

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E1.036
Capital Extension
1300 N. Congress Avenue
Austin, Texas

Thursday,
September 3, 2009
8:10 a.m.

MEMBERS:

C. KENT CONINE, Chair
GLORIA RAY, Vice Chair
JUAN S. MUÑOZ
LESLIE BINGHAM ESCAREÑO
TOM H. GANN
LOWELL KEIG

MICHAEL GERBER, Executive Director

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P R O C E E D I N G S

MR. CONINE: Good morning, everyone. Welcome to the September Board meeting of the Texas Department of Housing and Community Affairs. We have a special treat for you to start the day off this morning, and I'll turn the agenda over to Mike Gerber.

Mike?

MR. GERBER: Good morning, Mr. Chairman, and Board members, and everyone in our audience. We're privileged today to share with you the news that Governor Perry has appointed Lowell Adams Keig to serve as a member of the Board replacing Tom Cardenas. We're delighted to have him on the Board.

Mr. Keig comes with a tremendous amount of experience, most recently serving as general counsel and the compliance director at Youth and -- I don't want to mess up the name -- Youth and Family Services here in Austin, a private company here in Austin. Before that he was engaged in the private practice of law. He was also an assistant Attorney General working for Attorney General John Cornyn.

And so he brings a tremendous amount of public service experience and talent to our Board. We're very excited to have him with us. Staff has spent quite a bit

of time over the last few days with him, and as you can imagine, with the last name of Keig, and with a background in compliance, he was immediately a hit with staff.

We are very privileged to have the Chief Justice of the State of Texas, Wallace Jefferson, here to swear Mr. Keig in.

So we'd like to ask both of you to come forward, and go ahead and give you --

CHIEF JUSTICE JEFFERSON: Mr. Chair, and members, I can just do it right here, if it please the membership.

I'm Wallace Jefferson, Chief Justice of the Supreme Court of Texas. I first met Lowell Keig when we were students in law school at the University of Texas. And I remember the first time I became aware of Lowell. It was in a class with Charles Allen Wright, and many of you probably are familiar with that name. He was a constitution professor at the University of Texas, and has great status. He advised kings and governments on constitutional law in the United States, and was a frequent appearer before the US Supreme Court.

And we had to address the professor in a class one time and he called on Lowell. And he asked, You, sir, what's your name? And he said, I'm Lowell Keig, like a

keg of beer. Now this was, you know, the great constitutional professor. Now, how -- you know, but this is how I first met him, that little moment of humor.

And his wife, Beth, I met also at the University of Texas law school. Rhonda and I and he and his family become -- we've become great friends over the years. Lowell, after law school, went to San Antonio to practice law there for around 13 years, and then came to Austin. And when I was appointed to the Court in 2001, I drove up here and stayed at the Keig's house while I was looking for a home for our family. So that kind of shows you the affection that I have for Lowell.

I think you are getting a great member. He's always had spirit of public service, volunteers for the Texas Young Lawyers, the San Antonio Young Lawyers, and the Bar Association, et cetera. So he's going to be a great member of this state.

And I wanted to tell you just a few words about your service here. I'm not sure how much you're paid for the work that doing --

(General laughter.)

CHIEF JUSTICE JEFFERSON: -- but I took a look at the notebook of the materials you're going to be reviewing, it is -- it's one of the things that keeps

democracy going in this country, and this is it has citizens who are devoting their time and their energy, expose themselves to the public and to criticism, but do it all for the greater good. They're trying to serve their fellow human beings here in Texas.

And that is a tribute to you, and I thank you for your service.

And, Lowell, I thank you for agreeing to serve as well, and if you'll come up, we will administer the oath of office. And if you'll raise your right hand, and repeat after me.

(Whereupon, Lowell Keig sworn in as member of the Board.)

(General applause.)

MR. CONINE: Lowell, if you want to punch the button, I'll give you chance to say something.

(General laughter.)

MR. CONINE: You know, to get started.

MR. KEIG: You usually don't want to give a lawyer a mike. But I really look forward to working on this Board, with the public, and the other Board members. Thanks.

MR. CONINE: Thanks. Appreciate you offering to serve again. I think you'll have a degree of fun on

the Board; we try to make it fun occasionally. And I appreciate you agreeing to serve the great state of Texas.

Chief Justice, thank you for coming by and appreciate your assistance this morning as well.

I will now call the roll, now we've got a full house, or almost full house, we're still missing, it looks like one.

Leslie Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. CONINE: Kent Conine is here.

Tom Gann?

MR. GANN: Here.

MR. CONINE: Lowell Keig.

MR. KEIG: Here.

MR. CONINE: Okay, I get that one correct. I like the beer analogy; that one will stick.

Juan Muñoz? Not here yet, but on the way, I bet.

Gloria Ray?

MS. RAY: Here.

MR. CONINE: We've got five currently, and that's a quorum. And we'll get started.

As most of you know, we have a public comment period at the beginning of our Board meetings. Anyone who

would like to address the Board can do so either at the agenda item, or now during the public comment period. Fill out a witness affirmation form and we'll be glad to listen to what you have to say.

To get started this morning, Jeff Crozier.

MR. CROZIER: Good morning, Board. I really don't have a whole lot to say today. I just -- and so therefore I'm making it during public comment. I just want to keep in mind, or make comments, a little bit later on today we're going to be looking at whole bunch of rules that are the QAP, the compliance rules, and the real estate analysis rules.

And I just wonder sometimes if these programs meld like they should together. You know, if you go back to the Section 42 when it was written, the idea behind Section 42 was somebody gets a tax break as long as you fill up a unit that is income restricted, rent restricted, and suitable for occupancy. And do that, the state of Texas needs 87 pages of qualified allocation plan, 20 to 30 pages of real estate analysis rules, and 20 to 30 pages of compliance rules to carry out those three functions.

Somewhere along the line, I mean you're forcing kind of -- developers are forced to check boxes that maybe they don't need to check, or don't want to check, the real

estate analysis cuts a deal razor thin to make sure that they get the minimal amount of credits available to get a deal done, and all those things lead to compliance nightmares and we're always up here talking about whose got what compliance score and all that kind of thing.

In a previous life, I was with the General Services Commission here in Texas, and we were trying to institute the total quality management system. And even though some people say good things or bad things about total quality management, one thing it did do was it talked about looking at all of your processes and see if these processes do exactly what you want, what they were designed to do.

You know, I used to work for this Department, and there are things in the QAP today that when I was back here in 1994, I had no idea why those were in the QAP, and they're still in there today. And so I don't -- you know, sometimes I think we need a good hair cutting on some of these rules, just to go through with some thinning shears and really take a look at these rules.

And this is not an easy process, it's not going to be done in two months, it's not going to be done by the next meeting or anything like that, but I'd just like to suggest that maybe over the course of the next year,

couple of years, whatever, we really pull these rules aside and start looking at them to see that we're not -- one set of rules doesn't affect another set of rules, that we kind of get these programs all melding together to where we can make sure that somebody doesn't do something two years ahead of time that might lead to a compliance problem later on down the road.

So that was really all I had to say is just, like I said, we -- you know, there's nothing specific about -- the rules as they're written today are fairly user friendly for everybody, but I just think -- like I said, I think this needs some hair cutting that we might want to investigate over the next couple of years. That's all.

MR. CONINE: Mr. Crozier, as you know, we hold public comment -- public hearings for the drafting of the QAP each year, and I, for one, have been on that same bandwagon of let's simplify the QAP for quite some time, and it just -- you know, there's always other things that come along. This year we got the emergency with the TCAP exchange program and the like.

I would more than welcome an exercise between, you know, the association you represent, as well as TAAHP and others who have an interest in skinning that down, you

know, some time next spring so we can have enough lead time to do a drastic overhaul of the QAP.

MR. CROZIER: I'd love to help participate in that. I think there's probably a lot of other folks out here who did -- and that's what I said, this is not a --

MR. CONINE: Yes.

MR. CROZIER: -- quick fix.

MR. CONINE: It's not going to happen this time.

MR. CROZIER: Right. So --

MR. CONINE: We'll sure try to make it happen next time. I tried to get Brooke to do it on her maternity leave, but --

(General laughter.)

MR. CONINE: -- she wouldn't do that either, so we'll see if we can get it on the agenda. Thanks for your testimony.

MR. CROZIER: Thank you.

MR. CONINE: Natalie Fontenot, Fonteno. I may have mispronounced that.

MS. FONTENOT: Fonteno. Good morning.

MR. CONINE: Good morning. How are you?

MS. FONTENOT: I'm doing well. How are you?

MR. CONINE: Good.

MS. FONTENOT: My name is Natalie Fontenot, and I'm representing Senator Lucio's office.

MR. CONINE: Okay.

MS. FONTENOT: I just have a letter that he wants to be read into the record.

MR. CONINE: Okay.

MS. FONTENOT: Dear Members of the TDHCA Board, and the Executive Director, as the Board continues to make decisions on state and federal housing related funds, especially those made available to Texas under the American Recovery and Reinvestment Act of 2009, I respectfully ask the Board to take special notice of the housing needs of the counties with highest degree of unemployment and working poor in our state, specifically those along the immediate region.

While it is true that the national economic crisis has become an obstacle to the overall production in affordable housing, the crisis has only exacerbated a previously alarming situation along the border region.

Any impartial person would recognize that the difficulty of producing decent affordable housing is greater in communities outside the state's principal urban metropolitan areas and is unparalleled along the immediate Texas/Mexico border due to our high concentration of

working poor families.

As you are aware, the border region does not have the local or regional resources, not to mention the tag space as do the communities in the state's principal urban regions. Border communities fall short and are on the losing end of any credible comparison of wealth and available local resources.

In these hard economic times, the low per capita income that our working poor border families possess makes it even more difficult for them to afford market rate rents in apartment communities. Consequently, as compared to the principal urban areas of our state, to say that the entire border regions is in dire need of additional rental supported housing, is an understatement.

That is why I respectfully request that as the Board undertakes decisions that affect the federal stimulus money that Texas has received, including the tax credit assistance program related funds, that you do so in a fair prudent approach ensuring that housing developments plan for the border are well supported. In doing so, it is essential that the affordable housing needs of the border are not overlooked by the demands of major metropolitan regions of our state, and that planned projects for the border area be supported so that they

move forward and are allowed to be built.

It is my hope that any future policy decisions relating to these critical federal stimulus funds do not negatively impact projects planned for the working poor families along the entire border region.

Along the way lines, it has come to my attention that the Board has made a landmark decision during your last meeting in terms of the assistance that low income individuals will be receiving from our state. I commend the Board, for your statesmen-like decisions provide incentives to developers of tax credit developments who agree to set aside a portion of their units in their developments for extremely low income families.

As those who have kept up with my efforts in the Texas Senate, I have long championed the prioritization of the neediest Texans for assistance through housing programs your Department oversees. Your decision to provide incentives to help these worthy Texans obtain decent affordable housing is commendable, for it demonstrates your understanding of the housing needs of Texas, enlightened leadership of our state's housing efforts, and foresight to be compassionate in these hard economic times.

Such a decision and accomplishment is unprecedented by any other previous make up of your Board.

The affordable housing needs of the border region is certainly deserving of the same type of noteworthy support by your Board, especially when it comes to rental housing development assistance. Sincerely, Eddie Lucio, Jr., Texas Senator, District 27.

MR. CONINE: Thank you, Natalie.

Any questions of the witness?

(No response.)

MR. CONINE: Appreciate you being here.

MS. FONTENOT: Thank you.

MR. CONINE: John Henneberger.

MR. HENNEBERGER: Good morning. My name is John Henneberger. I'm the co-director of the non-profit Texas Low Income Housing Information Service. And I'd like to echo the comments that you just heard from Senator Lucio about thanking the Board for your contribution to the cause of affordable housing through setting aside -- or providing developers with incentives to undertake to provide housing that's affordable to lower income families.

I wanted to share with you an analysis that we did based on the application logs that you submitted --

that are -- I'm complimenting you.

MR. CONINE: Yes --

(General laughter.)

MR. CONINE: You must have made somebody mad.

MR. HENNEBERGER: The -- we used the application logs and the information that was posted on the web to try to get a picture of the relative success of your effort at the last Board meeting to create units for the neediest Texans, and I think it was undoubtably an unqualified success.

The result -- end result of your action was 883 additional extremely low income units provided across the state. There is a good mixture of units between elderly with 425, and 411 units, and 37 intergenerational units. There's a good mix between urban and rural. I think a lot of us felt that this might not be the case, but there's 540 units in urban areas and 273 units in rural areas.

And there's a good mixture between new construction units and rehabilitated units. So some of the high quality new units are going to be affordable to these extremely low income families, 541 to be specific. I've also provided you with an analysis by geography of the distribution of those units, and they fairly represent a cross section of the needs across the entire state.

It was an historic decision on your part; it will help many generations into the future of low income people to be able to afford decent housing in some of the best quality rental housing in the state, and I congratulate you again for your action. Thank you very much.

MR. CONINE: Thank you, John.

Any questions of the witness?

(No response.)

MR. CONINE: Tony Sisk?

MR. SISK: Good morning. I'm Tony Sisk with Churchill Residential, we're an affordable housing developer based in the DFW area.

And I was quite pleased to see that the Chief Justice of the Supreme Court would come and swear in the new Commissioner, and I welcome the new Commissioner Keig to TDHCA in these unprecedented and usual times that we have with the affordable housing industry.

I'm commenting in the general comment period because I did not see an agenda item on the exchange funds. And as was previously mentioned, the exchange funds and the TCAP funds are very closely intertwined, and I wrote down at the last meeting Chairman Conine made a very appropriate statement.

He said that TDHCA had the unprecedented and immediate opportunity to create a tremendous number of jobs, both construction jobs, that are going to be needed more and more each month, as well as permanent jobs, and a number of affordable homes for Texans, with the amount of stimulus funds that have been provided by Congress in the exchange program and TCAP program.

And we still have that opportunity, but the clock is ticking. And the reason I'm speaking in the public comment is related to the exchange program in prior years. We don't have any unclosed prior year deals, but it appears to me that a committee within the Board could encourage the staff to have the committee, or the senior executives at TDHCA, to interface with each applicant quickly and determine how much additional exchange funds could be given to each deal, somewhat like a loan committee process that's interactive with a borrower, and let each applicant know that there is X number of dollars in additional exchange funds available to help bridge the gap to get those deals closed.

I believe that a number of deals -- exchange funds deals can be closed a lot quicker, a lot easier. The TCAP deals with investors and environmental are much more complicated. I think it's extremely problematic in

meeting the immediate deadlines of the TCAP program. And we have -- the staff has the opportunity to give immediate notice to each applicant if there's a way that their exchange fund deal could work so that they could drop the TCAP application and more funds could be used for unclosed deals that have investors and lenders, and can get building permits and get closed quickly.

So I would encourage, again, the Board to give staff a strong direction and power, if you will, to appropriate some available additional exchange funds so that we can push as many transactions through the exchange program and not clog up the TCAP program. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Kathy Keane.

MS. KEANE: Good morning, Board. I won't take up much of your time. My name is Kathy Keane, and I'm the recently appointed economic development coordinator for the City of Eden. It's a small rural community in Central Texas.

Again, there will a be a number of people that will speak during the item, but since I'm new, I wanted them to have their time there. But I did want you to know that Eden, Texas desperately needs housing, and I've

brought some pictures that I'd like to show you. I know a lot of times pictures speak louder than words, so I'd like to leave that with you and ask for your due consideration when the item comes up. Thank you.

MR. CONINE: Okay. Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Robert Salas.

MR. SALAS: Okay. Guys, come on.

MR. CONINE: And he has dedicated time, so you get five minutes.

MR. SALAS: All right. Come on in; everybody in. I feel like a Rocky Balboa movie, you see it coming back.

(General laughter.)

MR. SALAS: Good morning. I am Bob Salas. I'm the Director of Community Development for the City of San Angelo, and with me I have a contingent of citizens here in support of the Blackshear HOMES project, number 08300.

Before you today there's an amendment to increase the number of lots from eight to 16. The city -- I mean, I'm sorry, your staff is recommending this approval because they cite that there is no site control.

I've got some letters from the City Manager I'd like to forward to you that confirms that we, in fact, did have site control. We then -- as soon as the Council approved support of the project, we earmarked and reserved 20 lots.

The developer decided to document only eight thinking that would be plenty, but there's reasons why we want to expand, and we asked the developer to submit an amendment.

Another issue that the staff brought up is that there's a lack of recommendation from the environmental assessment provider on whether a Phase Two was required in the new lots, and I'd like to pass out a letter from the ESA provider recommending no further action. And I believe that that should answer the staff's concerns.

