance we had received, we couldn't put time and money in those areas. It didn't make financial sense to go to those areas, even though they had higher scoring sites. But eight points negated the higher scoring sites in those other counties.

And that was the disadvantage that we had. We left higher scoring sites in counties that we believed, based on this guidance, were not going to get these eight points, to go to stay in Dallas, Tarrant and Kaufman, because we were going to get those eight points. And that is kind of the issue here.

The other issue is that Cameron just said that there is something in the QAP that said that any guidance they give is subject to Board approval. And I definitely understand that. I know that issues arise that staff and anyone needs to come to you for a final decision.

I guess my issue here is that, you know, we rely

on written guidance to put these applications in. And, you know, I watched the scoring appeals last year, for the applications. And the number one question I heard from you all was, did you ask the staff this before you proceeded?

And in this instance, yes, I did. I asked staff about this language. They told me three counties were going to get eight. Everyone else was going to get zero.

I proceeded to go to those three counties, leaving my higher scoring site outside of those three counties. And then to have a change like that, when it is too late for me to go back is somewhat detrimental to the process. And for -- I get --

MR. KEIG: Mr. Chairman, this is getting repetitive. And we are kind of over our guidelines for -- you know. We ought to let somebody else have the floor, if that is okay with the Chair.

MR. OXER: I will give you a minute to wrap up.

MS. CARPENTER: Okay. I will wrap up. To conclude, I feel like we need to be able to rely on staff guidance somewhat. I feel like we can't come to you all of the time to get clarification on what staff gives us.

And I have other emails and guidance that I have received from staff, and at this point, I am afraid they might change their mind, which is exactly what has happened on this

item.

And so the bigger issue is that I feel like we need to have some sort of reliance on what we hear from staff, because this is such a competitive process. It takes so much money. And I will wrap that up.

MR. OXER: Your point is made.

MS. CARPENTER: Any questions?

MR. OXER: No. Thank you.

MS. CARPENTER: Thank you.

MR. COHEN: Good afternoon, Chairman, Board and staff. My name is Gary Cohen. I am an attorney that represents tax credit developers who submit applications to the State of Texas. My remarks will be brief on this item.

Just three quick points to mention. The staff change in position appeared on January 4th, appeared to be premised in part on the fact that the threatened disaster had in fact occurred in certain counties. And that is understandable, that some change in position might have had to have been made because there wasn't going to be a subsequent disaster declaration, because something that was threatened did in fact, occur.

What I am having trouble following is the logic of why, if a disaster declaration for over 200 counties for

wildfires, and a wildfire happens in one county, why then all 252 counties covered by the disaster declaration should be entitled to receive points. I can't --

MR. OXER: And let me add, I find that to be an extraordinarily good question, because in none of those, I don't know of any drought that has the effect of dissolving housing.

I can see a few fires that have taken out housing. Okay. I mean, my own understanding would be, I think we need to get back to this, Cameron, that the real disaster area has to include the loss of housing stock.

MR. COHEN: So I struggle to see the connector between the subsequent event in one county giving rise to a declaration that all the counties get the benefit of the points, with respect to fire.

With respect to drought, the writeup indicates that since the January 4th pronouncement, staff became aware of subsequent -- subsequently became aware of declarations, i.e., the drought declaration, that would allow the points to be awarded even to the couple of counties that weren't awarded points under the fire declaration. But that is the drought declaration that was referenced by interested parties from the development community prior.

So I am not sure that any new evidence really came

forth since December, when everybody put this forward. I think that stuff was out there, and it was brought to staff's attention early on. And, you know, if a change of position occurred, a change of position occurred. But I would like to reflect accurately that I don't think new information actually showed up. There may have been a change of heart or a change of mind but not any new information.

I think there is a difference between the fire and drought disaster declarations: The fire and the threat of fire, the fire is the specific event. If you look at the disaster declaration for drought, the drought declaration is not itself consisting a disaster.

The drought declaration is referenced out as a causation factor that could give rise to disaster; i.e., wildfire, lowered water conditions, things like that. To take a position that drought has occurred in a county, and therefore the prior preemptive declaration is now activated because drought conditions exist, I think misses the point.

The disaster declaration for drought is written in a way such that drought causes an imminent threat of something else to happen. The mere existence of drought conditions and then somebody coming up and saying, by the way, my county has drought conditions, therefore give me the

points, I think that misses the point. Okay.

Finally, my last point. All public information that was disseminated to the development community prior to January 4 was that only the three counties were going to get the eight points.

Nobody could have acted in reliance on the advice that was out there, and gone into one of the other counties in reliance on staff advice, prior to January 3rd. Nobody went into the other nine counties in the Dallas MSA, saying, I think I am going to get the points there, based on staff advice.

Okay. So nobody would be disadvantaged if you went back to the old position, because that's the advice that everybody was relying on. There could have been no good basis to rely on any other position prior to the January 4th change in advice.

MR. OXER: So this would have effectively occurred only in Region Three.

MR. DORSEY: No. The three counties. The original three.

MR. OXER: I know, the original three. But in Region Three.

MR. DORSEY: Right.

MR. OXER: Okay.

MR. COHEN: That's it. Those are my points.
Thank you. I appreciate it.

MR. OXER: All right. Any questions by the Board
of the witness?

(No response.)

MR. OXER: Thanks. Sarah?

MS. S. ANDERSON: Hello. I am Sarah Anderson.
I will be even quicker. I think that everything has already
been addressed. Mr. Keig, you asked about how somebody might
be disadvantaged by going to those three counties.

And specifically I would say there are two or three
ways that someone could be harmed. The counties
outside -- once you get outside of Tarrant and Dallas, it
becomes a little bit more sparse. The land becomes cheaper.
The scoring tends to be better.

It was a lot harder to find a good scoring site
in those tight areas within those counties. And as well,
you end up, because of the size of the cities that you are
working with in those three counties, you end up having to
also bring significantly more money to the table from the
local government. So there were significant disadvantages
by not being able to go out. So I think everyone has covered
everything.

The only thing I would like to have on the record

is that Alyssa mentioned that there were some items that we have gotten guidance on, and I would like them on the record to make sure that you are aware that we are concerned that there may be enough people complaining that might precipitate another change in the way something is looked at.

Specifically the first one is the revitalization plans and how those are reviewed. The QAP says a certain thing, that you have to have a plan. But staff's direction has been, we don't care if your plan meets this; it has to meet these other criteria as well.

MR. KEIG: A point of order. This is not really a posted agenda item. We can hear comment on this during the general comment at the end.

MS. S. ANDERSON: Is that better?

MR. OXER: Yes. On that particular one, we have got to hear the drought declaration or the disaster declaration is out, if we are having to address -- right.

MS. S. ANDERSON: That is fine. Yes. We definitely want these on the records, because we would love to get a legal opinion on them.

MR. OXER: Okay. You have got to do that afterwards there, in the public comment period.

MS. S. ANDERSON: Okay.

MR. OXER: Thank you. Mr. Keig.

MR. KEIG: Do we have anybody else?

MR. OXER: Hold on. Is there anybody else that wishes to speak? Okay.

MS. RICKENBACKER: Good afternoon, Chairman Oxer, Board members, Tim. Happy New Year. My name is Donna Rickenbacker. I'm with Marquis Real Estate Consultants.

There has been a lot of confusion within the development community about this scoring item, the extent of which really didn't materialize until preapplications were being put together. I think there would have been a lot of public comment and discussion early on if people fully understood just how staff was going to handle the disaster points this year and its impact on the competitiveness of applications in certain regions.

Prior to this year, all applications received the same level of points in the scoring item. The points were considered a freebie. It's in the manual; They were considered a freebie And the interpretation being that the Governor had declared all 254 counties in the State of Texas as a disaster area.

This year staff wanted to differentiate the applications in the scoring category. This makes sense. By statute, this scoring category has been pointed out ranks tenth in priority. But if everybody can score it, then it

really has no meaning or priority.

A lot of us understood staff's interpretation to mean that applications would be scored based on whether they were in a statewide disaster area, and be granted seven points, or whether they were in an area covered by a localized disaster declaration that did not apply to the entire state, and would be eligible to receive the maximum of eight points.

I appreciate staff having taken the time to review multiple disaster proclamations that were provided to them.

And recognizing how many of them truly did cover localized disasters and met the requirements most importantly of Section 418.014 of the Texas Government Code and thereby expanding the counties that would qualify for the eight points from the original three counties of Dallas, Tarrant and Kaufman, identified by staff at the workshop in December.

With respect, by the way, to the workshops in December, there wasn't any definitiveness at that stage on how many counties would be able to reach the eight points.

It was just determined at that time that the three that they were aware of would be those three counties.

I don't think that anybody has been advantaged or disadvantaged by the outcome of this scoring category. And I think that staff applied their interpretation of the rule consistently and fairly.

I also appreciate and want to commend staff for how quickly they reacted to the confusion of the scoring category And getting the listserv announcement of the change in guidance out prior to the preapp deadline, realizing that a lot of people were going to be submitting their preapplication self-scoring seven points in the scoring category, believing that their sites still qualified for points under the statewide drought declaration that Governor Perry renewed in December of 2012.

A couple of -- listening to some of the other speakers, I want to make sure that the Board understands that there is -- under the statute that prioritizes applications, it is with respect to this item which is ranked tenth in priority.

It specifically states that at the time the complete application is submitted, or at any time within the two-year period preceding the date of submission, the proposed development site is located within an area declared to be a disaster under Section 418.014 of the Texas Government Code.

If you look at that section of the Government Code, there is nothing in there that recognizes preemptive in nature, which everybody has been speaking to today.

So you have got staff going in and interpreting declaration proclamations by the Governor's Office that are

in compliance with this code but don't speak to preemptive; they don't use those words.

And it is kind of like wanting the Governor's Office to be drafting declarations that meet staff's interpretation, if you will, and recognition of their desire to differentiate applications by this preemptive in nature language that has been brought into the QAP this year.

And that is very unfair, because within these proclamations that are renewed, you have lots of counties that have experienced disasters that are recognized in those proclamations and that have happened and that the Governor's Office is renewing and desiring to continue to cover resource -- or to continue to provide resources for those disasters. And any imminent -- which is the language in the Code -- disasters that may arise as a result of whatever these conditions are.

So I just want you all to know that they have -- that staff took the time to review all of these declarations that came in and recognize that they do include -- they are not statewide. And they do include language in there and recognition of disasters that have taken place.

And the Governor's Office extending those proclamations to now cover resources for those ongoing

disasters, as well as anything preemptive -- not preemptive -- imminently could arise as a result of the continuation of the drought and the fires. So that is all I have to say. If you have any questions, I am here to address them.

MR. OXER: Any comments from the Board? Any questions?

(No response.)

MR. OXER: I have a comment. Not necessarily what you were saying, Donna, but just generally. Part of this seems to be a conflict in the two purposes for which disaster declarations are made. One is a preemptive declaration by whatever fashion before something happens declaring a disaster is to prepare resources to be available.

And the other one that we are trying to get to the point that we identify those places that have impact. There has been some damage that has been incurred. And we are trying to put projects in place to result the housing stock. Okay.

MS. RICKENBACKER: Yes, sir.

MR. OXER: Now, that's -- am I getting that right? I mean, that's basically where we're all headed. Okay? Because I don't care if there is a disaster area in Crockett County. Crockett County is dry as a bowl of dust

to start with. It's going to be in a drought. It just is.

Okay. But to have it declared a disaster area doesn't mean they need any more housing stock, just because a hurricane hit Galveston County.

So all of those, what we are trying to get down to, is the way to differentiate in the projects, in the applications a mechanism that talks to or speaks to the increased need that occurs by the loss of housing stock when a disaster actually occurs. They burn down. They wash away. They blew up. They fell down. Something happened.

Dried out is not a disaster in a house. So what have you got for a recommendation to replace this? I know we have got to deal with this right now, but I don't want to hear everybody saying this is all wrong. Bring a solution with it when you come up here.

MS. RICKENBACKER: I could not agree more. I think first and foremost we need to recognize that this is by statute the tenth highest scoring category. And it is very specific that those disasters meet the Code and identifies what those disasters include. And there is no preemptive language in there. It is "imminent." And these declarations are drafted in accordance with those Code requirements. So we kind of got that hurdle.

I know where staff was wanting to go with this.

It made complete sense to me. But to differentiate an application by eight points, that really is going to steer tax credits to very few counties within a huge region? I don't think ultimately -- that is ultimately how it would have played out, had staff not taken the time to go over these many proclamations and recognize those proclamations were inclusive of the existing ongoing disasters.

So I don't know that I answered your question. But I think we need to start legislatively with Code changes, if that's the direction that we are headed. But right now it specifically states that it follow the Code provisions covering disaster areas.

MR. OXER: Any comments from anybody?

(No response.)

MR. OXER: Thank you. This is one that's going to -- come on.

MS. T. ANDERSON: Good afternoon. Terry Anderson, Anderson Capital, LLC. Good afternoon, Chairman Oxer and all the Board members, and Executive Director Irvine.

What I would like to request is that under this disaster point scenario, whatever you all decide at least allow per staff's recommendation the ability to make changes to that preapplication score, just based on conflicting

information that went from one swing to the next so that any applicant who submitted a preapplication would be able to either take the disaster points if that is what you all choose is available, or not take them, and have that correction made via a deficiency notice, without the loss of the six points for the preapplication score.

MR. OXER: Any comments?

(No response.)

MR. OXER: Okay. Thanks, Terry.

MS. T. ANDERSON: Thank you.

MR. OXER: All right. We are going to have some -- we have one more. The hits just keep on coming.

MR. SCHMIDTBERGER: Good afternoon, Board members. My name is Russ Schmidtberger. I am speaking on behalf of Brownstone Affordable Housing out of Houston. I will be brief. Thanks for having us here.

Basically we would just like to extend our support to TDHCA staff for their January 4 interpretation, Section 11.9(d)(5) in the QAP, because we think that they responded promptly and effectively to rectify all concerns basically regarding certain language and requirements within this particular scoring item. We thank them for that.

So I just wanted to make sure that that got on the record. We think that they did a pretty good job with

that, all things considered, what has been said here. So that's all we're going to say. Thank you.

MR. OXER: We appreciate your comments. Is there anybody else?

Cameron, you get to summarize where we are at on this, but we're not going to make a final decision on this.

We're going to have some counsel guidance in an exec session to go to a final on it. So is there anything you want to do to wrap this up to the point that we can hold it until we come back?

MR. DORSEY: Other than if you guys can modify my salary so I get paid based on how many times somebody says my name up here.

(General laughter.)

MR. GANN: Cameron, do you remember the -- before you replaced Tom Gouris, you know Tom Gouris had the reputation for everything and I mean everything was Tom's fault. Okay.

MR. DORSEY: Oh, yeah.

MR. GANN: It's still his fault that --

MR. DORSEY: No, I think the only thing I would clarify is I think the issue -- that it looked like you all might have some questions about why wouldn't we just identify Bastrop County -- for example, why wouldn't we just identify

Bastrop County.

And really the answer to that is, I have no basis to identify the county. Should it be the burned -- the area that experienced the fire itself? Should it be within a one-mile radius of the area that experienced the fire itself?

Should it be the county plus the counties outside of that area? Should it be the City of Bastrop? I have got nothing to go on.

And so what we did was we went on the area defined in the declaration itself. And if that declaration itself identified 252 counties and Bastrop was one of them and then Bastrop experienced a fire, then we applied it to the area identified in the declaration itself, which encompassed 252 counties.

To go beyond that in our reading and come up with some other defined areas, we didn't feel like we had a real basis to decide what type of area or that kind of thing, because it just doesn't exist in the language of the rule itself, or for 18.014, et cetera. That is the only thing I would add.

DR. MUÑOZ: You know, Cameron, what I am having trouble with is, you know, the declaration of imminent threat is not a disaster, many of which didn't have a natural disaster. Just, you know, I mean, Mr. Cohen's question was

very pointed and very persuasive on the logic.