The bottom line is adding eight more lots will make this project much more effective. First, it will require less replatting, which of course will make it easier to be city code compliant. Secondly, it will help maintain the character of the neighborhood, basically one lot, one home. But more importantly, it will expand and push out the revitalization efforts deeper into the neighborhood, and that's the bottom line.

I can't emphasize enough that this project is really less about housing 20 families, it's about

revitalizing a neglected neighborhood that's been allowed to deteriorate over the years. We're excited about Blackshear. In fact, since the last time you saw us we've built over 25,000 feet of sidewalks, our affordable housing partners have built six new homes in the neighborhood.

And, really to steal a line from the Army, we want this project to be the best it can be. And this amendment makes it a better project and we're hoping, and we're asking, and we're begging the Board to please approve the amendment. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Craig Meyers. Three minutes for Craig.

MR. MEYERS: Thank you for seeing us. It would be a shame after going through that traffic if you wouldn't.

(General laughter.)

MR. MEYERS: As Bob said, this is a part of something that is really unique in most revitalization projects throughout the state of Texas. Over 50 percent of all the existing housing units have been modified by rehab, new housing, or demolition since we started just a

few years ago. And we're also redoing all the infrastructure.

Since we were last here, as Bob said, the new sidewalks have gone in on the north side of town after -- no, on the north side of Blackshear, after 30 years of complaints to the city. We've got 1500 feet of new privacy fence, quality cedar picket, which separates us from the industry that has been encroaching on the backyards of the area for three decades.

We're upgrading the business corridors, a business association has been established, and the TIERS money has been applied to beautifying the intersections along those corridors. And the bottom line is that this is absolutely something that is transforming the whole landscape of San Angelo with the four neighborhoods starting with Blackshear.

And there is absolutely no reason not to approve this amendment. As Bob said, a long time ago the City of San Angelo took control of all the tax lots, made them available for this and other projects, it's been in the control of the city under community development for a long time. It does not change the target population in any way, and it only extends the geographical parameters by one block south, and that's a block that will be

greatly revitalized by these seven houses because there's also three new habitat houses that have gone up, one new community development house that's gone up, and that will enhance and speed up rapidly the transition of the whole neighborhood. And we ask you to please consider this.

And I was asked to say one other thing. We have half of our tax credits approved by the San Angelo National Bank. We have Gap financing to begin the project, and we also have before you for your later consideration a request for the state to help us with the other half of the tax credits.

Momentum is something that's really hard to achieve. We have got it, and timing is of the essence, and we hope you'll approve this and look favorably upon the second recommendation. Thank you.

MR. CONINE: Thank you, Mr. Meyers.

Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Jerry Sea?

MR. SEA: Oh, boy, sitting down again.

(General laughter.)

MR. SEA: Gentle ladies, gentlemen, good morning. My name's Jerry Sea. I'm one of the leaders of

WTOS. Since -- I think is about our fifth visit here, and I certainly want to thank you for passing the first part of it because San Angelo, we've come together with our city leaders and our communities, and we want to make a difference. We want to make a change.

And actually, by this happening like this, it's really a godsend because most of the construction is on one side of 19th Street. Over on where this is supposed to go is one of the worst streets in the area. The police have stepped up there, they doing their job, they've put two of the major drug dealers in that area, that put them in jail. We've torn down houses, cleaned up lots.

The community is excited because this is one of the areas of town that has been neglected for about 40 years. And actually there's no hope -- there was no hope until we started this movement. Now that this movement is started, people are beginning to take pride in ownership in their communities, they're beginning to help those that -- neighbors next to them that can't cut their grass or the weeds and help them do different things. They're taking ownership again.

And by this being one of the worst streets in the neighborhood, by the police doing what they're doing, the people are taking pride again. Just the other day I

was just telling Craig that -- this morning, in fact -- I picked up a guy that was walking, and he saw this guy walking down the street, and then a car came by, and this isn't in that same neighborhood now, this is a different place, the guy walked over and leaned over in the car and the guy that was riding with me looked and he said, Look at this, now just look at this. This is really awful. These people are bringing this stuff in here, tearing our neighborhood up, you know. So they're taking ownership.

And this would be -- this really would be the cap on the whole project. It would uplift the neighborhood, and more than that, you would give people more pride, those that had lost all confidence in the city government and the state, in fact, because they're saying, Well, we've heard those things before, we've heard this before, and no one's ever done anything. But there's -- like you've heard what has happened.

This is a godsend. If you could pass this and we can get those houses built on the other side of 19th, you know, I think it's all part of 18th Street, I believe, it was one of the worst drug streets in the area. Thank you very much, and we pray that you pass that so we continue to grow. Thank you very much.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Yes, I want to thank all of you for being here from San Angelo at eight o'clock in the morning. I know that was a challenge.

(General laughter.)

MR. CONINE: Madison Sloan?

MS. SLOAN: Good morning. My name is Madison Sloan. I'm a staff attorney with the non-profit public interest law center Texas Appleseed, and I am here today to speak on the proposed draft amendment to the action plan for CDBG funding related to disasters occurring in 2008.

And I would actually like to sort of incorporate by reference a lot of the things you've just heard about the need for affordable housing, and particularly the desperate need for affordable housing in rural areas, and keep that in mind.

I'm actually here speaking against adoption of this amendment. I'd like to be clear, it is not because of what's in the housing plan. There is some great some great stuff in the housing: repair programs, new rental construction, funding outreach and intake, making sure benefits are uniform across the state, dealing with single

family rental, and title clearing. You know, there are some really good programs in here and that really demonstrate the things the state has learned over the past four years of administering these programs.

The problem is that none of it's going to happen because it's not going to get funded. There is no guarantee of funding for housing above and beyond state set asides. So you have, you know, the rental housing state set aside, and -- I can't remember what else, but all of this money that's -- you know, that in theory is going to come from local Councils of Government, spending money on housing, it's not going to be there.

One, the ORCA funding model is, in a word, terrible. It's a model that estimates storm intensity, not damage. It does not take into account population density, housing, value of built -- you know, and aside from that, it doesn't use the information we have about actual observed damage.

You know, the state has gotten \$3 billion based largely on HUD's calculation from human data, as bad as it is, on our unmet housing needs, and we are not spending that money on those housing needs. The funding model has the effect of steering money away from the hardest hit areas in Galveston, Houston, and steering

money away from the Rio Grande Valley which has desperate housing needs. And even within the counties to which the money is being directed, it has the effect of steering money away from the housing needs and the needs of low income families within those areas.

You know, ORCA has funded comprehensive infrastructure damage assessments, invited technical assistance to these counties, but there's been no housing assessment and we really -- we need to do one. If you take out Houston and Galveston, the cities of Houston and Galveston, only 27 percent of the money of the last round went to housing.

That's just -- it's not enough and it's -- that's what this money is for and the plan's not going to get the money where it's needed, and it's not going to spend the money the way the federal government intends this money to be spent. Thank you.

MR. CONINE: Thank you, Ms. Sloan.

Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Donna Rickenbacker. I hope I got that right. And she's got some time donated to her so she's a five minuter.

MS. RICKENBACKER: Good morning, Chairman Conine, and --

MR. CONINE: Good morning.

MS. RICKENBACKER: -- Board members. My name is Donna Rickenbaker. I'm with Marquee Real Estate Consultants. We're consultants that worked with two developers, and this year, 2009, and secured tax credits for them on three transactions. Two of those transactions are in the Valley, Region 11, and I'm here today to tell you we're very much struggling with those two developments in the Valley.

And just to give you a little bit of background on the Valley, that some of you all may not be aware of, in 2008 -- the state allocates a large percentage of the state ceiling to the Valley, Region 11. And in 2008, a little over a million dollars of that ceiling went back into the collapse, and obviously into other regions of the state. And in 2009 a little over \$3 million went back.

And we've been working very closely with local and state officials to try to change that trend, and we'll -- and are continuing to do so. But we don't think our efforts are going to help us with respect to funding our 2009 transactions. So without the assistance, through exchange or TCAP, we really don't think we're going to be

able to get those two deals closed.

With respect to TCAP, it's my understanding that after all the '07-'08 TCAP applicants are awarded, the Department may collapse any remaining TCAP funds with in the 13 service regions into one statewide fund, and those remaining funds will go first to any outstanding '07-'08 applicants, and then to any 2009s that apply, and I believe the deadline for that is October 1.

This means that our '09 Valley projects will not be able to apply for any TCAP funds made available t Region 11, but will be required to secure such funds, if any remain, of course, through an open statewide process.

This scenario will make the ability to secure TCAP funds for Valley developments highly unlikely.

I'm respectfully requesting that the Board take a closer look at this allocation method and see what can be done to ensure that all eligible applicants within each of the regions, which does include the 2009 9 percent awarded applicants, have the opportunity to apply for and receive an award of TCAP funds allocated to their regions before the regional funds are collapsed and opened to applicants statewide.

This will increase the likelihood that 100 percent of the regional allocation goals associated with

the distribution of the TCAP funds are used within their given regions. To do otherwise will mean more lost units of affordable housing in the Valley, and the much needed job creation associated with that housing.

Based on the '07-'08 TCAP logs, it appears that Region 11 is over subscribed. But in the event some of those roll into exchange, we are hoping that every effort will be made to keep the remaining funds in the region and be made available to the '09 applicants if at all possible.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

MS. RICKENBACKER: Thank you.

MR. CONINE: Margaret Shaw.

MS. SHAW: Good morning. My name is Margaret Shaw. I'm the Director of Neighborhood Housing and Community Development for the City of Austin.

Good morning, Mr Chairman, Board --

MR. CONINE: Good morning.

MS. SHAW: -- members, and Mr. Gerber. I'm just here to share the city's support for the remaining two 2009 competitive tax credit rounds. We appreciate the support that the Board has given in awarding funds for

Malibu Apartments. But I'm here this morning simply to confirm that the City of Austin is ready, willing, and able to support the remaining two tax credit deals that are before you at next month's meeting.

Wildflower Terrace is a senior development at our award winning 700 acre redevelopment of the Mueller Airport site, and M Station is at a eventual -- trains that stop -- they will have eventual train service in Austin, but it will provide housing for families with children in childcare in a neighborhood in East Austin that is rapidly gentrifying.

So these applications are brought to you before by Diana McIver and Foundation Communities, which are both tried and true partners of the City of Austin, and I'm just here today to say we look forward to coming back to you in October when these are on your agenda. Thank you.

MR. CONINE: Thank you, Ms. Shaw.

Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Diana McIver.

MS. McIVER: Chair, Board --

MR. CONINE: Good morning.

MS. McIVER: -- welcome new member, Board

Member Keig. Thank you for the pronunciation of your name; it will make it easier to remember.

My name is Diana McIver, and I'm president of DMA Development Company. And I'm here, one, to ask that the Board consider putting the issue of forward commitments from the 2009 round on its October 5 agenda, and specifically I have provided for you information on Wildflower Terrace. And as Margaret Shaw just explained to you, Wildflower Terrace is a proposed senior community that is part of the new award winning Mueller redevelopment area.

And it is an exceptionally needed development in this community, so I can't begin to tell you the importance of this development in three minutes, So I provided reading materials and pictures to acquaint you with it, on maybe plane rides homes or for those of you who are driving, at some point before the next Board meeting.

I will tell you that Wildflower Terrace is in an unusual predicament. We are now the highest scoring application, 211 points, that does not have an award of credits or that is not on the priority waiting list. And you would think that a project with that score in a community that's only had 70 units of senior housing in

the last five years would also rise from the waiting list.

But because the Board did a priority waiting list at its last meeting that has two very large projects from Region 7, we now don't have a chance of getting off the waiting list, even though we don't need exchange funds, we can get an investor and use credits the old-fashioned way.

So what happens is, after you go through your priority waiting list, we revert to the regional allocation formula, and what that means is that Austin will be over-subscribed, even though it has investor interest, and it is highly unlikely that Wildflower Terrace, at 211 points, will ever come off the waiting list.

So because of that, I ask you to put an agenda item on for October 15 and I'll be back to tell you how great Wildflower Terrace is at that point in time. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Walter Moreau.

MS. McIVER: Who also has a package.

MR. CONINE: I know.

(General laughter.)

MR. CONINE: Walter, broken record, Moreau.

(General laughter.)

MR. MOREAU: Thank you for the opportunity to speak again. You know why I'm here, but I'll be real brief, and I didn't bring the Mayor, I didn't bring residents, I didn't bring our neighborhood leader, I didn't bring our tax credit buyer. They're all excited about the M Station project. Thank you for putting us fourth on the waiting list. We're on pins and needles. We're aware of some projects that have dropped out and there's some appeals, it all depends on how things play out, and Ike credits that are returned and the national pool.

I just wanted to make the same statement that Diana did, that please, please put forward commitments or wait list projects on the October 15 agenda. We've got two timing constraints, one is we've raised about four million for the project and we're trying to hold on to that money and meet those deadlines. We also were only able to get -- in a pretty difficult negotiation with the land seller, and we got an extension through tomorrow and another extension we can buy through October 16, it's a prime piece of land because it is across from the train station.

I think those are the main points. Hopefully we'll get some good news about the waiting list between now and October 15, but if not, if you can make this a forward commitment agenda item, that would be great. Thanks.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your persistence.

(General laughter.)

MR. CONINE: Ike Monty.

MR. MONTY: Thank you, Chairman, and Board members, Mr. Gerber. Welcome, Mr. Keig.

And I'm Ike Monty from El Paso, Texas. I'm here requesting consideration for a forward. I'll keep my comments brief. El Paso's going through substantial growth because of the troop expansion, and we have a syndicator that's interested in coming to El Paso because of the growth. We have some city funding that's pending based on this award, and any consideration that we could be given would be greatly appreciated. So, thank you.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Colby Denison.

MR. DENISON: Hi. My name is Colby Denison. Thank you all for your time. And I'm here for, again, forward commitments for 2009 for Belmont Senior Village, 09138. And just first, thank you all for putting us on the waiting list. We think we have a great project.

We are the highest scoring project in the state that did not get funded for new construction. We had a representative from Meridian Solar come talk to you all last time about the fact that we are in the process of installing one of the five largest solar systems in the state of Texas. Not just affordable housing, but in the state.

We also believe that with our allocation of HOME funds, we're probably one of the lowest tax credit pricing of any application in the state, and so we think because we're in the Austin MSA that we'll have a really good shot at getting an investor for the purchase of our tax credits.

I just wanted to highlight those. Austin was in an unbelievably competitive area this year. You all keep hearing from us, and I think they're all -- we all have really great projects, and thank you all for putting us on the waiting list.

MR. CONINE: Thank you.

Any questions?

(No response.)

MR. CONINE: John Cowman.

MAYOR COWMAN: Mr. Chairman, Board members, John Cowman, Mayor of the City of Leander. Mr. Denison just got up here and spoke about the Belmont Senior Village. And I am representing 30,000 people in my city; we're going to be a city of about 250,000 by mid-century. We have no senior components.

This -- before I read this project into the record, it was made a motion on and voted unanimously. Our city council is subtly behind it. Where it's located, it couldn't be in a better spot. HEB -- and I'm going to go -- I'm going to stretch it a little bit and just let you know that ACC is coming to Leander with a major hundred acre campus. The tax roads, toll roads, railroads, everything seems to fit just perfect.

Being that we don't have a senior component, this would be wonderful to help our sustainability model.

I'm also on the board of Capital Metro; I heard the train mentioned numerous times, this M Street thing. That's the whole purpose of what we're doing here in Leander is we have a multi-level situation, we're working on a YMCA that will be very close to this center. That'll be a 250-acre

YMCA, complete with a camping component.

But nevertheless, we're very much in favor. Forward commitments, forward commitments today would be greatly appreciated from my city. And we're ready. And that's I guess the -- to sum it up in two words, we're ready. Thank you.

MR. CONINE: Thank you, Mayor.

Any other questions of the witness?

(No response.)

MR. CONINE: Thank you.

Tim Lange.

MR. LANGE: Mr. Chairman, with your permission, I would like to amend my affirmation form to speak at Agenda Item 9e.

MR. CONINE: 9e? You got it.

That concludes all the public comment witness affirmation forms I have for this particular time frame, so we'll move on to the agenda at hand. Item 1 is the consent agenda.

MR. GERBER: Mr. Chairman --

MR. CONINE: Yes, sir.

MR. GERBER: -- Item 1h, which deals with Meadow Park Village, is going to be deferred to October.

MR. CONINE: Okay. Does any other member of

the Board request anything else to be pulled from the consent agenda?