The Chairman was indicating, you know, those areas where property or homes were destroyed, how do we go from trying to identify those areas captured in the declaration of imminent threat or disaster actually occurred to applying this to a great many areas that may have obviously faced an imminent sort of threat of disaster but no disaster materialized? I just -- I'm having trouble following the logic of that.

MR. DORSEY: Yes. It's --

MR. MUÑOZ: Now, I appreciate that you may not have had some guidance to identify those areas specifically within the declaration, the counties covered by the declaration and the threat. But, you know, is that within our purview to provide you?

MR. OXER: Tim.

MR. IRVINE: Well, it seems to me the statute is clear. It references the language in the Government Code at 418. And there either is a declaration or isn't a declaration.

We injected the element of the concept of a preemptive declaration which has been pointed out, doesn't really square that well with the language that the Governor's Office uses in writing these declarations. You know, I mean,

we aren't in a position in my mind, to get into looking at the facts behind what the Governor declares. The Governor makes the declaration. We should abide by it.

MR. OXER: Are -- go ahead, Tim. I'm sorry.

MR. IRVINE: Now, what it really comes down to is what we all thought the word "preemptive" meant. And based on, really, additional information and additional deepened understanding of it, we came out with a different clear guidance. And we did it very late in the game. That has been admitted and acknowledged. We did it in good faith. You know, there is an awful lot that happened in a very telescoped period of time here.

These were not issues that were just sitting around languishing. We looked at them as quickly and thoroughly and in good faith as we could.

DR. MUÑOZ: Tim, I have a -- may I ask, Mr. Chair, a follow-up question to the executive --

MR. OXER: Please.

DR. MUÑOZ: Just so I am understanding this correctly, Tim, is a disaster declaration the same as a disaster declaration warning of an imminent threat? Are those the same thing?

MR. IRVINE: Under 418, a declaration of a disaster would include a declaration citing an imminent

threat.

MR. McWATTERS: Okay. Mr. Chair, may I ask a question?

MR. OXER: Please.

MR. McWATTERS: Thank you. Regardless of what the interpretation is, regardless of whether or not the interpretation was initially correct or not correct or whatever, it seems like one of our goals around here is transparency, accountability and objectivity.

And we did have a rule out. We had a rule out for a long time. And it spoke to three separate counties.

And people made arguments that it should have been broader, and I agree. But that was the rule. That was the rule people detrimentally relied on, even with going and asking staff as to the interpretation.

And how do you address the problem of the last minute making a change when people have detrimentally relied on rules? It is just that I'm sorry those rules were so materially wrong that we have to change them? I mean, is that the answer?

MR. DORSEY: Well, I just want to clarify. We didn't change the rule outside of the rulemaking process.

MR. McWATTERS: The interpretation.

MR. DORSEY: That is right. It was the

application of that rule, how it would be applied. You know, I have been at the Department now for about seven years.

And I go through cycle after cycle where things change throughout the cycle. You all hear all kinds of reasons to change a particular staff position in April, May, June, July, all the way up until we award a transaction. The appeals process, the challenge process. And any of those can change an interpretation in a manner that does not allow an applicant to all of a sudden go change their development, their site identification process, based on that new information.

If they would have had that information at the time they were making the decision, maybe they would have made a different decision. But that is a problem that I don't think we can fix, unless you guys administer the program directly, and we don't have staff. So, you know, we do the absolute best we can.

And the way I see it, the alternative is that I can, you know, sit in my office and respond to emails by saying, you know, I can't provide guidance beyond the rule. You interpret it. When we review it after the apps come in, we will apply what we think and move on.

But, you know, I try to maintain an environment that is very responsive to the questions and concerns that

folks have. I respond to phone calls quickly. I -- from Ms. Carpenter, I received probably over 30 emails plus phone calls in the months of October and November; probably 60 over those two periods.

And I try and be incredibly responsive. Oftentimes it is very simple to just quote the rule. But a lot of times, it is how -- what about this situation? We develop rules in an environment or real estate program where we are serving 254 counties. It is simply beyond how we would contemplate all of the various nuances that might appear in any particular application.

But we do the best we can. And, you know, sometimes this happens. And, you know, I don't take it lightly. It feels terrible. I don't think Tim or Barbara or Jean take it lightly. We aren't excited about this type of thing, but I don't think it is a situation that we can avoid 100 percent of the time.

MR. OXER: In the end, the best you can do is the best you can do. And this is a continuously evolving program, which means you are going to have to be stitching down the edges to cut this to fit as we go forward.

And we are spending considerable time on this. And I think that's merited to air this out, because one of the things we are trying to do is to create a foundation

structure to the QAP that ultimately, the evolution of it is not that much variation as we go forward.

We are refining this points, okay. So sometimes it's the hammer and tongs and, you know, stirring this up, breaking the rocks to make this work. But you're right, unfortunately, and I don't have a direction this is going to go yet.

But unfortunately, sometimes, some projects don't make it, and that is just -- you know. I get that, and I am sorry for that. This is a very expensive process. Unfortunately it seems that this is early in the process. And those sites will be available again next year.

That said, we've beaten this senseless at this point. I think we need to retire to Executive Session to take this one on, in addition to the one that we have on Item 2 as well. So unless the Board members have -- yes.

What I am saying is I am going to stop. Not halt, but hold the discussion on this one now. Go to the second part. I want to see what else we have got in terms of effort or exercises in the Executive Session.

Get through this, and then, you know, we go to Executive Session and take each of these items in turn and come back, and tell you what we thought. Or come up with an answer.

MR. DORSEY: That sounds like a plan.

MR. OXER: All right.

MR. DORSEY: So, the second issue is clarification of how the term general population will be applied in the 2013 cycle, particularly related to the possibility of having some age-restricted buildings. When I say age-restricted, I mean restricted for elderly households. Some buildings restricted for elderly households within one development. But not all of the building is restricted in that particular development. In the past, the Department had an intergenerational housing rule. A couple of years ago, that rule was removed. It wasn't in the rule, I believe. Well, policy.

MR. OXER: Whatever.

MR. DORSEY: Policy. And we basically eliminated that policy. We have -- okay. So under the current QAP -- by the way, that would be termed intergenerational. You know, this kind of concept of having some buildings age-restricted and some buildings that lease to families or that are for families.

So that, in the context of the current QAP, the way the rule reads, or the definition of target population reads, you would be categorized as general population if you age restrict some buildings in your development but not all

buildings in your development. And we have become more and more aware of interest in doing this under the current QAP.

There are some scoring reasons why that makes sense for someone to endeavor to do. The main one is, because general population developments, as you all know, have point advantages over age-restricted elderly developments in a couple of these scoring items.

So one could present an application where two of four buildings are going to be age-restricted for elderly households and present that as a general population development, thereby receiving the point advantage for a general population development while having some units restricted for only elderly households. We got increasingly concerned about this. And I took this to our Legal Division.

And we have routinely reviewed this type of structure over the months and years. And when you go back, the essential problem is this. When you go back to the Fair Housing Act, I have the citation and the rule itself in your writeup.

And it basically provides three prongs for one to age restrict, to implement age restrictions in a development like this. One is, that you have the golden

ticket from the Secretary of HUD. Okay. That is one.

Another one is, that you are -- 100 percent of your units are restricted for households that qualify as age 62 plus. And the final one is that you have 80 percent of your units restricted for 55 plus. And the remaining units are intended and operated to serve the elderly.

Now when I say intended and operated, that is really an allowance to provide for situations in which, for example, you have an household that has one spouse that is above age 55 and one spouse that is under the age of 55. And the spouse that is over the age of 55 passes away.

This exists to allow that remaining spouse who is under 55 to continue to occupy the unit. It was never intended to be an allowance to specifically allow a development to market to other populations. Does that make sense?

MR. OXER: Yes.

MR. DORSEY: Okay. The question becomes, at what level is this applied? And how is it applied? Is the percentage at a development level, at a building level? Are there other types of -- is it a property owner level. How about if it is commonly financed.

And those are questions that have existed out there for some time, and that there are varying thought processes

out there to, you know, to -- you know, that support one versus the other and what have you. But we believe that, and based on our communications with our Legal Division, and I don't want to get into legal advice specific issues, but it appears to us that the trajectory is moving in a direction where the safest application of this is at the property level.