(No response.)

MR. CONINE: Hearing none, then I would entertain a motion to approve Item 1.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: So moved to approve the consent agenda.

MR. CONINE: Motion by Ms. Ray. Do I hear a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 2a.

MR. GERBER: Mr. Chairman, I don't believe there's any late minute Housing Tax Credit appeals or HOME appeals, so we're going to proceed to Item 2c.

MR. CONINE: Going to Item 2c. Okay.

MR. GERBER: -- which is the presentation, discussion, and possible action for 2009 competitive Housing Tax Credit and HOME appeals of underwriting. Brent Stewart's going to come forward who heads up our Real Estate Analysis Division.

This item contains three appeals to the underwriting recommendations for 2009 competitive tax credit applications. One of the appeals in your board book, Irvington Court, withdrew their appeal after posting the Board materials.

I'll turn it over to Mr. Stewart to walk us through each appeal.

MR. STEWART: Good morning.

MR. CONINE: Good morning, Mr. Stewart.

MR. STEWART: Actually, one of the other appeals withdrew yesterday, Mariposa at Keith Harrow appeal. So there are two appeals under consideration this morning.

The first appeal is for number 09108, Peachtree Senior Apartments to be located in Balch Springs, Texas. The applicant's application included \$3 million of TDHCA HOME funds as a source of financing, in addition to the tax credit request. These funds were not available to the

development because Balch Springs isn't a participating jurisdiction in HUD's HOME program, making it ineligible for our HOME funds.

Upon notifying the applicant of this, the applicant then requested TCAP funds as an alternative source to fill the gap in sources. At the time of underwriting, TCAP funds were not yet available as an alternative source, and the TCAP NOFA had not been published. Even upon publication of the NOFA, only deals with an existing allocation of tax credits are eligible for TCAP.

Therefore, no other gap source exists or was offered by the applicant, even after contemplating a deferral of 100 percent of the developer fee. While 100 percent deferral of this fee leaves a remaining gap of 581,000, the transaction is still infeasible as the 100 percent deferral is not repayable within that 15 years.

As a result, the Executive Director denied the appeal and staff is recommending that the Board also deny the appeal.

MR. CONINE: Okay. I have a witness affirmation form from Cynthia Bast.

MS. BAST: Good morning.

MR. CONINE: Good morning.

MS. BAST: I'm Cynthia Bast of Locke Lord representing the developer of the Peachtree Seniors Apartments in Balch Springs, Texas. This is urban Region 3.

You did hear from me with regard to this appeal at the last Board meeting, but it was determined that for procedural reasons a determination on this appeal could not be made at that last Board meeting. So because you've heard the story before, I want to try to shorten it and just refresh your memory.

The applicant applied for tax credits in 2007 and received an award at that time. It proceeded with the development, incurring over a million dollars worth of costs. And then as the closing neared, the economic downturn made the financing unavailable. The applicant was encouraged to reapply in 2009, and at that time the Board agreed that 2007 tax credit recipients who were returning credits and competing in 2009 would receive certain special accommodations.

So the applicant did return the 2007 credits and applied for 2009, and it achieved the highest score in Region 3 urban. Yet despite the score, the project was not recommended for a credit award because the applicant indicated that TCAP funds would be necessary to bridge

that gap that had occurred between the change in tax credit pricing from 2007 to 2009.

And because TCAP funds were not officially available at the time that the application was submitted, even though ARRA had been passed and we knew that that was part of the law, the application was found financially infeasible. So we've essentially got a chicken and egg underwriting problem.

At the last Board meeting, when you heard about this situation, you placed the Peachtree Seniors Apartments as number one on the priority waiting list for the tax credit applications, but it can't continue to hold that spot, it can't receive an allocation of tax credits if tax credits are returned, and it cannot then go forward to apply for TCAP money unless you approve this appeal.

So I'm just asking that you approve this underwriting appeal consistent with your action at the last Board meeting to prioritize Peachtree Seniors for Balch Springs, Texas. And I'm happy to answer any questions.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: I have one, or two.

MS. BAST: Yes, sir.

MR. CONINE: Refresh my memory, on the original '07 application were there HOME funds -- was there a HOME fund component to their sources at that particular time, or not?

MS. BAST: I believe there was. No? No, I'm sorry, there was not.

MR. CONINE: There was not.

MS. BAST: There was not. There was not a HOME fund -- it was going to be tax credit syndication. There was some money from Balch Springs Economic Development Corporation, there was some tax abatement, and it was pursuing HUD 221d financing.

MR. CONINE: Originally. And then when it came back in '09 after all of our encouragement, there was a HOME component as a source originally, and then that got switched to TCAP. Can you kind of go through an --

MS. BAST: Sure.

MR. CONINE: -- of that?

MS. BAST: What happened there is that, as you will recall, the 2007 deals were told to bring back the exact same deal in 2009.

MR. CONINE: Right.

MS. BAST: So they couldn't reduce the number of units or change anything. So with the same

development, and with a substantially decreased tax credit price, the developer knew that there was a gap. And so looking around Balch Springs, Texas he'd already received a commitment for project-based vouchers from the Dallas Housing Authority, he'd already received this Economic Development Corporation money, and there just were not any other sources to fill this gap.

And so the source that he put in was TDHCA HOME, which of course then was not available because Balch Springs is in a PJ and would have to actually go to the local HOME. So at that point he said, Okay, we've still got this gap, the stimulus is exactly what was supposed to be used to fill these kinds of gaps, so that would be my alternative plan to fill the gap.

MR. CONINE: Okay. I think I understand that, and I appreciate the explanation. That's all the questions I have.

Any other questions of the witness?

(No response.)

MR. CONINE: Okay. Thank you.

MS. BAST: Thank you,

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, ma'am.

MS. RAY: I move to approve the amendment for

Peachtree Senior in Balch, Texas.

MR. CONINE: Ms. Ray makes a motion to approve the appeal in Balch Springs. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: There's a second by Ms. Bingham. Any further discussion?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: To support my approval of the appeal, it's important that the Board undertakes decisions that affect the issuance of stimulus money that Texas has received, in particular the TCAP program, because I believe that these funds were -- are a prudent approach to ensuring that housing developments that are planned in smaller communities are well supported.

In doing so, it is essential that the affordable housing needs of the smaller communities are not overlooked by the demands of major metropolitan areas of our state, and that planned projects for these smaller communities can be supported so they can move forward and are allowed to be built.

Senior citizens are some of our most vulnerable citizens of the state of Texas, and I stand firmly in favor of all sources and uses of stimulus money to be used

in a prudent manner to support the seniors of the state of Texas, particularly those residing in the smaller communities that get a smaller bite of the apple than some of the metropolitan areas.

MR. CONINE: Okay. Any further discussion on the motion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Mr. Stewart?

MR. STEWART: All right. This next appeal is for number 09136, Gateway to Eden located in the City of Eden, Texas. This is a 20-unit single family project designed -- that staff has concerns for multiple reasons.

The total development cost is \$220,000 per unit, as projected by the applicant. The direct construction hard costs are 20 percent higher than the underwriters estimate, and it's significantly over our typical multifamily development.

It's also 15 percent higher than other single

family design projects that the underwriter has seen. This is even more significant given that the comparable single family developments have all been four-bedroom deals, which generally run higher in cost per unit.

The development does include \$717,000, or \$36,000 per unit, for solar panels to reduce electric consumption for the all-bills paid property. The underwriter, through the underwriting process, was unable to substantiate the applicant's electric utility assumption and projected savings, as a result of these solar panels, and therefore we still remain concerned about the expense proforma.

The underwriter used -- for the purposes of the underwriting, when it had used the applicant's assumption, but conditioned the report on receipt of third-party documentation supporting that assumption.

Based on the application material submitted, the underwriter determined that the development's expense to income ratio exceeded the maximum allowed of 65 percent consent to our rules. The applicant's ratio as submitted in the application, or amended in the application, was 64.98 percent.

We worked diligently with the applicant on this transaction. We had over 50 emails back and forth about

the proforma and he costs. In their appeal documentation the applicant provided new proforma information that was not previously available to us prior to publication of the report. In addition to their revised proform, the applicant's appeal documents requested adjustments to the terms of their HOME loan in order to get the service coverage ratio within an acceptable range.

The applicant's appeal requested that staff look to new information within their appeal documents, which is not allowed pursuant to the executive -- therefore the Executive Director denied the appeal, and staff is recommending the Board also deny the appeal.

MR. CONINE: Okay. I have several witness affirmation forms. As hopefully you know, there's only -- policy is that we allow three speakers in favor of particular project. I see that some have donated time to Genora Young, so I'm going to call on her first. And then the rest of them will have to flip a coin to see who gets to come and speak. She has five minutes.

MS. YOUNG: Good morning.

MR. CONINE: Good morning.

MS. YOUNG: Thank you for this opportunity, Mr. Chairman, and members of the Board. My name is Genora Young. I am a resident of the City of Eden, and as a

matter of acknowledgment, I'm an employee of the State of Texas as Director of Outreach and Special Programs for the Texas Department of Rural Affairs. I am on personal leave at this time, and my comments in no way, shape, or form represent the state. I represent myself and the City of Eden.

From September 2003 until May of 2009 I served as the Community and Economic Developer for the City of Eden. I am a professional certified -- certified professional community and economic developer.

The elephant in the room is that this is an expensive project. It's not a glamorous project. The reality is that rural life is not really a glamorous life.

Eden, Texas is a Colonia located between San Angelo and Brady at the very busy intersection of Highway 83 and 87.

Over 70 percent of our retail sales tax collection is made at that one corner. We have successfully negotiated with the Texas Department of Transportation to prevent a bypass of our community because it would have been a death sentence.

We also successfully negotiated the only two-year extension of an agreed order with the Texas Commission on Environmental Quality to help us expand our waste water systems. We have a private investment of \$3.3

million by Corrections Corporation of America to establish the first sequential batch reactor waste water plant west of the I-34 corridor. There are only four or five of those in the state of Texas.

This community has the most proactive positive attitude of anyone I've ever seen in my life. The reason we embrace this project in Eden, in the six years that I was the Community and Economic Developer, there were five developers who came to the community. This one developer walked into our community, invested \$52,000 of his own money in land purchase, not asking us to donate anything, though he would have scored higher on an application.

He also paid for his own market research; did not ask the City of Eden to fund that market research. Every other developer who approached our community wanted to know what we were going to do for them.

We have a declining school enrollment, we have an aging and unskilled work force. Both of those are tied to the lack of housing in our community. In the history of Concho County, a county of approximately a thousand square miles, with a population of under 4,000, and please keep in mind that 1,558 of those are inmates in the federal detention center housed in Eden, Texas. We are truly a frontier. Not just rural, we are frontier.

There's more livestock per square mile than there are humans in our community.

(General laughter.)

MS. YOUNG: And while that may be amusing to some, it is a challenge for us to overcome. And I implore you today to consider the need in our community. There's a gentleman named Ruben Escomeo who's a Vietnam veteran living in our community, and he's only one of many living in what I consider third-world country conditions. He does not have hot water in his home, you see around the exhaust pipe from his wood stove, in inch diameter. Yet -- and when you open the kitchen cabinets, there's grass growing under his kitchen cabinets.

This is the center of Texas. I implore you to consider the need in this community. I know it's expensive. We don't have construction workers, we don't have construction companies. The closest place for us to purchase lumber is Brady, Texas, 34 miles east of Eden, or San Angelo, 45 miles west of Eden.

And I'd also ask that you consider that in our county there are two financial institutions, and one of those institutions monitored the check register for one year. Didn't tell anyone who was writing checks, but monitored for a Tuesday, Wednesday, Thursday spending

cycle, money leaving our community and spent in the City of San Angelo because we don't have places to shop in our community. In an average year of spending through one small bank out of Eden, Texas to businesses in San Angelo totaled over \$13 million. And our most heinous spending is committed on a Friday, Saturday, Sunday cycle.

And so, Mr. Gerber, Mr. Chairman, and Board, I implore you to consider the merits and the needs of this community. They have twice been recognized by the Texas Department of Agriculture as one of the top ten rural hard working communities and once named the Shining Star of the state of Texas by Texas Department of Agriculture.

I ask you, please, be a partner with this community. Do something that's never been done, consider a rural community that is doing all they can to help themselves. You will send a loud message of hope, not only to this community, but every rural community out in Texas. I thank you for your service, and I thank you for your time.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: I have -- again, I have Warren Maupin, Gene Spann, Ester Jenowitz, excuse me, for Gracie

Salazar and Victor Ramirez, and only two of you can speak, so I don't want to -- you all tell me who wants to speak.

MAYOR SPANN: Good morning. I am Eugene Spann, I'm the Mayor of the City of Eden.

MR. CONINE: Good morning.

MAYOR SPANN: I appreciate you all letting us come before you.

As Genora said, Eden is located at the intersection of Highway 83 and 87 some 45 miles from the nearest large city, San Angelo, Texas. During the last 18 months, we -- partially because of a natural disaster, but it gave us the opportunity to clean up the town by removing over 51 dilapidated and dangerous structures. We have paved 18 city blocks, and began construction on the state of the art waste water program -- plant that Genora mentioned.

As we continue to improve the image of Eden and work on the giant puzzle to improve the quality of life, housing is one of our major concerns. The City of Eden and the citizens of Eden, are all in favor of this affordable housing project. We have submitted letters from our largest employers, all stating a need for the housing, and this, according to what I could find out, will be the first housing project sponsored by the Texas

Department of Housing and Community Affairs in Eden, a recognized non-bartered Colonia, as well as in rural Concho County. I thank you all.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: One more.

MR. MAUPIN: Good morning, Chairman, good morning, Board.

MR. CONINE: Good morning.

MR. MAUPIN: My name is Warren Maupin. I'm a partner in the Gateway to Eden development. I want to say that I appreciate the staff's support and consideration for this property. The underwriter has been very courteous and very knowledgeable, and has asked many questions and has tried very hard to work with us. I also appreciate Tom Gouris giving me his time; I know it's very busy for those at the -- staff at this time.

I pretty much agree with everything in the underwriter's report. It is too expensive, and we have agreed to the conditions that the underwriter set forth. The solar bids that we received initially were up around 6-, 700,000 and we have since received another solar bid to bring it down to around \$500,000. We're also prepared

to try to sell the solar credits to also reduce the cost in that area.

The reason for -- on the -- stated on the underwriter's report was we violated the 65 percent rule.

Now we had talked about this. This come -- in this property, using the numbers that the underwriter used, we're at 66.8, about 210 to \$250 a month. I would certainly not want the property -- the City of Eden to be denied 20 houses, four of which are four-bedroom, seven of which are two-bedroom, and nine of which are three-bedroom because of that 210 or \$250 a month.

Also, if you'll look on the underwriting report, under the rents that are allowed, we do have on several of the units additional rents that we could charge that would also reduce that ratio to get it below 65 percent.

This is unique project, and it's 20 units. I have been a developer in rural Texas for over 30 years. I have done projects with HUD, with Austin Housing Authority, with TDHCA, and with USDA. It's awful hard to do 20 units anywhere and make things work. It's awful hard also in this area to get contractors that are familiar with Davis-Bacon, and other items that we've been needing to do. And also people that would be able to

bond. We would have to bond the property for most of the contractors we would use. And we also would have to administer the Davis-Bacon requirements for all our contractors and subcontractors.

I hope you will look favorably upon this and grant us our appeal and allow us to continue to try to build these 20 houses and do this for the people of Eden. As you can see, they've been very supportive, and they're good people and they certainly need housing in Eden, Texas. Thank you. Is there -- I'm available for any questions.

MR. CONINE: I would have one or two, I guess.

MR. MAUPIN: Sure.

MR. CONINE: Obviously I have compassion for a small city being able to put rental units in their particular neighborhood. It would be hard -- but we do have an underwriting process, we do have a cost guideline and so forth. I'm having -- I'm struggling with the difficulty of the high cost in this particular project simply because I would make the assumption that if you're to get a flat piece of land in Eden, Texas and put 20 units of multifamily on there, two-story multifamily, it would certainly cost -- I bet it's going to cost less than what this particular project costs.

And to gobble up tax credits in an excessive amount because we want to do solar and we want to do single family and we want to do this and we want to do that, penalizes the rest of the state, so to speak, when it's time to spread those credits around. So can you help me get past \$178 a square foot to put this project on the ground?

MR. MAUPIN: Sure. There's several cost items we can talk about. Our preliminary estimates for the -- for bid with home builders out in the area, trying to get the cost numbers, we have since talked with Robbie Brewer out of San Angelo who has -- who also works with the people that were just here recently with the group in San Angelo doing CHDO houses. And he is able to bid this property out at approximately \$68 a foot for construction.

We also have several -- \$250,000 in building the streets; offsite costs, and of which the city is participating in with \$77,000. So I pretty much agree with the underwriter's report and certainly agree with you that it is too expensive. And that we can get it in with the credits that were recommended by the underwriting using the Marshall-Swift proforma at 413,000, I believe is what he recommended.

And we certainly would like the opportunity to

meet the conditions. We certainly have the solar worked out where we'll be able to achieve 96 percent of the cost of the utilities, and probably be able to pay for all the utilities using the solar. These units are going to have Icynene foam in the ceilings and in the walls which will reduce the cost of utilities even more. We may be able to downgrade the size of the air conditioners to also save some cost.

Beyond that, I don't know anything else I can tell you to help you with the cost, other than it certainly needs to be less than it is.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Mr. Brent, could you come back?

Let me --

Thank you very much for your testimony.

MR. MAUPIN: Thank you.

MR. CONINE: Refresh my memory on the underwriting conditions. It kind of seems like we're doing this in motion, constantly moving here. Can you -- and I'm sure he's trying to placate you guys and make you happy, and adjust the project accordingly. Can you tell us what conditions just right quick that you placed on

possible approval of this project?

MR. STEWART: In total there were six. As it relates to the actual underwriting of the real estate, there was the condition relating to proving up, or us getting comfortable with the savings as a result of the solar panels. There was a suggestion that there was going to be some sale of some of the utility consumption, and we had a condition relating to understanding that. There was also a condition that we review documentation relating to some additional acreage that had been transferred to the local government. The rest of the conditions were related to the amount of the credits and the condition relating to the HOME funds being available for the project.

MR. CONINE: And on the underwriting portion that related to the expense ratio being in excess of 65 percent, what number is he at currently?

MR. STEWART: Our number is at 66.81 percent; based on the revisions that the applicant has submitted, 64.98 percent.

MR. CONINE: And if he were to meet the conditions that staff's laid out for the construction of the project, will the cost of the project then come back into alignment with staff policies, or Department policies, or is it still going to be in tremendous excess?

MR. GOURIS: Can I say something?

MR. STEWART: Go ahead.

MR. GOURIS: Can I jump into that? Tom Gouris, Deputy Executive Director for Housing Programs. I'm sorry to jump in, but the problem here is that he may, in fact, be able to bring the costs in line. In fact, we hope that he does and that we hope that he could bring this transaction back when it's more thoroughly -- evaluated thoroughly, ready to move forward.

The question here is he's thrown out a number of \$69 today. I mean we're a month after, you know, a month and a half after the allocation. It's very difficult to underwrite these kinds of transactions on the fly like that.

MR. CONINE: Right.

MR. GOURIS: That \$69 is probably a lot more realistic than the \$107 that he actually submitted in his application, and had he submitted that, we would have been in a far different place. We worked diligently with these folks, had 50 conversations with them, going back and forth over the application period. We're way beyond that period now and it's very difficult, and it's very unfair to the other applicants, who have been able to move forward in a timely manner.

The last thing I'd like to make sure everyone recognizes with this transaction is that it's unlikely to get a tax credit syndicator's interest. It's in a rural area, it's single family homes. They've indicated they have one, but they're also number one on the exchange -- would be number one on the exchange for this transaction.

It's -- the other source of funding is HOME funding, our HOME funds. So if it went to exchange and HOME funds, it'd be 100 percent financed by Department funds with no third-party outside, you know, evaluation party, you know, partner in the project. It's a very high risk, high cost project as it stands right now. And all those things add up to, you know, if we were going to give a waiver to the 65 percent rule, we need to look at all those other factors to see if it's warranted in this instance.

And I think we're saying, staff is saying that it's not because that 65 percent rule is something that says, This deal is very stressed, it's very tight, they've chosen to make it this tight, and we've got a lot of uncertainty about what those costs are, so all those things combined make us very uncomfortable with it.

MR. CONINE: Too many moving parts. Okay.

Any other questions of staff?

(No response.)

MR. CONINE: I'll entertain a motion.

(No response.)

MR. CONINE: If I don't hear one, I'll make one. I move we deny the appeal to the Gateway to Eden Apartments. Do I hear a second?

MS. RAY: I second the motion.

MR. CONINE: Motion was seconded by Ms. Ray. Is there any further discussion?

(No response.)

MR. CONINE: Seeing -- there is some discussion. Ms. Bingham.

MS. BINGHAM ESCAREÑO: I'd just like to say that I think the Board hears very clearly the plight of these projects, and we're committed to continue to be diligent, as I know that our staff has been, in trying to come up with solutions. So I know this is unfortunate, but I certainly understand the circumstances and will continue to work with the rural areas on trying to get these projects done.

MR. CONINE: Yes, even though I hate to make the motion I made, I certainly would encourage the folks to come back for the next round next year and we get this thing massaged where it works just right and fits the cost

parameters. They certainly have gotten an education through this process, I think, and hopefully the next time through it'll tidy up pretty nice and neat hopefully.

Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Let's take a 10 minute break if we could right now.

(Whereupon, a short recess was taken.)

MR. CONINE: Appreciate everyone's tolerance of our much needed break. And I'm going to take the Chair's prerogative, if the rest of the Board doesn't mind, to call on Representative Jose Menendez to address the Board, so we can pay deference to his time today.

REPRESENTATIVE MENENDEZ: Good morning, Mr. Chairman. It's good to see you again.

MR. CONINE: Good to see you.

REPRESENTATIVE MENENDEZ: I'm glad we had a good uneventful flight from Dallas this morning.

MR. CONINE: Yes, we did.

REPRESENTATIVE MENENDEZ: And --

MR. CONINE: Solved half the world's problems.

REPRESENTATIVE MENENDEZ: I tell you what.

I'm sure that most people, many people get up typically at 4:00 a.m. most days, but I typically don't get up at 4:00 a.m. two days in a row, so excuse me for being a little -- I'm a little slow this morning.

But, Mr. Chairman, Board members, Mr. Gerber, good morning, and thank you for allowing me to address you out of order. It seems like I've been doing this almost every Board meeting these days, and I do appreciate the opportunity to continue to work with each and every one of you. And once again, I do want to thank all of the Board members.

And particularly congratulate your newest member of the Board, Mr. Lowell Keig, for your dedication, your commitment in service to our state. We acknowledge we could not do it without citizens like yourselves who are committed to the state of Texas.

I'm here today to readdress the matter that we spoke of last month. The rules affecting the awards of the Tax Credit Assistance Program, or TCAP funds -- I believe it may be Item 9b, c, or Item 10, I'm not sure --

and how these applications affect our various service regions.

You will recall that last month I read into the record a letter at the last Board meeting expressing my concerns and suggesting an alternative approach to the rules adopted for this very critical process in utilizing the federal housing stimulus money.

After speaking to you, I became increasingly concerned because I didn't see much indication that the Department was giving consideration to my proposal to let each region maximize the use of their allocation before the remainder was collapsed into a statewide pool. When some of my colleagues brought these same concerns to me, I asked them to join me in a delegation letter, and we sent letters of our concern to our political leadership, and you should have copies of those in front of you in your packet. There was a letter to the Speaker of the House, the Lieutenant Governor, and the Governor, and the letter was signed unanimously by every member of our San Antonio delegation, and all three of our Senators.

These letters say essentially the same thing that I said in the letter brought to you in July. When we ask leadership to assist in efforts to ensure that every region in the state has the maximum opportunity to access

the emergency stimulus funds allocated to their region for the purpose of putting more housing on the ground and new jobs in the workforce as quickly as possible.

I'd also like to read a response letter that I received this morning from Speaker of the House, Joe Strauss, that you also have attached in your packet. My copy says -- it's addressed to Chairman Conine -- "I recently received the attached letter unanimously signed by all of my legislative colleagues from Bexar County regarding the proposed rules for the implementation of Tax Credit Assistance Program funds provided through the American Recovery and Reinvestment Act.

"My staff has been closely monitoring this issue at the Texas Department of Housing and Community Affairs in the expenditure of other federal funds administered by TDHCA. The issues raised by my colleagues are of equal concern to me. The Agency appears to have created an unfair advantage to a particular financing mechanism resulting in certain regions in the state receiving a higher allocation of funds. It is my hope" -- and that may be a misunderstanding -- "it is my hope that the implementation of these rules are a result of an unintended consequence and that these inequities can be immediately rectified.

"As we explained in the attached letter, San Antonio and other parts of the state will be adversely impacted. The inherent inequity in the Agency's rule making may result in a missed opportunity to provide much needed affordable housing and economic development across the entire state of Texas.

"TDHCA has a responsibility to ensure that the American Recovery and Reinvestment Act funds are allocated equitably on a regional basis as originally intended. I appreciate your immediate attention to this situation. Sincerely, Joe Strauss." And it's carbon copied to each member of the Board and the Bexar Country delegation, and Mr. Gerber.

I also have provided in your packets a draft of an alternative rule for your consideration. I would like to ask you to look at them in hopes that you may reconsider the policy regarding these funds. These changes simply provide that every region, regardless of the type of application, whether it be a 4 percent or a 9 percent, have the full opportunity to apply their allocation of funds to their region first.

They take into consideration the stipulations of federal criteria and priority requirements and still provide for reallocation of any unused funds to a

statewide pool. These proposals aren't intended to address specific projects in San Antonio, or anywhere else. The fact that San Antonio has a preponderance of 4 percent bonds deals as a result of several years of limited 9 percent credit allocations, and some innovative approaches by several providers to continue to build quality housing to meet the growing needs of our community.

I believe that other regions have also used alternative approaches to fill tax credit short falls in their communities, and so they are affected by these rules as well. And I believe that Senator Lucio may have spoken to this matter earlier today.

As a delegation, we simply do not believe it is equitable to see the San Antonio allocation be short-changed in any way by having the region share the stimulus money diverted to other regions as a result of these rules before every possible project in our area has had an opportunity to apply these funds to our citizens' needs. This is a first time, and most likely only time, opportunity to close these deals using these federal stimulus dollars.

The federal criteria does not differentiate between a 9 percent or a 4 percent project. The only

prioritization that I can determine is to apply these funds first to '07 applications, then '08, and finally '09 developments that are at risk of not being done because of the crisis. The proposed rule changes in front of you accounts for that as well. There is simply no rationale for the Board to place additional work criteria on 9 percents versus 4 percents.

I believe the intent of the Bexar delegation letter is clear, and I don't presume to speak for any other region of the state, but I can tell you that in my conversation with Senator Lucio yesterday, he is equally concerned that funds intended to benefit his communities are being placed at risk because the rules that this Board could easily tweak today could solve many problems.

And as -- Chairman Conine, as you and I mentioned this morning -- as I mentioned to you this morning, you know, in the legislature the big fights for money are for typically between our institutions of higher education. And many times, when the formulas are being tweaked and people don't know what they're going to get, we have to put in a rule that we say hold harmless, where we say, you know, we really don't know what's going to end up happening at the end of the day, but we will say we're going to draw a line, you will get no less than X, and if

you could help us -- because I do appreciate the call that you and I had, and Mr. Gerber and Mr. Gouris, on the phone the other day where, you know, it came up and, you all talked about possibly, when some of these applications use exchange instead of TCAP money, that those TCAP dollars will be freed up and that possibly our region may get the same or more money.

But the problem is that I can't go back home and say to my colleagues, We should be okay, we should. They're going to ask me, Well, what do you mean should? And my question is, possibly, if you tweak this, if we say, Look, every region was allocated this money using our formula, and I'm not going to sit here and debate the formula today, my issue is the nine million that were awarded to Region 9, 16 million down to the Valley, those dollars should be given an opportunity to be used within their regions first, and if there's some money left over, go to the statewide pool and do what you got to do.

And that's it. That's it. It's very simple. And in talking to the Mayor of San Antonio, that's why he -- he told me he wishes he could be here, today's council day, but he did send the Director of Housing and Neighborhood Services Department, Mr. David Garza, who's going to speak on the item later this morning. Because,

you know, based on a letter that he showed me, we've got a need for over 34,000 affordable rental units. That's the need; that's the gap. And the applications that you have before you that are looking to get some of this TCAP, they're only going to build maybe 500 units.

So it's hard for me -- you know, it's definitely not on my -- this is definitely not something I look forward to coming to every month. I like you guys, I'd love to have coffee with you or lunch, but, you know, I mean I'm not here because I get -- enjoy just sitting here, you know, debating and asking you to do this. I'm here because it's my responsibility to my community.

And I hope -- I'll try to answer any questions -- and I hope that you consider tweaking your recommendations in your rules just to allow each region to use it, and then whatever's left over go to the statewide pool and let the whole state benefit as well. Thank you.

MR. CONINE: Any questions of the Representative?

(No response.)

MR. CONINE: Thank you for coming by. I hear you, and we'll address it when we get to that particular agenda item.

REPRESENTATIVE MENENDEZ: Thank you very much.

MR. CONINE: Thank you.

MR. GERBER: Thanks, Representative.

MR. CONINE: Okay. Next, Item 3, bond finance.

MR. GERBER: Item 3a, Mr. Chairman, is a presentation, discussion, and hopefully approval of the senior manager team in conjunction with underwriting services and co-manager team in conjunction with the sale of TDHCA single family mortgage revenue bonds commencing fiscal year 2010.

On July 30, 2009, this Board approved a request for proposal to select four investment banking firms to provide single family bond underwriting services as senior managers, along with eight investment banking firms as co-managers, to provide marketing of single family bonds for TDHCA.

Bond finance staff, along with the staff from the Financial Services Division, and Gary Machak of RBC Dain Rauscher, who's the Department's financial advisor, assisted the Department in scoring and then ranking 11 firms for the position of senior manager and three firms for the position of co-manager based on the criteria that was approved by this Board at the July 30 Board meeting. This working group scored the firms based on seven factors ranging from retail distribution capacity, institutional

distribution capacity, and their single family housing finance experience, among other items.

The four firms selected for senior manager, in alphabetical order, are George K. Baum and Company; J.P. Morgan Chase, Morgan Keegan, and Morgan Stanley. The eight firms that were selected for co-manager position, in alphabetical order, are Bank of America, Merrill Lynch, Citigroup, Fidelity Capital, First Southwest, Goldman Sachs, Piper Jaffray, Ramirez and Company, and Raymond James. Staff is recommending the approval of these senior manager and co-manager teams.

MR. CONINE: Okay. We don't have any staff testimony because you just did it. I'd like to call on Gary Machak, if he could come up. Give us your two cents on how this thing, this process, went, if you would.

MR. MACHAK: Mr. Chairman.

MR. CONINE: And just the overall condition of the market just so the Board can be up to date with the most recent information.

MR. MACHAK: Yes, sir. Well, let me start out with good news and follow up with more good news. Last month we were successful in selling 120 million of new money single family bonds, actually a portion of that was a refunding, and it will provide first-time home buyer

money for the citizens of Texas. This is a first issue in a long time and it's at a very competitive rate, and with down payment assistance.

The issue was well received and although the structure of the transactions are somewhat different than what we have done in housing bonds, they're still paying a healthy premium to general obligation bonds out in the marketplace. On to -- if there aren't any other questions about that, I'll move on the RFPs.

MR. CONINE: Okay.

MR. MACHAK: We had a very successful, fair, and open process. And we've met -- and the rest of his staff and -- Valley and met and talked on the phone several times. We went through all the proposals, we actually spent about four or five hours to wrap it up in a think tank type situation where we looked at the weaknesses and the strengths of each of the firms, and looked at every dimension that they can offer.

Our conclusion is that if we feel that the team of both the co-manager list and the senior manager list provides the Department with the best representation out in the marketplace. We as financial advisors are your advocate in the market, and the underwriters are responsible for helping the Department get the best rates

out there with their distribution instructions.

MR. CONINE: Are -- can you -- are there representatives from each of these four firms here today?

MR. MACHAK: Yes, Mr. Conine. I'd be happy just to have those -- them --

MR. CONINE: Just have them stand --

MR. MACHAK: -- stand up.

MR. CONINE: Call them out and stand them up --

MR. MACHAK: Sure.

MR. CONINE: -- just so the Board can see who they are.

MR. MACHAK: First on the list for the senior managers, I'll go through that list, Mr. Conine --

MR. CONINE: Okay.

MR. MACHAK: -- if that's okay. George K. Baum, I believe Mr. Scott Rippel [phonetic] is here, he's there at the back of the room; J.P. Morgan Chase, Peter Weiss is here; and Morgan Keegan, Mark O'Brien and Stacy Houston; and Morgan Stanley, James McIntyre and A.J. Thomas. So these are the faces that represent these firms that we'll be looking to senior manage your business in the near future.