What that would mean is that if you had an LP, a tax credit development at the LP level, you would say, are the units owned by this LP 80 percent 55 plus, the remaining intended for blah blah, or 100 percent 62 plus, or does this property owner have this waiver?

It is not completely clear. But we are putting forth that application that as a general policy moving forward in the 2013 cycle we believe that we should apply the rule at the -- apply those provisions at the property owner level.

We believe that taking on the additional risk of -- not that it would necessarily be our risk, but just the development taking the risk.

You know, we want these properties to operate affordably and in compliance with all applicable laws; that the safest interpretation is to go at the property owner level.

And that really -- it also aligns with the intent of doing -- of the incentives we provided under the QAP for

a general population development specifically, which is to allow that development to serve general populations without these additional age restrictions.

So that is kind of the policy decision. And what staff recommends doing, I think, for some further discussion of the legal implications, you may need to meet in Executive Session discussion.

MR. OXER: Did he do okay, Megan? Okay.

MR. DORSEY: I didn't get kicked.

MR. OXER: No bruises on that side. Right?

Okay. We are going to -- let's see. Is that it on that piece? Okay.

All right. We're going to hold the decision on Item 6 until we recover -- return from Executive Session. We'll go to Item 7, get that one out of the way.

Marni?

MS. HOLLOWAY: I'd like to make a request that I always go before Cameron. Always.

MS. BINGHAM ESCAREÑO: She just said your name.

(General laughter.)

MS. HOLLOWAY: Good afternoon.

MR. OXER: So far.

MS. HOLLOWAY: I'm Marni Holloway. I'm the Director of the Neighborhood Stabilization Program. Item

Number 7 brings to the full Board an item that we discussed earlier today. Seven? Six -- eight. The last one.

We discussed earlier today during the strategic planning committee meeting as NSP is moving toward our expenditure deadline on March 3, HUD is continuing to publish policies and guidance and instructions. As it always has been with NSP, it just kind of changes on a regular basis.

This particular item, though, is something that I think will help us moving forward and will help our subrecipients moving forward.

We have a number of homebuyer properties that will not close, that will not be occupied by the March 3 deadline for a variety of reasons. HUD has, in recent guidance, said that they expect this and that expenditure does not equal occupancy. So we are okay with not having it occupied.

The problem becomes how to pay for those trailing expenses; those third-party costs to title companies or inspectors or final construction issues, activity delivery costs for our subrecipients, in getting those transactions closed. So that's one group of transactions.

The other group are land bank activities. As you're aware, land bank activities go out for ten years. It's a much longer-term contract that we have with our subrecipients, and it extends far beyond that expenditure

deadline. Those land banks will have continued costs after the March 3 deadline.

In recent guidance, HUD has finally clarified that they expect to see us, as the grantee, and our subrecipients continue to actively participate in the disposition of those properties. So that will mean having funds available to cover costs or property maintenance for taxes, for insurance, for mowing and potentially for administrative costs.

The item that we are bringing before the Board today is a little bit different than the items that we have discussed in the past that have been about funding, because this is not a NOFA. It would be -- it doesn't make sense to me to put out a NOFA for someone to request funds for us to just finish up what we have already started.

What we would like to do is to take portions of the program income that we have earned and that we will continue to earn and set those aside as a top priority, so that we can get these deals closed. The percentages that were part of previous NOFAs would not apply here. This is not an automatic you get 20 percent, you get 5 percent.

We will be working with our subrecipients to look at what our costs have been to date, and we will be budgeting based on that experience moving forward. I'm happy to take any questions.

MR. OXER: Mr. Keig.

MR. KEIG: I just want to confirm. It's my understanding that HUD is okay with us doing this?

MS. HOLLOWAY: Yes. We have it -- HUD has sort of reinvigorated their webinar program. So we have a closeout notice, we have some policy guidance, we also have a number of webinars. And particularly the land bank disposition question, I asked specifically. So now we have a transcript that says, yes, go do this.

MR. KEIG: I move staff's recommendation.

MR. OXER: Motion by Mr. Keig to move staff recommendation, or to execute staff's recommendation. Not to execute staff, just execute staff recommendation.

MS. HOLLOWAY: No, him first. But I'm not going to say his name.

MR. OXER: He Who Shall be Nameless.

MS. HOLLOWAY: That is right.

MR. OXER: Voldemort over there. Do I hear a second.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Is there any public comment?

(No response.)

MR. OXER: I think I asked this morning with

respect to this. We do have our audit ducks in a row to make sure we have --

MS. HOLLOWAY: We absolutely have.

MR. OXER: Because I know you had just such a lovely fun time with this earlier this year. Got all those lessons learned. Right?

MS. HOLLOWAY: Oh, yes.

MR. OXER: Okay. All right. A motion by Mr. Keig for staff recommendation. Second by Ms. Bingham. Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous. Thank you. All right. Now everybody sit still and be quiet for a second. There is an audio thing we have to do here.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act, to discuss pending litigation with its attorney under Section 551.071 of the Act; to receive legal guidance and advice from its attorney under 551.071 of the Act; to discuss certain personnel matters under Section 551.074 of the Act; to discuss certain real estate matters under Section 551.072 of the Act;

and to discuss issues related to fraud, waste or abuse under Texas Government Code Section 2306.029, parentheses, closed paren.

This closed session will be held in Room 3.122 of this building, the Johnson Conference Center. The date is January 17, 2013, and the time now is 3:48. That's 1548 hours. We expect to be about an hour. Those of you who are waiting for a decision, I suggest you wait. With that, we are going into Executive Session.

(Whereupon, the Board adjourned into Executive Session at 3:48 p.m.)

MR. OXER: All right. The Board is now reconvened in open session at 5:23. We pick up discussion. We will take up discussion of the items that we discussed. There were no decisions made, and we gained the advice from legal counsel. We seem to be --

MS. MURPHY: You are unplugged [phonetic].

MR. OXER: Less hardware than we had in the war zone [phonetic]. Okay. We are going to do these in sequence on the -- as they were on the agenda. So we will start with Item 2, which was -- you are the big winner there, Patricia.

MS. MURPHY: So Item 2 was a report item about the 2013 income and rent limits. It was the opportunity for

public comment which we have. And it was the opportunity for the Board to provide any policy guidance or action that it sees appropriate.

MR. OXER: All right. I think we would like to summarize more of the discussion or at least quantify -- characterize some of the discussion that we had.

Those original bond contracts, I think it was the Board's intent to protect the stability of the Bond program, to maintain the stock, the count, the quantity, the quality of the housing, low income housing in the State and provide for -- I think provide for the financial stability of those, so that we weren't put into a pinch that caused the deterioration of the capacity to maintain these portfolios, the facilities, in a status that kept them able to satisfy your monitoring requirements.

So does any other Board member care to make a comment, or what do we need to -- we need to give you some guidance on what to do out of this. Right?

MS. MURPHY: Yes.

MR. OXER: This stuff -- the bond -- or the date for that effective -- the effective date would be tomorrow, under what we're currently looking at. Right?

MS. MURPHY: The income limits are definitely

effective tomorrow.

MR. OXER: Right. So --

MS. MURPHY: But federally there is no guidance or law that dictates that effective date.

MR. OXER: Okay. So we have the option to identify an effective date.

MS. MURPHY: I believe, yes.

MR. OXER: Okay. Counselor, if we were to identify a date -- I think this is of sufficient importance, but there are more important -- it's important that we, I believe, as I think members of the Board believe, that it's important to respect the intent of the original agreement with the developers and the bond holders particularly, for the financial strength of these projects.

But this is of sufficient importance that we need to work out a way to give you some time to figure out what the details are, to come up with an agreement that changes those contracts. What I am looking for is a way to give you some time to reach out to counsel and generate some language that satisfies the stakeholders of the process.

MR. KEIG: I'd move that we would not monitor enforcement of the increase of the rent limits at least until the next Board meeting.

MR. OXER: Not monitor them. Just making sure

I heard right.

MR. KEIG: Right. Not monitor them.

MR. OXER: Hold in abeyance the monitoring.