MR. CONINE: Okay. Great. And why don't you do the co-managers, just in a block, if you would. Read

off their names and just have them all stand up.

MR. MACHAK: Sure. Let's see, Bank of America and Merrill Lynch, I think I see Kirk back there.

MR. CONINE: Yes.

MR. MACHAK: Citigroup should have a representative here. Fidelity, Kevin back there. First Southwest, I'm not sure if we have a representative from First Southwest. Goldman Sachs, and I don't think we -- I saw someone from Goldman. Piper Jaffray, I know Dale Lehman is here, along with Frank. And Ramirez and Company, don't see any representatives from their firm. And Raymond James I don't see anyone --

MR. CONINE: Okay.

MR. MACHAK: -- from their firm.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Again, thanks to you and all your efforts, and thanks to Matt and the staff, you guys have done a great job through tumultuous times, and I'm kind of glad, at least from my perspective, that the musical chairs have stopped to some degree and folks have found a home somewhere if they were upset by the financial crisis. And look forward to doing some more issuances and helping some more first time home buyers in the state. Thank you.

MR. GERBER: Mr. Chairman.

MR. CONINE: Yes.

MR. GERBER: I'd just like to interject Matt and Gary, of course, but also the team that supports them did a tremendous job pulling off this bond deal, and it's enabled us to roll out an interest rate of 6.25 percent all which will be assisted with 4 percent of the mortgage for down payment assistance, which is really a critical part of getting lower income folks into homes. And so we're going to be doing events to raise awareness of that program across the month of September, but we've already seen a tremendous amount of interest in it as those funds have become available.

And of course our lender network has really responded as well. We have the largest lender network -- one of the largest lender networks in the state of Texas, and we hope to add folks to it, as many folks and as many regions of the state can take advantage of those dollars.

It's nice to see home ownership hopefully turning around a bit in our state with more people being able to take advantage of it. We think this program is an important part of that, making that part of the American dream possible.

MR. CONINE: Okay. Thank you very much.

MR. MACHAK: Thank you.

MR. CONINE: Appreciate everybody for --

MR. MACHAK: Thank you. Appreciate the opportunity to work on this for you.

MR. CONINE: Let's keep rocking and rolling. I'm for it.

Texas Home Ownership Division?

MR. GERBER: Mr. Chairman, Item 4a is approval of our master servicer. The Board approved staff's recommendation to issue an RFP for master servicer back in May and the deadline was -- for submission was July 1. Based on a favorable up front service release premium pricing, as well as their single family mortgage revenue bond experience and a significant retail participation in TDHCA's Mortgage Revenue Bond Programs, and their in-house final review and reporting capabilities. TDHCA is recommending the selection of Bank of America Home Loans as our master servicer for a two-year term.

We should mention also that Countrywide was our master servicer when B of A acquired them. This is that same group of folks that we have had long experiences with. I know Tim Almquist is here representing them, and they've been a first rate firm to work with and we're pleased that this is a result of that review process, and

that they have asked to continue to do business with us. We're excited about doing business with them in the future as well.

MR. CONINE: Now if we could hang on just for a second, I forgot to vote on Item 3a, which we kind of need to vote on and make sure all of us are in agreement.

Do I hear a motion?

MS. BINGHAM ESCAREÑO: So moved.

MR. CONINE: Motion --

MS. RAY: Second.

MR. CONINE: -- by Ms. Bingham, seconded by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: Motion carries.

Now we're to 4a, and Eric here, is he going to do a presentation?

MR. GERBER: No, I think we're -- I think that's it.

MR. CONINE: Any of the B of A people here?

MR. GERBER: Tim?

MR. CONINE: There's Tim and Mike.

MR. GERBER: Mike.

MR. CONINE: Good to see you guys. We've got some business to talk about afterwards, so see me during the lunch break, if you would.

All those in favor of -- oh, we need a motion, I guess, for the --

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

MR. CONINE: Mr. Gann makes the motion to approve Item 4a. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Ms. Bingham makes the second. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, for Item 5a, Brooke Boston and I think Michael DeYoung are going to come forward to walk us through that item.

MS. BOSTON: Brooke Boston with the Texas

Department of Housing. We had a couple of things to clarify on what's going on with our Weatherization funds, specifically the ARRA component of those funds. As reflected in your book, I think we're asking for four actions with this item.

The first is actually just providing you a status. As you recall, at the July 30 meeting we -- there were seven entities from the existing network who did not receive -- who were not allocated funds at that meeting. Five of those due to instances of material non-compliance, and two because they actually chose not to proceed with getting ARRA funding, although they do receive our non-ARRA WAP allocation.

So at this time we are still in discussions with the Department of Energy on how we need to proceed with those who are in that situation. They were in our DOE plan, but they were not in our Board action on the 30th, and therefore while we kind of work out the logistics of that with the DOE, we're asking to kind of hold off another month.

The next action that we're actually asking for though, is that out of the seven, too, one has fully cleared their issues. There -- in one case, West Texas Opportunities -- and this is reflected on page 3 of 4 of

you write up -- had a board member who had some compliance issues. The board member has been removed and therefore is no longer an issue. They're fully eligible, they're not in non-compliance at all, and so we're recommending that they be awarded.

And there's also another entity, South Plains Community Action, who, if you look on page 2 of 4, is shown, they're the fourth subrecipient down, they also had had non-compliance issues, and they not only have repaid the funds, but also have repaired the homes, and we've gone out and checked that. So that's something the Board could also add on if you so chose.

MR. CONINE: So there's three that are okay. South Plains, and what were the other two?

MS. BOSTON: It's just two total --

MR. DeYOUNG: West Texas --

MS. BOSTON: -- South Plains and then West Texas Opportunities.

MR. CONINE: Okay. Thank you.

MS. BOSTON: Yes. And those cumulatively reflect 7.1 million, and it would bring the amount that's outstanding for us still to resolve down to 22.1 million.

MR. CONINE: Let's go ahead and take these items separately. Do I hear a motion to approve those two

agencies?

DR. MUÑOZ: Motion to approve those two.

MR. CONINE: Motion --

MR. GANN: Second,.

MR. CONINE: -- by Dr. Muñoz, seconded by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. BOSTON: Great. Thank you.

And the remaining two issues are just kind of blended together. If you look at page 3 of 4 of your write up, there is a series of five bullets that describe some clarifications. And these are somewhat just technical and mundane revisions, but it's letting us reconcile what we turned in in our DOE plan with what we gave you guys on the 30th to what we will ultimately be resubmitting to DOE as a plan amendment.

The distinction being when we took the DOE plan, we were clear about how we were spending things like

grantee technical -- training and technical assistance or administration, or training and technical assistance funds. When we brought you the awards on July 30, we were focused very much just on the awards, and inadvertently were silent on that at this point we're now going to begin to also access 50 percent of training in TA for ourselves, training in TA rolling into the contracts for the subgrantees who you have awarded, our administration, and then also -- well, that's actually it, just those three.

And then also there was one minor error. We had -- there's an entity who is one of the two who is not proceeding, they did not ask for funds, and we had inadvertently left them out; it's about \$300,000, and so we're making sure that clarification is put back in as a part of our reconciliation effort.

So with this action we're getting you to acknowledge that that also was part of our plan as we had presented it in the DOE plan, and then also getting your permission to turn that in as a plan amendment.

MR. CONINE: Okay. Any questions of Brooke on the clarifications listed in Item 3?

(No response.)

MR. CONINE: If not, I'll entertain a motion,

MS. RAY: Mr. Chairman, I move staff's

recommendation,

MR. CONINE: Move staff's recommendation by Ms. Ray. Do I hear --

MR. GANN: Second.

MR. CONINE: -- a second? By Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: And Mr. Chairman, I would just note that part of this is we're building it as we're flying it, and so we're -- our Weatherization team is doing a great job, but we've had the benefit of some fairly expensive and exhaustive conversations with the Department of Energy and so this reflects a set of refinements to the plan and needed amendments.

I suspect that there will be many more before we're done. We've had additional visits, coming --

MS. BOSTON: Hopefully not.

MR. GERBER: -- but I suspect that there's

more coming. So this is going to continue to be a work in progress as we sort of iron out details of how program implementation goes.

MR. CONINE: When they dump 350 million in your lap, there is a lot of moving parts.

MR. GERBER: Yes, there is. Yes.

MR. CONINE: There is.

MR. GANN: Could I ask one question?

MR. CONINE: Yes, sir.

MR. GANN: I might have missed it, but Greater East Texas, we didn't include that earlier, and I was wondering how are they coming along?

MS. BOSTON: They, as of today, are still in non-compliance. We checked -- I actually checked with our compliance team this morning before we met and the three at the top of the list, CAC of South Texas, Community Service Agency of South Texas, and then Greater East Texas, those three are still having compliance issues.

MR. CONINE: It's a tough group over at that compliance group.

MS. RAY: Yes, they are.

MS. BOSTON: And then the last issue, of course, is just Item 4, which is permission to submit the amended plan at whatever point we and DOE agree that's the

appropriate step to take.

MR. CONINE: Okay. Any other questions?

Mr. DeYoung, you didn't get a chance to say anything.

MR. DeYOUNG: That's quite all right.

MR. CONINE: Brooke, she always does all the talking if you let her do all the talking.

MR. DeYOUNG: She's very good at it.

MR. CONINE: Is there a motion to approve resubmitting of the plan?

MS. BINGHAM ESCAREÑO: So moved.

MR. CONINE: By Ms. Bingham.

MR. GANN: Second.

MR. CONINE: Seconded by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Thank you for your continued hard work.

MR. GERBER: Mr. Chairman, Item 6a is a

presentation, discussion and possible approval of the 2010-2014 State of Texas Consolidated Plan. TDHCA, the Texas Department of Rural Development, which used to be ORCA, and the Department of State Health Services prepared the 2010-2014 State of Texas Consolidated Plan in accordance with 24 C.F.R. Part 91.

TDHCA coordinates the preparation of the Consolidate Plan documents although two of the programs addressed in the documents are administered through other state agencies. The Plan covers the state's administration of CDBG program by TDRA, and the Housing Opportunities for Persons With AIDS Program, or HOPWA, by the Department of State Health Services, and the Emergency Shelter Grants Program and the HOME Investment Partnerships Program, which of course are administered by TDHCA.

You'll note that the CDBG disaster funds are not included in this Plan. Some of the significant changes in the Plan are first that it's updated to reflect changes in the Code of Federal Regulations, including descriptions of programs for the chronically homeless, needs for public housing, and coordination of housing programs with other programs.

That coordination part is an important part,

and we've spent quite a bit of time in the preparation of this Con Plan to address that issue. I know coordination is something that has been discussed here, and we really do take that to heart. And I've tried to represent that in this Con Plan.

Secondly, there's also updated housing and homeless needs assessment information. Thirdly, there's a HOME one-year action plan which is updated -- which includes updated program performance numbers, it's removed the CHDO set aside for colonias, there's a proposed pilot loan reservation system, and removes specific allocations by activity for persons with disabilities set aside to now be provided in the NOFA. And fourth, there is an ESG one-year action plan which has updated program performance numbers.

The Plan's going to be made available for public comment from September 18 through October 19. The final version of the Plan will be presented to the Board in November, and is due to HUD on December 15. So we're asking for the Board's approval today to issue that Con Plan in draft form so we can take it out for public comment.

MR. CONINE: Okay. Any questions of Mr. Gerber, or any other staff member?

MS. RAY: Mr. Chairman, I move staff's recommendation.

MR. CONINE: Ms. Ray moves to -- moves staff's recommendation to approve. Do I hear a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Mr. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: Those opposed?

(No response.)

MR. CONINE: Hearing none, the motion carries.

Item 7.

MR. GERBER: Mr. Chairman, Item 7a is the 2010 draft QAP. I'm going to ask Robbye Meyer to step forward and walk us through some of the issues that are proposed to be changed.

MS. MEYER: Good morning. Robbye Meyer, Director of Multifamily Finance.

MR. CONINE: Hello, Robbye.

MS. MEYER: Good morning, sir.

MR. CONINE: How are you?

MS. MEYER: Fine.

MR. CONINE: Good to hear.

MS. MEYER: The staff recommendations are minimal this year. And we just made a few clarifications of deficiencies in urban core; we have the proration of the two million credit cap, expanding the 30 percent increase in eligible basis to all rural developments; refining the development experience certificate required to the principal and not just to entity; clarification of qualified -- for the qualifications of quantifiable community participation; and we added bonus points for applicants to submit clean applications; and reducing the time frame to submit the 10 percent test from 11 months back to six months.

And I will take any comments from that point, if you want to take public comment before we go on to anything else.

MR. CONINE: Yes, just in general, before I hear individual public comment, you heard Jeff Crozier's comment this morning about simplifying and scrubbing the QAP. What would you say staff's perspective is on that issue?

MS. MEYER: I would definitely welcome it. I

don't like the 80-page document myself. There are a lot of regulations and state statutes that we still have to deal with. But I would certainly welcome the outside input and anything that staff could do to reduce the QAP.

I'm all for working with the outside community to develop a smaller document.

MR. GERBER: And most states have a smaller document in large part. I mean our document is so expansive we're responding to a lot of what's --

MR. CONINE: Statute.

MR. GERBER: -- the law.

MR. CONINE: Yes.

MR. GERBER: So we're going to need to address that. And one of the items that we have included in our submission to the Sunset Advisory Commission is a recommendation that there be a streamlining of our part of the statute and clean up of our part of the statute.

We would welcome the chance to, you know, perform a working group with outside folks, create a little task force that would work over time to try to address that issue. I mean streamlining regulations and making this program easier is obviously in all of our interest. I just don't think that we can get there, at the moment, until the next legislative session when we

have those changes that make that possible.

MR. CONINE: Well, you know, just from my perspective, I think we ought to target a month in the spring some time that we can have a round table with -- since we've got so many in the room today that are interested in the QAP, we'll target a month, March, April, May, whichever one, I don't care which one it is, to get everybody together to get a lot of input to that process.

And I would think the legislature would be helped, if you will, in making some of their decisions if we had a draft available for -- you know, here's some suggested changes, or here's what we think the QAP could look like given the statutory authority to do this, that and the other. And that would be a proactive way for the Department, as well as the development community, to participate in that process and see if we can get this back to a cleaner, simpler, easier, you know, responsible, whatever words you want to use, QAP to make life a little bit easier.

I think it's time for that. We've slowly built on this QAP over years and years and years and years, and it's probably -- I know I've expressed that, you know, personally in the past, and having other express it, just

bring it to -- let's see if we can target a date where we can get that done.

MR. GERBER: We'll do it in the spring.

MS. MEYER: All for it.

MR. CONINE: Okay. Witness affirmations on Item 7a. John Henneberger?

MR. HENNEBERGER: Mr. Chairman, members of the Commission, my name is John Henneberger. I'm the co-director of the Texas Low Income Housing Information Service. I would hope that any effort to undertake a review of this would not just include the development community, but would also include the advocates for the poor and the tenant advocates as well.

MR. CONINE: I didn't mean to leave you out by any stretch of the imagination.

MR. HENNEBERGER: Thank you, sir.

MR. CONINE: Just felt myself babbling on and I was trying to bring it to a close.

(General laughter.)

MR. HENNEBERGER: I'm sure you'll feel the same way about me in a moment.

(General laughter.)

MR. CONINE: We'll see.

MR. HENNEBERGER: Mr. Chairman and members,

there's -- I've provided you with a list of 10 principles that we believe ought to be applied to the operation of the tax credit program. And in undertaking any comprehensive review, as you've discussed, I would urge that the Board consider in advance deliberating about the principles about what it seeks to accomplish with the tax credit program.

In essence, the QAP is a device to achieve policy, and has become more of a device to achieve an allocation system which is non-contentious, and which hasn't necessarily succeeded always, but it has sort of put a lid on it. And I think we need to get back to the question on the critical policy issues that the state of Texas wants to accomplish with the Housing Tax Credit program. There's nothing terribly wrong with the QAP as it is now, but it appropriate, I think, to look at these policy questions.

In particular, I believe there's a need to work on what can be accomplished to get projects developed in high opportunity communities. It's pretty -- it's become pretty clear to me that the qualified -- quantifiable community participation process has had the effect of prohibiting developers from offering projects in certain high opportunity areas because of citizen opposition.

And that issue needs to be taken head on in the Sunset process and in the next legislative session. It is producing serious negative problems with the tax credit program operation with regard to the ability of the program to provide housing opportunities in those areas where there are good jobs, high performing schools, and good community services, places where people want to live.

And there are -- I have suggested in our initial comments to the staff in anticipation of your publication of these rules, some things that we think can be done to more narrowly define what the acceptable areas of quantifiable community participation are, or the appropriate areas are.

And there's a quid pro quo involved in that, and that is that I believe that fundamentally what we have to do is to establish a market analysis process which takes the -- which satisfies the public that market analysis is being done objectively and fairly and is not just on the whim of a developer. And then remove that question about market need and about the appropriateness of various other community facilities to accommodate tax credit developments out of the equation for citizen participation.

And I'll look forward to the opportunity to

provide you with some more thoughts about how this might be accomplished with the goal of providing real opportunities for citizens to participate, but to curtail this process which has, I think, had the unfortunate result of restricting your developments from the areas where people want to, and need to, be able to live. Thank you very much.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: It wasn't all that bad.

(General laughter.)

MR. CONINE: Sarah Andre? Now this one could be bad.

(General laughter.)

MS. ANDRE: Hi there.

MR. CONINE: Hello.

MS. ANDRE: As you know, my name is Sarah Andre, and I am a consultant, and as consultants, of course we spend a lot of time with the QAP and the application. I'm really happy to hear you all talk about a willingness to work on changing the application and the QAP. It's definitely time for a clean up.

I'm going to be actually fairly brief, believe

it or not. The first comment I have is just a request that we make the document more user friendly from a physical perspective, adding bookmarks, simplifying the format, that kind of thing. I think that would help a lot and make it easier to find what you need.

From a more substantive point of view, we've outlined a number of issues, and you all should have a copy of that. If you don't, I know that the staff has it to provide you. And I just would like to highlight of few of those.

In general, the comments fall into two categories. Just a need for clarity within the document.

As you know, I've been here before you to speak to that clarity, and that would help, you know, staff, the Board, and everyone who is involved in this program. And then also a need for consistency with the ASPM and with the application. There are some places where -- and I'm sure it's just through oversight. You know, it's a huge amount of information to compile, but there's just inconsistencies and so sometimes you ask for something maybe in the application that you don't ask for in the ASPM, or you ask for it in the QAP, or vice versa.

The four comments that I'd like to just highlight, I'm going to just start with number 1, the

local political subdivision funding. In the new draft document on page 38 you guys have eliminated the ability to submit an intent to apply for a funding source, and have actually asked for evidence from the lending agency that the development has a commitment for funding.

And that's just out of sync with local schedules as well as local attitudes. A lot of places want to see that you're going to get credits before they'll commit, they're kind of waiting, they're hedging their bets, they only have so much money, they want to see which of the, you know, four applications in their area will make it to the finish line before they commit.

In addition to that, we can change the source at any time and it's also not really due until commitment, so it just seems out of sync with the way things have been working, so I'd like to request that that go back to the way it is.

The second comment is about the 10 percent test time line. You guys have proposed that it go back to six months instead of 11 months, and I just feel pretty strongly that the economy is in a place where we still need the 11 months. People don't want to commit unless they know they're going to get through the process.

My third comment is about neighborhood

organizations, meetings and the neighborhood organization information that is to be submitted to TDHCA. And on page 45 -- I guess I will yield to my colleagues. You do have this. We'd just like to see that cleaned up. And then finally there are just some strong inconsistencies between the ASPM, the application, and the QAP on the neighborhood organization information. And as you know, I was here last month and spoke to that, and we really need to address those.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray?

MS. RAY: Those of us that sit on -- we do appreciate your input, your clarity, and your attention to detail. There are many of us that sit on this Board that are just not as in tune with some of the acronyms that you use.

MS. ANDRE: Sure.

MS. RAY: And I need some clarification for me, I don't know about the rest of the Board members, we do have some new ones. ASPM, please tell me what that means.

MS. ANDRE: Sure. That's the Application Submission Procedures Manual.

MS. RAY: Thank you so much. And I would appreciate in the future that when you give us

documentation where you're making recommendations, if you would at least spell it out, because it helps us to keep up with where you're going --

MS. ANDRE: Absolutely.

MS. RAY: -- because you're moving fast.

MS. ANDRE: There's a lot to keep up with.

MS. RAY: Thank you.

MS. ANDRE: Thank you.

MR. CONINE: Any other questions of the witness?

(No response.)

MS. ANDRE: Appreciate it.

MR. CONINE: Thank you, Sarah.

Sarah Anderson?

MS. ANDERSON: I think I have someone willing to yield time if I go over. Just in case.

MR. CONINE: Really.

MS. ANDERSON: So, maybe St. David? Yes. Okay. Just in case.

My name is Sarah Anderson, and I'm a consultant and I work with Sarah Andre, and she made it through a couple of the items, and I'm going to discuss a couple more in detail.

The first item that I want to go through has to

do with the addition of the bonus points relating to having a clean application. I think that in theory we agree with this. And if the application was in a state that it was simply because we were lazy or not paying attention and that's why there were mistakes, I would completely agree.

Unfortunately -- and I was up here last year bringing up this issue -- the application is well over eight years old. I take a lot of responsibility for how bad it is because when I was at the Agency I was responsible for putting it together.

MS. RAY: Oh, it was you.

MS. ANDERSON: It was me.

(General laughter.)

MS. ANDERSON: Hence why I have sort of made it my charge to fix it over the last couple of years.

The technology is old, it's very difficult to use, there are huge inconsistencies, it's just incredibly difficult, especially considering now that we're doing electronic submissions. It used to be if we change something, we could print out a page, put it in the hard copy. Now it's very onerous to make changes to the application. And honestly, changes come up until the last second before submission.

So in addition to the physical application being very problematic, there also are some inconsistencies in reviewing, on staff's side, some ambiguities in the materials that we're using, the manual that tells us how to put the application together, the QAP, which tells us what we're supposed to do, we go to these -- we go learn how to put them together at workshops, staff has check lists. There are inconsistencies between all of these documents that are causing problems.

We can say out of the deficiencies we got this year, 15 to 25 percent of those deficiencies were things that were either in the application already, or were not required to be submitted. And usually we just suck it up and send those things in because it really doesn't matter.

It's going to start mattering, and what you're going to have are unintended consequences where we will now fight every deficiency that comes in.

You're also going to see that this will become a huge challenge item. My job will be from now on to go through every single application and find what staff has missed to make sure that nobody gets their points, except for me, of course. So I think that we have some unintended consequences. We would completely back this if

we had a year to go through, fix the application, work with staff.

We submitted to you a list of inconsistencies with the application. It goes on three pages, and these are only things that we remembered off the top of our head. So if -- you know, I volunteer myself, my staff to sit down with staff and spend the next two months, if we can come up with an application or a process that will be cleaner, we would support this. Otherwise, I really feel like it needs to wait a year.

The next item has to do with the amendment process. Currently as it exists, I think it's been untouched for many, many years. The original intention was to assess fees to prevent us from coming back, trying to disincentivize us from coming back, and to making changes, and for those fees to cover staff costs.

Unfortunately, I'm not sure either one of those things holds true anymore. I've put some language in here, one, just a technical clean up. Right now, based on the rules, we're not even notified when a determination's been made on our amendment. It goes to the website, but we're not notified, so I've given language to at least have us at the same time that's something's posted that we're notified.

We'd like to propose -- and I put in very tight time lines. Right now an amendment could take anywhere from two to six months to get through. Development moves quickly and those just aren't working. And I don't know what is reasonable. I put in five days for anything not requiring underwriting, five working days; 10 working days for anything that does require underwriting. I know that that's not -- that was my beginning bargaining point.

(General laughter.)

MS. ANDERSON: So I started low, but I know that that's probably not reasonable, but it needs to be addressed and there needs to be a finite time line, if possible, for some of these.

Also, again, the fee, the one size fits all fee structure of \$2500 just doesn't seem to match up with the amount of work required. I pay the same thing if I want to change the name of my development, or the name of my company involved, even if it's every -- all things being the same, as it would if I did a material change.

So if indeed the fee is intended to cover staff costs, then it needs to somehow correlate to the amount of work that goes into the review of it. And if -- we'd like to see if it's not material, it doesn't have to come to the Board, that there would be no fee assessed at all.

And as a last just general question, we believe that somewhere upwards of half a million dollars a year is probably being collected, that's 200 amendment requests, anywhere from 250,000 to half a million. We'd like to know whether or not that money, if there's money left over after paying staff, could go to the Housing Trust Fund. I'd heard that it wasn't even being appropriated, that it was going to general revenue, and I guess my question is, if someone could follow that up. And if it's not coming back to TDHCA, it seems we should ask for an appropriation that it does.

MR. CONINE: Any questions of the witness?

Yes, Dr. Muñoz.

DR. MUÑOZ: Sir, I've got two questions. Differences in the counting of deficiencies among reviewers. What do you mean?

MS. ANDERSON: There --

DR. MUÑOZ: Somebody says it is deficient, somebody else says, No, it isn't?

MS. ANDERSON: Well, to give you an example. Somebody forgot to include their organizational chart in there. One reviewer would say one mistake, you forgot your org chart, please submit. Another reviewer it might be 15 deficiencies that would result from the lack of that

organizational chart, saying that nothing else could be reviewed because the organizational chart wasn't there.

MR. GERBER: That's significant over-exaggeration --

MS. ANDERSON: Yes.

MR. GERBER: -- of that, but --

MS. ANDERSON: Right. It's an exaggeration, but to illustrate the point -- sorry --

(General laughter.)

MS. ANDERSON: -- to illustrate the point that -- sorry -- but to illustrate the point that it does -- there are some -- some reviewers just look at things differently, and will do a single line asking for something, whereas somebody might do several deficiencies as a result.

MR. GERBER: Which I would add, Dr. Muñoz, is why we have multiple reviewers reviewing things multiple times, to make sure that there is consistency across programs. It's a worthwhile discussion. I'm not trying to debate Ms. Anderson. But we want to -- we need to walk through some of this, and I think doing it off line --

MS. ANDERSON: Absolutely.

MR. GERBER: -- we'll be certainly glad to partner, because I think she raises a number of very

legitimate issues. I'm not sure this is the best one, but --

(General laughter.)

DR. MUÑOZ: These bonus points are valuable?

MS. ANDERSON: Absolutely.

DR. MUÑOZ: Isn't there an inherent incentive to be accurate and avoid deficiencies?

MS. ANDERSON: Yes.

DR. MUÑOZ: Why reward that with additional points?

MS. ANDERSON: I can understand that if it were -- if people paid that much more attention --

DR. MUÑOZ: There would be no deficiencies.

MS. ANDERSON: -- that -- well, maybe not none, but if there were points associated I do think that people might pay more attention. But I think that that's not the main issue that we're trying to address here. I think that we saw a spike in problems this year. I've never seen so many deficiencies come out, and I've not seen so many applications being terminated.

And I don't think it's, on our part, a matter of last second or laziness, I think that there are just some systemic problems that need to be addressed that would help both sides. We would stop making as many of

the mistakes if -- as an example, if I have to input one thing in one part of the application and that particular item, which might be asked for several other times in the application, if I changed it in one place, if it changed across the board, rather than me trying -- you know, rather than someone trying to remember, well, I've got to go back to five different pages and fix those things.

So, you know, this isn't just about this. This is I really believe that if we could work with staff, that it would eliminate a significant amount of staff time that's going into the deficiency process.

DR. MUÑOZ: I presume that staff has these three pages of -- I mean some of these seem very, you know, apparent in terms of the contradictions between what could appear in the QAP and -- I mean, you know, your first point, for example. Right?

MS. ANDERSON: Yes. And you guys have my first set, and I'm trying to set a meeting with staff to go over them. And, you know, a lot of them are things that they just have been happening through the course of the years, and we worked last year to try and fix some things and, you know, there's just always tweaking that needs to be done.

MR. CONINE: Any other questions of the

witness?

MS. RAY: Mr. Chair?

MR. CONINE: Ms. Ray.

MS. RAY: Ms. Anderson, thank you for your due diligence and helping us to serve the citizens of Texas. We appreciate it very much.

I think what I heard from the two Sarahs is that you're looking for more clarity, more objectivity and consistency, and on top of that you want to look at some clarity in the fees structure. As I understand this recommendation right now, this is merely an approval to send it out for public comment. And you will have other opportunities to communicate with staff on your concerns. We thank you for giving us this information. I think when you give this information to staff, that will help staff to bring us a better document before it's "nailed in stone." Thank you very much for your work.

MS. ANDERSON: Thank you.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: I'd like to follow up, if I might, with Mr. Hamby for just a minute before I go to the next witness, because I do need a little clarity here myself along the lines of what Ms. Ray just alluded to.

We've been furnished now with a couple of -- somebody put a lot of thought into this, as did Mr. Henneberger with his. And the question always occurs in November, is this a material change in the QAP that if we want to drill down and make it, and so my question to you is, by them providing this in a public atmosphere today, is it going to solve our material change issue in November or not if we decide -- because I don't want to drill down and do all this today --

MS. RAY: Amen.

MR. CONINE: -- I'd rather do it in November. But if the public has been well served, or notified with this, then we can drill down and do it in November.

MR. HAMBY: Kevin Hamby, General Counsel. Mr. Conine, I haven't actually read the documents.

MR. CONINE: Right.

MR. HAMBY: If you're talking about a fee structure, fees can be changed because it's not a material issue. If you're talking about adding in new items that may be a requirement, that does have to be put into the *Register* because this, while it's an official public meeting, is not the APA process for changing rules. That has to be published in the *Texas Register* and there has to

be a 30-day window for which that discussion is.

So the material non-compliance -- sorry -- one drum here -- the materiality of the rule change would basically be the thumb that if it takes away anybody's right, so somebody thought they were going to get to do something and then at -- in November you pull that back out, the public should have an opportunity to discuss that.

MR. CONINE: Okay. Can we then -- let's assume I've got five people that are going to give us pieces of paper, they've got good thoughts on it. Can we add those as an appendix when we publish in the *Register* so that the public can be notified through the *Register* that there are these sheets of paper floating around that have ideas that may get changed?

MR. HAMBY: For you to actually -- I'm going to have to check on the appendix, I'm not sure how that would work because it'd have to say where it fits into the rule.

Our real problem here for the QAP, and it doesn't apply to any other rule that we have, but the QAP, because we have the statutory deadlines, you have to approve something by September 15 to go into the *Texas Register*.

MR. CONINE: Right.

MR. HAMBY: And in order to make the other

deadlines that are down stream, I think it has to go in this Friday, so it has to go in tomorrow. So if you can direct staff to make these changes, but in order to meet that whole time line down stream you've got to shorten up the process dramatically that people have time to discuss it and staff has time to do a reasoned response, because if you miss this deadline, then you're a week, two weeks down the road before it can come out in the *Texas Register*, so you shorten up that time frame.

So the goal would be to direct staff to include as much as you can in this particular process and to give them an idea of what you are interested and what you're not interested in. Again, if it's dollar changes, as long as they're on notice there's going to be a fee, it doesn't matter if it's \$5 or \$500 --

MR. CONINE: I understand that now.

MR. HAMBY: But for huge changes -- and you can always take things out, you know, like if you have a concern about the -- if you want to test market the issue on whether or not penalty points, or bonus points I guess is what it actually is, bonus points for affirmatively filling out your application correctly, you can certainly put that in, and based on public comment, take it back out.

The QAP is an odd rule just because it's on such a tight deadline. Normally if you have major changes to a rule you just then re-post them. We can't do that.

MR. CONINE: Okay. You didn't answer my question, but --

(General laughter.)

MR. CONINE: -- it's okay.

MR. HAMBY: I did, you just like the answer.

MR. CONINE: No, I heard the answer and I'll show you how I heard it a little later on.

MR. HAMBY: Okay.

MR. CONINE: Granger MacDonald. And he's got time, five minutes.

MR. MacDONALD: Thank you, Mr. Chairman, members of the Board.

I come before you today representing TAAHP. I was dubiously given the honor of being a chairman of the QAP policy side in review. We, again, share your concern about the time lines. We've had two telephonic meetings that we had the entire membership on the telephone, which was interesting enough. I had requested that everybody who was involved send me an email with their proposed changes; that was a mistake. I ended up with a crashed computer and one worn out Blackberry.

(General laughter.)

MR. MacDONALD: But, and I narrowed down the 386 emails that I have, and I will not present all of those to you today, but just the ones that we all were in complete agreement on. I think you'll hear other people speak about additional items.