MR. KEIG: Hold it in abeyance.

MR. OXER: Compliance monitoring.

MR. KEIG: And I base that upon -- the discussions I have heard, it seems that the intent all along was to keep the rent limits the same, that they would not go up. All the underwriting was based upon those assumptions. And --

MR. OXER: Would not go up or would not go down.

MR. KEIG: Would not go down. Right. I said that backwards. Sorry. And so that is the basis for this motion.

MR. OXER: Okay. So the motion is -- to clarify on the motion, the motion is to hold this -- the monitoring in abeyance until the next Board meeting, where we can implement a final guidance to compliance, but not hold -- execute the monitoring compliance on the rents until the next meeting, which will give you time -- all of us time to work out the language that will satisfy on those contracts.

Is that clear?

MS. DEANE: Is that -- so just to clarify, would that be not monitoring on the rents, but you are not saying anything about the effective date. You're just saying don't monitor on the rents or how --

MR. KEIG: Right. I am not saying anything about effective date.

MS. DEANE: Okay.

MR. KEIG: It could end up being retroactive, if that's where we proceed with the next Board meeting.

MS. MURPHY: Okay. So if a bond property comes up on the schedule between now and the next Board meeting, we would monitor it as scheduled, but not review the rents?

MR. KEIG: That is my motion.

MS. MURPHY: The bond rents. Right? If it has other programs --

MR. KEIG: Right. Monitor everything else.

MS. MURPHY: If it is layered with credits, monitor everything else, social services, tenant files, everything.

MR. KEIG: But don't do any checks or Xs in that area, in the area of rent limits.

MS. DEANE: And then in the meantime, you are directing Legal and staff to take that time to sit down together and try to work through some kind of resolution and bring that back?

MR. KEIG: Yes.

MS. DEANE: Okay.

MR. OXER: Okay. Motion to what he said and what

she modified. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Okay. There is a second by Professor McWatters. There is no public comment out there that we can tell. I think. All in favor?

(A chorus of ayes.)

MR. OXER: It is unanimous. A quorum. So that is what we are going to do. Okay. Now, I think just in terms of the clarification of the intent is this is something we have got to get worked out. It was sufficiently important. We don't want to make any mistakes on this.

We don't want to get in a hurry, so we are not going to write this tonight. We are going to take until the next Board meeting to write it. Okay.

Cameron. You get the second shot.

MR. DORSEY: All right. Well, we've got --

MR. OXER: Disaster decs.

MR. DORSEY: -- disaster declarations. That is right. We can take these up, I suppose, as two separate issues.

MR. OXER: Yes.

MR. DORSEY: They're one agenda item.

MR. OXER: Two separate issues, please.

MR. DORSEY: Disaster declarations first.

MR. OXER: Go for it. So, summarize the position where it stands right now. What are the options?

MR. DORSEY: Well, we have the initial guidance that was provided shortly after the rule was approved by the Board. I believe some of that guidance may have been just prior to approval based on the draft language, but around that time period, which would have allowed for eight points for Tarrant, Dallas and Kaufman counties, based on the tornado declaration; and zero points for all remaining counties, based on the fact that there is no other declaration that uses the occurred language within that two-year time frame provided for under the QAP.

That is one of the positions explained in the writeup. That was revised and put out via listserv on December 4. That revised guidance indicated a much larger sweeping number of counties could get the eight points.

And based on that guidance, we are at a point where, if you use the concept that it's not just the declarations language itself, but looking at whether the subsequent disaster in fact occurred, all counties in the state, all applications in the state would be able to access the eight points. Those are the two explained in the writeup.

MR. OXER: Okay. So in -- effectively, the entire state, every county in the state or every project in

any county of the state will qualify for seven points.

MR. DORSEY: Eight. That would be eight for everyone under that --

MR. OXER: Under that interpretation.

MR. DORSEY: That is right.

MR. OXER: Okay. The -- I think the discussion should reflect that we understand that the original guidance was that where a disaster declaration had occurred, that the applicants would be awarded eight points. But there is also the other interpretation where the statewide declarations gave as much as seven points, which, in a strict interpretation of the rule, which we are trying to be as close to that as we can, recognizing that this is another one of those quirks we found in the law, we thought we had swept most of those out to me.

And we tried at the last year to get most of those quirks out. They keep, you know, sprouting back up. We're going to kill this one, and go on next year.

But the actual occurred declaration did occur in those three counties. But the rule, or the reading on 418.014, right, actually does say that for a statewide disaster declaration, they could be awarded seven points.

MR. DORSEY: Well, in 50.9(d)(5), yes. 418 is the Texas Government Code. That's not our statute. But,

yes. Right. Statewide, seven.

So, you know, the issue you end up with is you have a whole host of disaster declarations that deal with wildfire and drought. You know, in order to kind of get to that idea of -- you could get to I guess, a concept where just three counties get eight, based on the disaster declaration for those three counties: Tarrant, Dallas and Kaufman. And you could have a viable argument that said, you know, there were a whole host of declarations that dealt with drought and wildfire, and some of those were statewide.

And because some of those were statewide, we are only allowing seven points in all of the remaining applications in the remaining counties in the state, despite the fact that there were some that may have been localized.

The fact that, you know, there were statewide ones, that dealt with drought and wildfire, we are going to allow just seven and not eight for the remaining counties.

MR. OXER: And I think it should be noted that it occurs to me that it would be unwise policy on behalf of the State for us to encourage housing development in locations that have an imminent threat of fire. What we're trying to do is to repair some of the damage where a fire occurred, post-event.

So it is a piece of the conversation that needs to be put in there. A drought declaration has little impact on the housing stock, apart from the risk of fires that knock out housing, which you would think, after a preemptive disaster declaration, would be upgraded if one had occurred.

So I think there was at least some commentary that the Governor's Office recognizes that not having upgrades, it anticipated -- the rule anticipated that were there to be preemptive declarations, they would be upgraded to the ones -- that the Governor's Office would upgrade those to the places where they had occurred. Is that a fair statement?

MR. DORSEY: I think in drafting the language, we did look at examples. For example, where the declaration was upgraded to an occurred declaration. And in drafting the rule, because of a very short window to draft the rules, we presumed that that was generally the case and proceeded in accordance with that.

We now recognize and have recognized since that, you know, that isn't always the case. I think that there is a clear rationale for that not being the case, in that in an imminent disaster declaration provides the same benefits under statute as an occurred declaration, because it is only under one provision of statute that provides such benefits.

MR. IRVINE: Yes. I would say that --

MR. OXER: Tim.

MR. IRVINE: My characterization is there are three counties where something extraordinary and different did occur. And I don't think there is anybody here that disputes that the awarding of the eight points for those situations squares up very well with what occurred, what's in the rule, what's in the statute, and what the Governor's declarations are.

The real question is what's the situation in the other counties? Is it fair to say that nothing occurred, in which case they all get zero? Or is it fair to say that something as significant as what occurred in those three counties is the case, and they get eight? Or is it somewhere in between?

You know, our rule does provide for seven points for disaster declarations that are statewide in nature. And I don't think there is a person in this room that can say with a straight face that drought has not hit and impacted every county in this state. So to me, it really comes to whether it is appropriate to award points, albeit perhaps lesser points, to the counties other than those three.

MR. KEIG: I have a question.

MR. OXER: Mr. Keig.

MR. KEIG: When's the -- not the preapplication but the application deadline?

MR. DORSEY: March 1 at 5:00 p.m.

MR. IRVINE: Preapp?

MR. DORSEY: That's the application deadline.

MR. KEIG: Yes.

MR. IRVINE: Preapps came in, when?

MR. DORSEY: January 8, by 5:00 p.m.

MR. IRVINE: Last week.

MR. OXER: I recognize that, you know, we would like to -- as everybody would recognize -- I hope recognize -- this is an extraordinarily difficult to do at times. What we are trying to maintain is the -- in no small measure -- inasmuch as we can, the transparency, saying, Look, this is the best we knew at the time.

It has changed. But we need to offer some courtesy to those -- or not -- or deference to those who actually went about their site selections based on this disaster declaration.