First, regarding the credit amount, it has been suggested that if two or more experienced developers for a joint venture on a specific application, that the

Department will prorate the credit cap based exclusively on a pro ratio of the developer fee with regard to the ownership interest provided that does not constitute a violation of any related party rules.

The thinking behind this is to help generate experienced developers working with more inexperienced developers, not-for-profits, and HUBs, and so that it doesn't affect your cap and you're not penalized under the \$2 million as much. We think that would be beneficial for the industry to have more of a partnership between not-for-profits and new developers.

Also, additionally, we have seen the points creep up on Ike rehabs from seven points in '05 to 12 points in the last three years, and we'd like to see that go back toward the seven points. And possibly not give

such an advantage to the Ike rehabs.

The 10 percent test in the 2009 QAP, I think you heard mentioned just a few minutes ago about that being changed from the 11 months to the six month period.

In these economic times, we'd recommend that that change not be made this year.

On application fees being charged to perspective residents, right now if you do criminal background checks, criminal credit checks, and rental history checks, and you do any of this inside, in-house, you cannot charge your actual cost for that. Currently it's \$5.50. We'd like to see reasonable reimbursement costs including overhead bill out for this service if done in-house.

Material non-compliance is always an issue that brings up a lot of folks. I think you'll hear from Coach Rose later about some specific ideas. Basically the feeling was that if you have material non-compliance on a property and you fix the items within a reasonable period of time, 120 to 180 days, that your score go back to zero, that you don't have a residual score. These points accumulate up to a total of 30 over a three year period, and if they don't completely go away when you fix the issue, you could find -- and three years is a very long

time, that you might end up in material non-compliance even though you fixed everything onsite.

It is certainly not our position that we want to see things not fixed, but we want to reward the people that when they do find out that there's a problem, they do get in and fix it in a reasonable amount of time, that they have their score go back to zero.

Let's see. There were several discussions about the commencement in substantial construction. This has become an issue because we now state that we have the foundation of the club house, all grating completed with the exception of landscaping, and all necessary utilities available to the property and specific requirements to be eliminated. Each contractor cite locality of different schedules.

Many times you'll find a municipality does not want the utilities done till the project's almost completed. In a larger seniors project where your club house may be actually a part of one your main structures, it may not have the foundation poured in time. We would like to see some flexibility and rewrite on that.

Specifically these requirements should be adjusted to more reflect the percentage of total -- these requirements should be amended to reflect the total

percentage of construction cost and not a specific event, mainly because just construction changes from a state as vast as Texas as to what is a standard in a local area.

I think that covers those; we did most of those. Okay. One of the specific items in the construction. We right now have a \$9,000 limit on site work. While \$9,000 a unit on site work is probably a decent number for site work itself, you have many other items that have been added to that, including landscaping, irrigation. That will drive the cost of construction up over the \$9,000.

Right now, the fix is we all have to go out and provide an engineering letter and a letter from our accountant, and those are running us 5- or \$6,000 a property, and that seems like an unusual expense. If we could have some -- when we're going to do a cost cert anyway.

MR. CONINE: Did I hear his buzzer go off?

(General laughter.)

MR. MacDONALD: About two or three minutes ago, when Mr. Hamby was --

MR. CONINE: Yes, I thought it --

MR. MacDONALD: -- taking a poll.

MR. CONINE: Trying to do two things at one

time.

MR. MacDONALD: That takes care of all that I have. Thank you.

MR. CONINE: Okay. Appreciate it.

Any questions of the witness?

(No response.)

MR. CONINE: David Keegler? Koogler, excuse me.

MR. KOOGLER: I yielded my time --

MR. CONINE: David Mark Koogler.

MR. KOOGLER: -- so Sarah could talk.

MS. RAY: He yielded.

MR. CONINE: Oh, you yielded to Sarah. I'm sorry.

Barry Kahn.

MR. KAHN: Good morning, Mr. Chair, Board. My name is Barry Kahn. I'm a developer in Houston. I'd just like to focus on one general issue, and that's the neighborhood organization additions in the QAP.

Getting neighborhood organizations to support a project is extremely difficult as it is. We often have to even rent buses, show people our other developments, everybody looks at us kind of with a jaundiced eye when we want to do a development in their neighborhood. This

year, in the proposed QAP, there's been additions of several things that have been added that create a very large burden, and almost an impossibility in some situations.

For instance, there has to be a list of the organization's membership that includes the name, address, email and telephone number for each member. These neighborhood organizations, for the most part, aren't overly sophisticated. In fact, some don't even -- I mean we've dealt with some that don't even have their neighborhood organizations on a computer.

We aren't allowed to assist them as the applicant, to even help them organize, if that were the case. What we're doing is we're precluding development in a lot of areas, particularly lower income areas where the neighborhood organizations aren't very organized. And there's no way they can begin to meet these tests.

They're obligated to provide minutes of the meeting in which the decision was made to support or oppose the development, identifying the section of the minutes where the decision was recorded. Again, lower income neighborhoods, in fact, probably most other neighborhoods, don't keep detailed minutes like this. We can't put these huge burdens on neighborhood

organizations, as hard as it is to get their support for a development.

Another issue that was added was a neighborhood organization can't be organized by the seller of the land.

Well, if you wanted -- I mean we want to get some more suburban locations and deconcentrations within the city. More often that involves going into a master -- it can involve going into a master planned community where the development contains hundreds of acres. The seller is the one who created the neighborhood organization. All of a sudden we preclude ourselves from going into those subdivisions.

Then there's a requirement that they accurately certify that all residents within the neighborhood organization's defined boundaries were offered membership in the neighborhood organization. How do they really prove that? And, you know, it's a huge burden.

In Houston we have super neighborhoods that involve numerous neighborhood organizations. They aren't going to have the details on all their members, all these details. They run as an organization, that people come and vote, and, you know, resolution is passed. It's just an unfair burden to place on getting neighborhood organizations to support the developments, and we ask that

these additional provisions be deleted.

MR. CONINE: Any questions of the witness?

(No response.)

MR. KAHN: Thank you.

MR. CONINE: Okay. That's all the witness affirmations I have on that particular agenda item. It was suggested maybe that we have some more discussion about some of these issues in Executive Session at the lunch hour, and then once we do that, we could probably come back and vote on this particular agenda item.

So if we can get a motion to table until after lunch, that'd be --

Oh-oh, you want to comment on some of this stuff? Yes, come on up here. Sorry about that.

MR. GOURIS: That's okay.

Tom Gouris, Deputy Executive Director for Housing Programs. And I don't mean to jump in the middle of this, but --

MR. CONINE: No, that's all right.

MR. GOURIS: -- here's our predicament in general with the QAP and why it gets to be so lengthy over time, and why sometimes there are conflicts between, you know, one set of rules and the other set of rules, that are -- and mesh with the QAP, is that we -- and we should

take the time to address these issues, but it's difficult to do that at this meeting.

We generally hold round tables and have discussions throughout the summer, and have had discussions, and some of these things have come up and some of these things have not come up. And this is a very short notice, very short time frame to be able to make some of these changes.

I would suggest we were cautious about how much we add to the QAP at this point, and look to a spring -- a February rewrite of the entire QAP compliance and our A rules as a major overhaul because I think it's due. The QAP has extended its space in the world over the years because of these kinds of last, you know, last minute adjustments, and then -- so, those are -- that's the bigger picture thing that I've got concern about, about making changes.

The other thing is, the QAP -- we made very few changes to it this -- for this moment. If those changes received a public comment to be removed, they can be removed, and we can move forward. So I would look to things that we could do, if we're going to make additional changes, to make those, things that we can test out there and then remove, as Kevin said earlier, like the things --

the few things that we've suggested.

MR. CONINE: Okay.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I'm still in favor of discussing this at the Executive Session.

MR. CONINE: Okay.

MS. RAY: I'm still in favor of discussing -- tabling this item until after lunch and discussing this in Executive Session because there are some things that I'd like to communicate --

MR. CONINE: Okay.

MS. RAY: -- about the process.

MR. CONINE: Ms. Meyer, you have --

MS. MEYER: I want to tell you why we changed a couple of things so you'll have a little information as to why we did some of the things we did, so to give you a little bit more information in Executive Session to discuss, if you allow me.

MR. CONINE: Okay.

MR. HAMBY: Can I clarify something about what we're going to be discussing in Executive Session? Our Executive Session discussion will be an attorney discussion as to whether or not something is material that

you want to add and whether or not it would impact you in November.

MS. RAY: Thank you --

MR. HAMBY: Okay.

MS. RAY: -- for that clarification --

MR. HAMBY: Thank you.

MS. RAY: -- Mr. Hamby.

MS. MEYER: On the local political subdivision points that was brought up by Ms. Andre, the intent to apply, all we're taking out is the intent to apply. All we're asking them to do is make the application, they don't have to have a commitment, they can still do that once they get their award. All we're asking them is to actually apply. We're taking out the yes, we intend to, or yes, we'll do it later on. That causes a little stress as far as our underwriting is concerned. So all we're doing is taking out that part. We're asking them to at least apply.

MR. CONINE: Before March 1?

MS. MEYER: Yes, sir.

MR. GOURIS: So that we know that funds actually exist for such a program. We've gotten a number of situations this time where what was applied for wasn't even something that they could apply for. So we had no

way of testing if that was even a reasonable source of funds.

MR. CONINE: What do you do in the case of the application round for whatever the funds are doesn't open till March, or I mean April?

MR. GOURIS: That could be problematic, but that also mean that the allocation may not meet our deadline as well, because they have to get a commitment by carry over, so --

MS. MEYER: A commitment, not carry over.

MR. GOURIS: Sorry.

MS. MEYER: For a local political subdivision, they have to have commitment, at our commitment, not carry over.

MR. GOURIS: So -- yes, no it hasn't --

MS. MEYER: So that even shortens the cycle.

MR. GOURIS: -- the application round isn't available for them, there's little chance for them to meet that requirement, and then they'd be coming back and asking you for an extension of that requirement.

MS. MEYER: It's just something to consider. That's the reason why we changed it, is that intent to apply just it causes more stress on our side because we don't even know that it's there. And in an intent to

apply, we get into the place where we are right now and we have several applicants that aren't meeting the conditions of commitment and I'm going to be rescinding credits here this next week.

MR. CONINE: So would a reasonable alternative be if their application -- if the initial application for a local political subdivision is after March 1, would a reasonable addition to this be a letter from the local political subdivision that said that the fund would be available some time after March 1? But we don't want the application until then,

MR. GOURIS: Sure.

MR. CONINE: I mean just trying to cover --

MR. GOURIS: Sure.

MR. CONINE: -- all the bases.

MR. GOURIS: Yes.

MR. CONINE: There's going to be one of those situations come up and then I'm going --

MR. GOURIS: Right.

MR. CONINE: -- to have to listen to the appeal.

MR. GOURIS: Right. Right.

(General laughter.)

MR. CONINE: So might as well think through all

this thing as much as we can --

MS. RAY: I agree.

MR. CONINE: -- and try to close as many gaps as we can.

Okay. Anything else?

MS. MEYER: The 10 percent test, and the reason why we're trying to move it back to the six months, if this whole process in the 2007 and 2008 has not proved something to us, we have a lot of 2007s that haven't even started construction. You've had many developments that have come to you time and time again, we need an extension of substantial construction, we need an extension of this, We need -- it's problematic. We don't have developments that are moving through the process that should have moved through the process. So we need them to move through the process.

MR. GOURIS: And we're hearing from our lenders and the syndicators who are working on those '07-'08 deals, the '08 transactions in particular, that the T cap funds and exchange funds will do them no good if they can't -- if they're not available to them by the end of this year, which they're saying they need a 12-month window to make sure that they can deliver by the end of next year.

You know, so the timing of moving everything up to six months is to say, you're moving forward, you can still get an extension, but if you don't show us that you're moving forward until December, there's not much we can do about an extension, even if we get granted, your lender and syndicator are telling us now that they're not willing to do those transactions. You know, why would they change that story in the future?

MS. MEYER: On the quantifiable community participation, just to give you a little background, this year, the reason why we are requiring a little bit more information is we had several developments that received points for two members within the -- that was their quantifiable community participation support. There are two members in the group; that doesn't really make a community.

But because it's persons living there, that's what we had to put through, and that's two property owners. And so we're trying to make it a little bit more community as it's supposed to be. There were others that drew boundaries around communities that they didn't even include. I mean, those subdivisions, they included houses and they didn't even ask those property owners, you know, if they wanted to be members of that organization. And I

find that problematic.

So that's why we're asking for memberships of the organization, that they actually had the opportunity to join that organization. So that's the reason why we're trying to tighten up, or strengthen the quantifiable community participation area, and I just -- we had a few problems this year, and I think if a developer is going to go out there and get the whole 24 points for the second highest scoring piece of the scoring item, then they need to be doing something to actually get it. Or they just don't get that point.

MR. GOURIS: That's probably an example of a well-intended concept that in order to be meaningful, staff has had to try to come up with some ways to evaluate that so that it was actually what was intended by the original concept. We've got lots of great concepts in the QAP that then have a trail of requirements that become overly burdensome and I think that's the sort of thing that is why the QAP gets to be so long. But it's needed, if that concept is going to be --

DR. MUÑOZ: Tom, let me ask a question, because, you know, this jumped out at me as well. I just -- you know, I can't imagine, I mean these developers having to go, you know, all over and personally interview

everybody and solicit whether they were individually invited. I mean I appreciate and agree with the intent of trying to involve all of these people to be in a neighborhood organization, but, you know, Barry's point about how do you document that, how do you document it effectively?

You refer to this one instance of two people being part of this organization. I mean did that happen once? Because I think the revisions -- you characterized them as we've asked a little bit more. I don't think it's a little bit more, I think it's a lot more.

MR. GOURIS: The developer doesn't do that work. It's the organization that would, and the organization would say, Yes, our membership is open to everyone who lives in this community and we've made our organization open.

DR. MUÑOZ: The emails and the physical addresses and names and all of that would be provided by --

MR. GOURIS: The organization.

DR. MUÑOZ: -- the neighborhood organization.

MR. GOURIS: And if they don't have a membership list, they -- I would think they would be able

to supply the fact that, you know, we don't maintain a membership list, but these are the --

DR. MUÑOZ: And that would be sufficient for staff?

MR. GOURIS: -- these are the active board members, and the membership list moves from time to time, or however they want to explain that situation. It's not something that the developer is required to do. In fact, the developer isn't --

DR. MUÑOZ: Right.

MR. GOURIS: -- supposed to be involved in --

DR. MUÑOZ: Supposed to be involved in the creation of.

MR. GOURIS: -- the develop of -- right.

MR. CONINE: Well, and therein lies the rub, I think, is these are all volunteers.

MR. GOURIS: Sure.

MR. CONINE: They're not paid, they don't have staffs, they don't have an official management companies for the most part. And on the two-person member example, I seem to recall, if this is the same one, that that was a master planned community that was early in the development stages and you just don't have the folks yet. But we have to provide for that to have the ability to --

MS. MEYER: Those are --

MR. CONINE: -- be able to score, even if, you know, if you've got a thousand acres out in the middle o nowhere and you're just starting development, you know, if you want -- if they choose to start with an affordable tax credit deal as opposed to a bunch of single family, they choose to do that. And so you've got to provide the avenue for which that project can score as well as the one in middle of downtown that's got, you know, that's got six homeowners associations wrapped around it.

MS. MEYER: And that was considered, and those were okay. And most of those actually planned communities had several, you know, homeowners already there, the other ones were not.

MR. GOURIS: If it's truly a planned community, that's going to happen, because they're going to have planned it and they're going to have been working with their neighbors to create that vision and such. We've had situations where an apartment -- or dwellers in an apartment complex formed a neighborhood organization, claimed the property next to them.

There were just a few apartment dwellers that were members of this organization, and we -- it made us scratch our head and say, Hey, is that really a

neighborhood organization? Have they really opened it up to the other -- even the other people in the apartment complex to be members of it?

You know, so there's lots of difficulty with any rule as people try to find the edges of that rule.

DR. MUÑOZ: And, Tom, when you had your round table discussions, did -- I mean I presume people weighed in on this? Does this change reflect some of those considerations?

MR. GOURIS: Yes, some of these changes, you know, have been identified before. Some of the things you heard here have been identified before, and staff, you know, is struggling, you know, with how to make those changes. You know, some of them interact with other things. On the neighborhood issues, I think those -- and Robbye can speak to how those were received specifically, but --

MS. MEYER: We didn't get a lot of comment on the QCP. It was -- how we brought it up at the round table is, you know, we made reference that we were going to make some changes to the QCP because we did have, you know, have issues. And there were quite a few developments that we had -- I mean applications that we had issues with. So it's not just one or two

developments, there's a lot of developments that, you know, work around the point situation, and I think it is problematic.