That said, it is also equally true that the disaster declaration -- statewide disaster declaration does warrant points under the rule as written and is not really an interpretation of that.

So what it comes down to is, sites in three counties would get eight points; the rest of the state, or other projects, would get seven points. Is that where we are -- is that what is --

MR. DORSEY: That's what we have kind of been talking about. Yes. And that is -- you know, I think Tim explained it quite well, that if you track that back to the disaster declarations, I think that tracks quite well, as well, in that, you know, despite the fact that there may have been some declarations related to drought and wildfire that covered smaller areas of the state, at the end of the day, there's clearly declarations for drought wildfire for the entire state and thus those should be deemed statewide and receive seven points.

MR. OXER: I would like to hear a motion to that effect. Mr. Keig.

MR. KEIG: Well, one last comment. I am inclined to agree with that. But I don't feel I'm in the position to usurp the authority of the Governor to determine what areas actually are a disaster.

MR. OXER: Yes. We are not in the disaster declaration business. You know, as far as I know, there is only one guy in this state who is in that business.

So we have got to go with an interpretation of

the rule, which sounds like the eight points versus the seven points; eight points for the three counties, seven points for everybody else. And that is basically the way it laid out. Is there any other middle ground in that? Counselor?

MR. IRVINE: I think to award the other counties zero would be to ignore the fact that the Governor has issued declarations that qualify under 418.

MR. DORSEY: The one last thing I would mention is --

MR. OXER: Wait. Can you repeat that again?

MR. IRVINE: I believe that the Governor has issued declarations covering all of the counties of Texas and that all of those declarations are disaster declarations under Chapter 418 of the Government Code.

MR. OXER: You think the 247 or 252, which is it?

MR. KEIG: 251.

MR. IRVINE: 251.

MR. KEIG: 251? Well, I was thinking --

MR. OXER: 254 less three.

MR. KEIG: I was thinking, the one that was an imminent declaration --

MR. DORSEY: There's a declaration for 252 counties, and there's also a declaration for 247. One is drought, one is wildfire. I cannot recall which one they

were.

MR. OXER: But they overlap. That covers the entire state, all 254.

MR. DORSEY: Those two could cover the entire state. But there is also a drought declaration for 254 counties, just straight up. And there is a wildfire declaration for 254 counties straight up.

MR. KEIG: Yes. The imminent threat of wildfires is in 252 counties. That was April 5, 2011.

MR. OXER: A tough couple of years.

MR. DORSEY: Right. And there are other. Just to clarify, I don't talk about the statewide disaster declarations in the writeup, because they weren't relevant based on the two positions that are discussed in the writeup.

However, there were declarations -- there were a number of them that were statewide related to drought and wildfire, and that's the basis on which the seven points comes into play for the balance of the state.

MR. KEIG: I will echo Mr. Irvine's comment that 2306.6710(b)(1) does not give any reference to imminent versus preemptive or anything like that. It is just a disaster declaration. We only came up with that to try to flesh out --

MR. OXER: To create more competition

differentiation.

MR. KEIG: Yes. In our rule.

MR. OXER: Well, that's one we're going to try differently next year. Okay. So essentially the entire -- the Governor has called the entire area of the state a disaster area under the statewide imminent threat and a specific disaster area for those three counties.

MR. KEIG: I don't think it requires a motion for the three counties for the eight points.

MR. OXER: But it does for the seven.

MR. KEIG: But I think it does for the seven, as an interpretation of our rule. I would move that the two of the remaining counties, other than those three counties --

MR. OXER: Dallas, Tarrant and Kaufman.

MR. KEIG: Yes. Would receive seven points.

MR. OXER: Under the 418 rule.

MR. KEIG: Under the 418, yes. The 418 rule.

Yes.

MR. OXER: Which is -- Cameron?

MR. DORSEY: Just real quick. There are two issues that I want to bring up.

One, I want to just see if this would be allowing corrections to preapplication scores, based on the fact that the preapps have already been submitted, just for this

specific situation.

As well as, should new disaster declarations related to very localized disasters be issued over the coming months for things like tornados and those things outside of drought and wildfire, that we could still account for those.

That's clearly allowable under the rule, but I just wanted to provide that clarification that this isn't limiting --

MR. OXER: All right. There's two pieces here. Okay. Because we have got to go to the -- let's do this point about the seven points.

MR. KEIG: Right. Well, I mean --

MR. OXER: Okay. Then we have got to come back to allowing that interpretation, because unless we pass the seven-point rule, there's no interpretation -- no reason to change it. Right?

MR. KEIG: Well, I mean, I could qualify it to say, if the Governor subsequently issues a localized --

MR. DORSEY: I mean, if like a hurricane hit within the next couple of months --

MR. KEIG: Well, or if the Governor tomorrow issues a localized declaration, that county or that area could be eligible for eight points rather than seven.

MR. DORSEY: Right.

MR. OXER: For the eight points.

MR. DORSEY: This is based on the information we have at this time.

MR. OXER: Retroactive.

MR. KEIG: Yes. I mean, I would assume he would still be looking at something that happened within these past two years.

MR. OXER: Because it has to be in the past -- the two years preceding the application.

MR. KEIG: Right.

MR. OXER: So in the future, it will only be -- right now, for this round, it makes no difference what happens after the application is in.

MR. KEIG: If a new disaster occurs.

MR. OXER: So what we are saying, we would offer an amended point for any new disaster that occurred between now and when the selection process is complete.

MR. IRVINE: When the full apps are due.

MR. DORSEY: Full apps are due. The distinction here is full apps haven't been due yet. So the two years is --

MR. OXER: Before the full app; March 1.

MR. DORSEY: That is right. March 1. So all I

am suggesting is --

MR. OXER: Pray for no disasters between now and March 1st.

MR. DORSEY: -- if something -- if new declarations not related to drought and wildfire or that use the specific occurred language are issued, that we -- this does not preclude us from taking that into account.

MR. KEIG: Sure.

MR. OXER: Correct.

MR. KEIG: That is not -- I would agree with that, and I will adopt that, but I am also saying, if the Governor issues a disaster declaration tomorrow that relates back to something within the past two years --

MR. DORSEY: Sure.

MR. KEIG: -- then that would also qualify, if it's a localized, for the additional point, to make it eight points. Does that make sense?

MR. OXER: Is that clear to all the Board? Is that clear to the Board?

MR. McWATTERS: I am not sure what you mean by localized.

MR. OXER: The one like the three counties in Dallas.

MR. McWATTERS: But I mean, what if the Governor

just changed it, just struck the word "imminent" from a statewide?

MR. DORSEY: Under the reading of the rule, a statewide cannot possibly get eight.

MR. KEIG: It would just get seven.

MR. OXER: It takes a specific occurrence, or an occurrence unique to a specific location.

MR. IRVINE: Localized.

MR. OXER: Localized. That is the best concept of localized.

MR. McWATTERS: Is that -- did we develop that distinction from some -- from 418.014?

MR. OXER: No. That's --

MR. DORSEY: No.

MR. OXER: Okay. Let's go back to this.

MS. DEANE: And let me also just mention for purposes of the record, I understand that you're interpreting the rule, but also the extent to which -- some of the discussions that I hear appears to be a weighing of the factor and the extent to which these declarations and projects meet the factor under 2306.67(25).

You are allowed -- under B, you are allowed to use a range of points to evaluate the degree to which a project satisfies the criterion. And so I am hearing a little bit

of that as well, and I just want to throw that out as some legal authority that you could act under.

MR. OXER: So we actually have the capacity to this. We have the authority to do this. I am just trying to make sure it's clear what we are doing.

MR. DORSEY: That is right. Which is exactly the authority used to make the distinction between statewide and localized.

MR. OXER: Right. Does that satisfy you?

MR. KEIG: I think so. To restate my motion, it is that --

MR. OXER: Bullet points.

MR. KEIG: Applicants who -- well, I guess everybody, all 254 counties, pursuant to the Governor's prior April 2011 disaster declaration will get seven points under our rule. And if subsequently another disaster occurs between now and submission time, they would be eligible for the full eight points if it is a localized determination.

And if the Governor subsequently issues a localized determination, they would be eligible for the full eight points, but if it is a statewide determination then it is just the seven points.

MR. OXER: And since the localized determination has been issued for Dallas, Tarrant and Kaufman counties,

those do qualify for the eight points.

MR. KEIG: Right. And the final caveat is there will be no penalty for changing your self-scoring between the preapplication process and the application process due to --

MR. OXER: Interpretation of this item.

MR. KEIG: Our interpretation today.

MR. DORSEY: Basically we would just send out an administrative deficiency to allow them to increase points in the preapp for this particular point item to comply with what the Board's action is today.

MR. IRVINE: May I ask a Bureaucracy 101 question?

MR. DORSEY: Yes.

MR. IRVINE: Since we know that it is everybody except those three, can't we just change it?

MR. OXER: Can't we just offer it to them and say --

MR. DORSEY: Absolutely. I would love to do that.

MR. OXER: They don't have to come change it. We're going to change it for them.

MR. DORSEY: Great. Love it.

MR. OXER: That is part of the motion. Okay. I have a motion by Mr. Keig. Is there a second?

MR. GANN: Second.

MR. OXER: Second by Vice-Chairman Gann. There is no -- you don't want to talk about this, do you, Jean? I noticed the chair you were sitting in. Okay. That is what I was just saying. So that's -- okay.

All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous. Thank you. Go ahead. Part B.

MR. DORSEY: Okay. We have got one more. Part B is the guidance staff drafted. Basically a policy, a recommended policy related to the application of general population as a term in the QAP, which would, under this policy, basically mean that you could not do age-restricted buildings and still be categorized as general population.

Further, you could not do any age-restricted units without the entire development from the property level, from the property owner level complying with the -- in other words, the Fair Housing Act requirement related to housing for older persons will be applied at the proper unit level of that test, of 55-plus, 62-plus, et cetera.

MR. OXER: So it is the entire site. The entire

project.

MR. DORSEY: That is right. Yes.

MR. IRVINE: I hate to interject. Lack of clarity. But there's three magic ways that you can get to doing age-restricted units; 55-plus, 62-plus. The other one of course is the letter from HUD.

Are we -- how would we address it if somebody said, I want to do this, and here is my letter from HUD that says it is okay?

MR. DORSEY: We --

MS. SYLVESTER: Well, we would determine -- the Act actually only gives --

MR. IRVINE: Megan. Please identify yourself.

MS. SYLVESTER: I am sorry. Megan Sylvester, Legal Services. The Act actually only gives the Secretary of HUD the authority to approve what is in effect a waiver. However, sometimes that authority is delegated to a deputy secretary. We would make sure that whoever the letter was from had the appropriate authority.

MR. DORSEY: But there is no real way to consider it anything but a general population development under the QAP. We are simply saying that we are not going to award or recommend awarding a transaction that does not comply with the Fair Housing Act test at the property owner level.

MR. OXER: Okay.

MR. KEIG: I move that it is our policy that general population cannot include age-restricted units within that general population in their application or preapplication, subject to authoritative guidance, rulemaking or other authoritative matters from HUD as an exception or whatever. Does that make sense?

MR. OXER: I believe it does.

MR. DORSEY: That would effectively implement what is recommended in your Board book.

MR. KEIG: Okay.

MR. OXER: All right. Motion by Mr. Keig to implement staff recommendation. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: A second by Professor McWatters. Do we have public comment?

MS. STEPHENS: Lisa Stephens. I will be quick. I know you have had a long day, and I appreciate that. And I appreciate this language.

As a developer, I have run into this over the course of the last two years, where we were working to do general-population applications and other developers are coming in proposing intergenerational developments in order to circumvent the two-point issue and setting aside less than

80 percent of their housing as senior housing to qualify for the two points and satisfy the city that they are doing a senior development.

And so I appreciate this language and the Board's position that you considering right now. There is -- and I apologize -- Mr. Cohen who was here earlier was supposed to present on this. He had a flight and had to leave.

But I understand that there is a 2012 application that was submitted this way, with a set-aside for seniors at 73 percent and that they are facing this issue currently.

I would like for the Board to clarify if this language is effective in 2013 going forward. And that application that is now looking at the Fair Housing issue, if that will have to be dealt with by the Board as a separate issue.

MR. KEIG: My motion, I am going to go ahead and amend my motion, is that it is just going forward for 2013.

MR. OXER: Yes. I mean, it would be hard to unwind some of this stuff, to have somebody play by our rule. It is an ex-post-facto implication for the rule, as far as I can tell.

MR. IRVINE: But I would like to clarify that it is also still the ongoing responsibility of each development

owner to comply with Fair Housing.

MR. OXER: Correct. I personally think the intergenerational should be anybody that wants to lives there can, because generations benefit by having an age cohort that is not their own cohort, that is vertically integrated. That is my own personal thought.

So where are we? We have a motion by Mr. Keig.

MR. KEIG: Yes.

MR. McWATTERS: I amend my second.

MR. OXER: Okay. Motion by Mr. Keig to implement staff recommendation as indicated in the Board book with a second by Professor McWatters, an amended motion to include that as going forward in 2013, also amended by Professor McWatters or seconded by Professor McWatters. We don't have to do these sequentially, so it all forms as one motion. Is there any other? Any other public comment?

(No response.)

MR. OXER: Anything else?

(No response.)

MR. OXER: Okay. Any other staff comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: I say aye also. We are unanimous.

Thank you very much.

Now, before everybody gets in a hurry, I think that comes to the end of our stated agenda. Those of you who have been strong enough to stay, that's real hard core of you.

If there is anything that the public wishes to say that was -- come up here. Anybody who wants to say anything that has nothing -- that is not covered on the agenda today, we reserved this time to take information. Take comments for items to be considered in the future. So with that --

MS. CHAPA-JONES: Good evening. I'm Veronica Chapa-Jones. I am the Deputy Director for Grants Management and Compliance of the City of Houston, Housing and Community Development Department.

I hope today will be brief, but my hope is that this will be a continued series of briefings that I will be giving to you throughout the year to let you know where we are on a variety of projects in the City.

It is important, not just because you are the state agency, and we are the fourth largest city in the country.

But we share a lot of investments together. So what I am providing to you is a quick PowerPoint. This is something that was actually presented to Counsel.

And the full presentation is about 45 minutes, so what I am going to give you today is not that I want to skirt the information and not give you the full story, but I am assuming everyone is a little bit tired. You may have more questions. So I am going to hit the highlights.

MR. OXER: My first question is, something of this magnitude, why was it left off the agenda until this point?

MS. CHAPA-JONES: That was staff decision and direction.

MR. OXER: Okay. Please continue.

MS. CHAPA-JONES: Okay. What I would like to do is make myself available. I have business cards for additional questions. And we can make the presentation available to you as well.

So what I would like to do is start off with summary of the Round One Ike disaster recovery funds, give you kind of a report on what we are doing there. And then talk about where we are going with Round Two, that is going to show the integration of the map.

So the Round One disaster recovery for those of us who may remember, there was an executed written agreement between the Texas Department of Housing and the City of Houston in December of 2009 for approximately \$87.3 million. Of that, the key point that impacts many of the investments that the

Department makes is about \$56.18 million that went into sticks and bricks construction, strictly for multifamily activities in the city.

If you go to page 3 on the third slide, you will see mapped out where those apartment complexes were actually built. And as you can see, geographically, the bulk of them are on the southern half of the City.

But notably, there's two, number four and number eight, that are the Premiere on Woodfair Apartments and the Vista Bonita Apartments. So the reason those two are significant was not only did TDHCA participate in the award of the disaster recovery funds for those money, but we had \$20 million in exchange funds from the stimulus package also go into those properties.

So where we are at with the multifamily program at this current phase is we are finishing construction and completion on the last two projects, and we are getting ready to close out our single-family program and the Ike grant in the next six months.

So it has taken about a year of our Department, the City of Houston Housing Department working with the General Land Office, housing advocates and community stakeholders to put together the plan for Round Two Ike disaster recovery funds. A lot of this is governed by the

conciliation agreement that you are very familiar with.

And the reason I wanted to present this to you today at a higher level is this has taken a very innovative approach. It's not something that we have seen done before in Texas. We are actually being touted as a best practice and are being asked to continue not only the work but consider presenting papers on this topic, nationally, on panels.

This is what the implementation of Fair Housing is going to look like affecting these funds specifically. So when we are talking about Round Two funds, the housing side is about \$152 million, which for us is about three times our annual allocation we will be receiving in one year. Annually, we receive about \$60 million in entitlement, CDBG, HOME, HOPWA, ESG, like the Department administers.

So we are looking at this year, getting written agreements for approximately \$210 million with very little growth in staff. Yes. And we can't screw it up. So where we are on the multifamily, a couple of the pieces that I want to break out of the budget page for the Round Two funding.

So the significant piece there for us is the subsidized housing that is \$30 million, because for the first time in the City's history that we can track with our Department, we are actually partnering with the Houston

Housing Authority, which is a separate legal entity, to collaborate on where that investment actually goes in the City.

We also have a separate allocation of approximately \$52.4 million that is going to go towards multifamily investments; an additional \$6.4 million in single-family rental investment.

The uniqueness of Round Two for the City of Houston is that the Mayor charged us with looking at targeted investment in the City. And this is key. Rather than doing the first-come, first-served, pull-down mechanism that we have done in the past, where you have RFPs, you score and you award, all of us have been charged with saying where the projects should also direct other potential future investments of the City.

So theoretically what this would mean is when we get an RFP for a multifamily application, we are not going to just build the apartment complex in a bubble in a community and not look at what is around it. To the extent possible, we are going to work with urban planners, housing advocates, community stakeholders, and look if there is ways to improve economic development activities, build public facilities and also, address some of the single family housing issues that were affected by Ike and mapped in these geographic areas,

as well.

So the first map that I would like to present is part of this process that we went to. And you will see some of this through the development community, in responses to the proposals that they are putting in for their tax credit program, is the neighborhoods of opportunity.

So what it is, in short, is the neighborhoods of opportunity map is for general areas that the City was able to identify, what stakeholders and partners are looking at data and saying, these are the areas that we are prioritizing for investment for the disaster recovery funds. That is not to say that every square inch and mile is going to be rehabilitated with that funding. Funding like that is wonderful, but it is also quite limited.

So what we have had to go and tell the public in order to address expectation is, if we had a windfall of funding come in, and we could really cause effective change in our community, where are the places and the locations in the neighborhood where we want to make that happen. So together with the local initiative support corporation and the Texas organizing project, there was a series of hearings held, or meetings, pardon me, not hearings from about April of last year through December, where people went into the community, took large maps and started to assessing what the

community neighbors that were there, what were the assets and what were the detriments in some cases.

From the public hearing workshops, what they used was a process called the lunch method, where they literally took the map, got a sticky dot, and said, this intersection is great; there's a vacant lot ready for investment. Or they would tell us there are some areas that have crime.

So what we started to do is if you turn to the next page, you can see a map where we have nodes from the public workshops. So what my team did is they went together with lists and said, okay. Where are all of these nodes collocating, and let's start looking at the frequency. Where is the concentration?

I have this available in the larger map, it may be a little easier to see. But the purpose really was to say, okay. Look at the frequency and the density. Then we are going to tier these into first, second and third choices.

MR. KEIG: When you say a node, you mean like a low income community, or what?

MS. CHAPA-JONES: Great question. It would be whatever the stakeholder defined as the node. It could be the block. It could be a little bit larger than the block. It might be part of their neighborhood. But it was

typically, they are looking at street blocks and intersections.

MR. KEIG: I guess I am just not clear on what are the factors that go into defining a node.

MS. CHAPA-JONES: And that is a really great question, because this was stakeholder driven at public meetings.

And I think when we come from an academic -- and I come from a planning background; I wanted to enforce a methodology to say what are the factors, and let's impose this. And that is how we will do our site selection. This was a little bit of the reverse.

We told the neighborhoods, you tell us the parts of the neighborhood, the intersections, the streets, the green spaces that make sense, and we will call that a node. Whatever the individual stakeholder took a sticky dot and identified as an area, that was effectively a node.

What we are doing now is we are actually looking at damage data in detail to see how we can supplement that node data.

MR. KEIG: Okay.

MS. CHAPA-JONES: So instead of doing it -- forcing that data down, we started with the stakeholder first, and have some data. But we are buying a better data

set that is actually giving us about 80 percent field data for the whole city, to say exactly where the damaged inventory was.

So we can couple that with some data that we are also getting from the reinvestment fund, the economic based data that we don't have a lot of. And then of course, the new update 2010 or -- pardon me -- 2013 American Community Survey data.

MR. KEIG: Okay. Thanks for clarifying that.

MS. CHAPA-JONES: Sure. So where we are at today is, the two maps that you saw are important in that the development community was distributed these maps along with the request for proposal process for disaster recovery. And as we talked about in Round One there was use of exchange funds. Probably some disaster recovery, I am guessing, with the housing authority had tax credits as well.

Our guess is that there will be the use of some tax credit equity and investment along with some of the disaster recovery funds. This could be a win-win for everybody.

What is going to dictate a lot of that site selection, and where those go is going to be this process. There is also a separate time line that has been very dynamic.

So I wanted to make you all aware of that as well, because it took us from application to execution of written agreement an additional twelve months in between, to do all of the planning, discussion, get everybody collaborating on the same page to make it happen. So we are right on the cusp, and really excited about it.

But it has been difficult, because the challenge of the dynamics itself in communicating why is it that we are making a change in the decision or taking a different perspective is a very valid criticism. And it is just kind of part of a process like this, because it is new.

So I do want to thank -- know Tim and Cameron have spent a lot of time with Neil and our team. And I know the staff at TDHCA has been great from all levels in helping us work through some of these issues, and giving us data. This is just the beginning for us, in partnering with you all.

Although we have had a great long-term relationship, this is definitely something innovative that I just am kind of excited about. And we look forward to giving you more updates throughout the year.

MR. OXER: I think this is a good approach.

MS. CHAPA-JONES: Thanks.

MR. OXER: Yes. Lots of good ideas. Part of the things that I have encouraged and Tim has taken to carrying

the flag on this, we are going to try out some new things, not knowing if they are going to work or not. And with the idea that we are going to just experiment with a certain number of things, see if we can improve the return that we can get on the invested effort, the intellectual capital and the financial capital.

So I am encouraged to see you trying something like this. Another question. Do you have to drive home tonight?

MS. CHAPA-JONES: No.

MR. OXER: All right. Mr. Keig, question or comments.

MR. KEIG: Old-ish business. No, not for you. Sorry.

MR. OXER: He's busting my chops on that one.

MR. KEIG: Would Mr. Irvine please contact Ms. Anderson and find out what she wanted to testify on and apologize that we ran so late today and discuss, you know, if she wanted to -- you know, I cut her short.

MR. OXER: Do you know what it was, Cameron?

MR. DORSEY: Yes. She wanted to -- she was just concerned about other emails that staff has communicated the application of certain rules. She indicated that she would just contact Tim and I and maybe see if we could just roll

that in to the FAQ.

And I said we would certainly take a look at that; just get in touch with us, you know, tomorrow.

MR. KEIG: Great. Thanks.

MR. OXER: Okay. There appear to be no other requests for public comment on there. We will get to the end here. Everybody be careful. Does anybody, any staff have any other comments they would like to make?

(No response.)

MR. OXER: Any of the Board members have any comment they would like to make?

(No response.)

MR. OXER: As the Chairman, I will say thank you to everybody for being patient and enduring and being hardcore. We know the ones that are really important find this to be a really important process, because you are still here. With that, I will entertain a motion to adjourn.

MR. IRVINE: They want to keep going.

MR. OXER: I know. It keeps going.

MR. GANN: I make a motion.

MR. OXER: Veronica is going out and getting drinks and dinner for us. So we will stay here and keep working on this.

MR. GANN: I so move.

MR. OXER: Motion by Vice-Chairman Gann to adjourn.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: I do. We stand adjourned. See you in a month, folks.

(Whereupon, at 6:15 p.m., the meeting was concluded.)