MR. GOURIS: Again, the thing that I want to emphasize is what we've heard already, and that is, you know, the work that needs to be done is a early spring --

MS. MEYER: Yes.

MR. GOURIS: -- you know, start to --

MR. CONINE: I understand.

MR. GOURIS: -- a major revision.

MR. CONINE: Any other questions of staff at this point?

MR. GERBER: Mr. Chairman, since we're going to bring this item hopefully back a little later, if we could give staff a chance to also work through it and maybe have a discussion, I think there may be some ways that we can tweak this so that -- to make it less onerous, but at the same time get the information that the Department needs so that we could say to the Board, you know, we don't think this is a sham neighborhood organization. I mean I think that's what we're fundamentally trying --

MR. GOURIS: Right.

MR. CONINE: -- to get at. We've seen more than a few, and you all get asked to judge what's real and

what's not when a set of neighborhood organization credentials are put forward. So maybe, as we bring it back this afternoon, we can get to a better point.

DR. MUÑOZ: Also, Mike, if staff could also be directed to examine, under the scoring break down in the area of services provided to tenants --

MR. GERBER: Yes, sir.

DR. MUÑOZ: -- if we can look at those services and perhaps disaggregate them and assign some sort of point structure. Also, if we could perhaps add some consideration of some kind of joint use literacy facility. This would require that there be some kind of executed agreement with the local school district of some kind, and I know that there's notification to the superintendent, that there would be some kind of formally structured literacy, academic tutoring program as opposed to what often happens is some empty room that might be called a tutoring lab without any properly trained educational professional there.

Also, under -- let's see, for special -- under the category for special housing needs population, if we could look at adding some kind of emphasis for veterans, perhaps some affirmative marketing program for veterans, and at that point, the category be increased by two for a

total possible point of six be looked at.

MR. GERBER: We'll look at those and we'll come back after lunch with some language.

MR. CONINE: Any other comments from Board members?

MR. GOURIS: Mr. Chair.

MR. GANN: Do you need a motion to table it?

MR. CONINE: Yes, I do.,

MR. GANN: I'll make that motion to table till after lunch.

MR. CONINE: Motion by Mr. Gann. Any -- MS.
RAY: Second.

MR. CONINE: -- further -- and there's a second by Ms. Ray. And no discussion on the motion to table. All those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 7b.

MR. GERBER: Mr. Chairman, Item 7b are the multifamily housing revenue bond rules. They include language to make the 2010 multifamily housing revenue bond rules consistent with other multifamily program rules. These rules will provide greater flexibility and choices

to improve the overall quality of multifamily developments.

The rules contain language that mirrors the 2010 qualified allocation plan and rules that explains that the 2010 QAP once approved by the Board may have changes that would affect the Housing Tax Credit applications that coincide with the bond program, and that the QAP would take precedence over the 2010 bond rules where applicable.

Draft rules will be posted on the Department's website and published in the *Texas Register*, and there'll be consolidated public hearings hopefully between September 18 and October 19 to garner public comment, and we'd ask for the Board's approval to go ahead and issue those rules to solicit public comment and bring them back to you hopefully in November.

Robbye, anything you want to add to the rules?

MR. CONINE: I have no public comment on this particular item, so I'd entertain a motion.

MS. RAY: Mr. Chairman, I move staff's recommendation.

MR. CONINE: Move --

MR. GANN: Second.

MR. CONINE: -- staff recommendation by Ms.

Ray, seconded by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Did I miss somebody?

MR. GERBER: No, no, you're fine.

MR. CONINE: Okay. Item 7c.

MR. GERBER: Item 7c are the REA rules. This item is a request to repeal the existing REA rules and guidelines and publish new rules for comment in the *Texas Register*. The real estate analysis rules and guidelines remain separate from the QAP to facilitate the application of these rules with all the Department's multifamily programs.

The draft rules being presented today include changes resulting from too many sources of input, public input at round table meetings, as well as staff and what we've experienced over the last couple of years to try to get a good strong working set of REA rules. The information in the board materials summarizes the

significant changes. Other changes that are minor or clarifying in nature are included in the black line version of the rule.

The most significant changes between the rules include a new methodology for calculating our gross capture rate that is proposed to replace the current inclusive capture rate analysis. The difference between the two methodologies is the elimination of a turn over factor used in the inclusive capture rate calculation which removes subjective and sometimes conflicting turn over data. As such, definitions were added or changed to reflect that new methodology.

A couple of other minor changes, but you might want to open it up to public comment first.

Brent, is there anything you'd want to add --

MALE VOICE: No.

MR. GERBER: -- to that?

I'll stop there and ask the Board -- what staff is seeking is, again, to be able to take these rules out along with the other rules for public comment, and again bring them back to you with the incorporated changes and hopefully approve them at the November Board meeting.

MR. CONINE: I've got two witness affirmation forms here; two more repeat offenders. Jeff Crozier.

(General laughter.)

MR. CROZIER: Thank you, Board and Mr. Conine.

My name is Jeff Crozier, and I am the Executive Director of the Rural Rental Housing Association. And after my earlier comments today, I do have my thinning shears out now. The 65 percent's got to go.

This is very, very difficult thing in rural Texas to do. I understand guidelines are guidelines, and I understand where the 65 percent rule came from. But as we saw earlier today in the Eden project, when you're, you know, a couple of hundred bucks this way, a couple of hundred bucks that way, you're 65 versus 66, all of a sudden if they fill out their paperwork a little differently we now are feasible again, and all that kind of thing.

I just -- when you start putting percentages in, especially in rural Texas, it's very difficult. Once again, 120 percent of nothing is nothing. So when you start talking about I'm 115 percent over construction costs, 115 percent here, whatever, but in a little 20-unit deal, that's not a whole lot of money.

A long time ago when I was at this Department, we had a discussion one time about efficient use of the credit. Maybe sometimes doing 20 units in a little small

community is better than doing 250 in downtown Dallas. That's an argument either way and we never got to the decision on how that was going to work out, but it is a problem that we always identified.

That's the other thing. When we talked to the real estate analysis arena, they always say their job is to identify risk. They are certainly -- you know, falling back on the Eden thing a minute ago, there's no doubt in anybody's mind that that deal was a very, very risky deal to do. Well, one way of looking at it is certainly you could kill that deal, but another way is for this Department to come back to do the deal where it would be a deal that wouldn't be as risky as it may be.

Maybe instead of relying on the developer to say how much my costs were going to be, maybe the Department could have come back with an offer and said, Okay, for us to look at this deal you need to bring your costs down to XXX and X.

Then you throw it back upon the developer to say, Okay, I've got to pay a big commitment fee in 30 days, less than 30 days, I've got to make carry over, I've got to have substantial construction, I've got to do all these benchmarks that we've got in there, somewhere along the line they're going to wake up and realize that deal's

no good. Then that takes pressure off you guys of killing it, and they've killed it on their own.

So it's kind of a half -- glass half full half empty thing, but the main thing I want to talk about today is that 65 percent rule. Most of my conversations that I hear with the development community, when you start doing those percentages, and especially on this one, the income to expense ratio, the -- you know, a couple of hundred bucks here or 50 bucks, five dollars on the rent, makes all of a sudden this deal fall where it's considered feasible again. So I would like to see that change made.

And then have a look see from just -- from an overall standpoint of the real estate analysis department, maybe start looking at some ideas instead of, you know, on the glass half full half empty scenario, instead of trying to kill deals, let's try to see how we can do more deals, especially in rural Texas where we've determined it's very, very difficult to do things. Thank you very much.

MR. CONINE: Did I hear a suggestion on what to change the 65 percent rule to?

MR. CROZIER: Well, it's one of two things. A, do away with it altogether, or, B, at least give somebody some leeway, because I know you're trying to build a great big box to put everybody in one box. And sometimes it

doesn't work for every -- real estate's not black and white, it's a lot of gray areas. So if somebody's got some leeway to look at the -- you know, maybe -- I mean I know how difficult that is because whatever number you pick, there's always going to be that one guy that's two or three dollars over whatever number it may be.

So I'm not so sure the 65 percent rule is bad for 90 percent of the deals, but, boy, on those 10 percent it sure would be nice if, once again, if there could be some leeway in there, some discussion, you know, just don't just say they ain't feasible and throw them out the door.

MR. CONINE: Didn't the leeway appeal to the Board?

MR. CROZIER: Certainly. And that's -- but certainly we could do some --

MR. CONINE: If they could present the extenuating circumstance of a rural transaction having higher expenses and, you know, more than likely we would at least entertain the motion.

MR. CROZIER: I've been trying to --

MR. CONINE: I, you know --

MR. CROZIER: I certainly understand that --

MR. CONINE: Defending the process, I'll let

Tom or somebody else defend the process even more.

MR. CROZIER: Very much so, but --

MR. GANN: Mr. Chairman, in rural areas, a lot of times it's the number of units that makes it economically not really as feasible as it is in 300 units. And I think if you tied -- if you think about tying it maybe to the number of units, or somewhere have some kind of sliding scale there, that it'd more equitable to everybody.

Because you can't have a manager basically with 20 units as a rule. And you can have four or five managers with 360. So that may be one of the solutions, and we're going to talk about that later I'm sure.

MR. CONINE: Yes.

MR. CROZIER: That's a great comment. Just as long as there's abilities to move around before -- my comment is before it gets to you guys, because you all don't want to sit up here and listen to drone on about appeal after appeal after appeal. But if we can get some directions to the staff maybe to do some things, maybe have two boxes, or whatever it may be, then maybe we can figure all this up before it gets to you guys.

MR. CONINE: Well, but you don't have any complaints about any of the rest of these changes?

MR. CROZIER: Theoretically, no.

MR. CONINE: Okay.

(General laughter.)

MR. CROZIER: That was --

MR. CONINE: Thank you for your testimony.

MR. CROZIER: -- that's the main one I hear about all the time.

MR. CONINE: Barry Kahn.

MR. CROZIER: He may have some comments about it.

MR. CONINE: There's no question he will.

(General laughter.)

MR. KAHN: Hello. Barry Kahn. Actually, it isn't that broad and I'm going to pick up exactly where Jeff left off and make a suggestion. Rules are great, but one box doesn't fit all situations. Right now, according to the rules the only way one can get a modification of the infeasible rules -- and certain things are deemed infeasible and they're pretty hard and set, one of them is the 65 percent rule.

They have new capture rate rules; they may not work in every situation this year. There is a variety of things deemed infeasible. The only way one can get an appeal is on appeal. When does on appeal occur? Very

late generally in the cycle with underwriting. Underwriting is the last department to send out deficiencies and you often hear a lot of appeals right before Board meetings, plan allocations, and near that time.

I'd like to suggest something that would create more flexibility, and that would be, instead of waiting for the appeal time, that the rule be written that in the alternative, an applicant may seek a predetermination of an infeasible rule from the Executive Director at any time. In other words, they could seek it early in the process and see if their extenuating circumstances are such the Department could go in and grant a waiver, or then go to the Board at that point.

And my other suggestion is, and I've spoken with real estate analysis and they said they'd be happy to look at this, with single family houses because it has certain unique circumstances with the capture rate rules that maybe capture rate is not applied to single family homes. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Mr. Stewart, you want to comment on his two suggestions?

MR. STEWART: Brent Stewart, Director of Real Estate Analysis.

Every lender and syndicator has a box that they fit deals into. The box is defined, the deal goes into the box. If it comes out the other side it's a deal that's, you know, worth doing, had the risk profile to do.

The difference between a lender and a syndicator and us is first and foremost we kind of have an octagon that has very rigid sides.

The lender and equity guy can move aside one way and move aside another way to get the risk profile to match what they're looking for. We don't really have a lot of that flexibility in these rules.

As it relates to the 65 percent issue, there is no doubt that a rural deal of 20 units is more likely to have a problem with the 65 percent than an urban deal. Expenses are the same, income, rent limits are much less, particularly with the deep targeting that occurs in the scoring process. You're going to have those deals bump into that often.

But the underlying reason for the 65 percent test is to ensure the long term feasibility if you do, in fact, not have rents increasing and expenses increase faster than you project. And it's kind of an upward cap,

just a safety measure, if you will, to benchmark that off of. And obviously deals like Eden bump into that cap and have the ability to appeal that.

A significant change in the rules that we're looking at is this concept of a gross capture rate as opposed to an inclusive capture rate. And, you know, as it relates to applying that to a single family kind of deal, it does bring into question the underlying how you go about calculating that on a single family deal, and I think that is worth something looking into with Barry.

We have proposed in the rule the removal of the financial statement review, which is something I think the development community and ourselves will welcome. And --

MR. CONINE: What about the application -- or the predetermination of infeasibility going to the Executive Director early on in the process?

MR. STEWART: As I understand that suggestion, it would be that a developer would come in kind of up front prior to the application period to discuss issues relating to infeasibility at that time. There are really only four measures of infeasibility in the rules, and with those four there are exceptions that are provided within the rules.

I know through the underwriting process -- this

is my first year actually going through a 9 percent round -- I know how much time we spent going back and forth with developers trying to get their deal to fit that box. It's not that, you know, we just do the math and it pops out with an answer that bumps into a infeasibility test. So we really do try to work and get the deals to fit into that box.

From a practical standpoint, I think it could get very onerous to go in up front on many, many deals to try to work through these infeasibility issues as opposed to letting them run the course through cycle and through the underwriting process and let the appeals come to you as we cannot get them worked out.

MR. CONINE: Okay. Any questions?

(No response.)

MR. CONINE: Thank you for your testimony, both of you.

MR. KAHN: Thank you.

MR. CONINE: I guess this whole capture rate situation -- well, let me -- come back, Brent, I've got one --

(General laughter.)

MR. CONINE: -- one more question. If we exempt the gross capture rate rule for single family and

just go back to the capture rate rule, would that help alleviate the problem you think?

MR. STEWART: No, not --

MR. CONINE: No?

MR. STEWART: -- necessarily. The --

MR. CONINE: Well, Tom's coming out of his chair.

(General laughter.)

MR. GOURIS: I think Barry would -- or actually Bob Coe if he were here, he'd be able to help share what some of the issues are with single family. I think the issue with single family, particularly if you're building a four-bedroom households -- or four-bedroom units, is dealing with a very small subset of the population, that those households don't fit our normal capture rate models, or historical, or even the new ones.

I think though their history has shown that they've been able to get those things leased up and keep them leased up for a long --

MR. CONINE: Sure.

MR. GOURIS: -- period of time. But because they're so -- the population size is so much smaller and because they don't move as often because it's a much bigger household for them to move, and so they don't, in

the old way, don't get counted in turn over as much because they don't turn over as much.

So there are a lot of reasons why that just -- the single family, particularly when we're targeting the higher -- you know, the larger household sizes, don't meet that, don't meet our normal model structures. They're hard to model.

MR. CONINE: So you'd rather go ahead and apply, have the capture rate, you know, crap out, and then have them come to us and say, because it's single family, why don't you all let this one go?

MR. GOURIS: Well, we have generally been able to work with them to get to some reconciliation on that. Where the problem comes in is if now we expand that to all single family units that include two-bedroom and three-bedroom units; then it kind of overlaps. If it's strictly a four-bedroom transaction, or even just a three- and a four-bedroom transaction, you know, if we could provide an exception, or we could provide some additional dialogue and recognize that we know that's a difficult thing to model. You know, maybe one a year is what we see.

MR. KAHN: Mr. Conine, if I may add, the staff has been very good on working with developers on many of these issues. But, you know, it's just trying to, you

know, define some clarity or some flexibility when such is appropriate.

MR. CONINE: And relieve on the 65 percent rule, you think it's best just to keep it there, or is there some number up to 20 units, 30 units, some number that it makes sense to provide some relief before they -- to give staff the wiggle room before it has to come to the Board?

MR. GOURIS: There certainly could be. The 65 percent though isn't -- is size indifferent. It says something about a transaction being more tight than another transaction. We picked 65 to include rural deals and be able to get there with rural deals.

MR. CONINE: Right.

MR. GOURIS: But a typical deal should really be running at 50 percent or --

MR. CONINE: And we've heard several cases that have had -- you know, they're 2 percent over, or 1-1/2 percent over, and what I'm trying to do is figure out a way to give staff some wiggle room. If we said something along the lines of if a project in excess of 65 percent, up to, you know, 70 percent, and it's less than X amount of units, staff has the ability to go ahead and waive the 65 percent rule for that particular project. And that

should pick up most every rural deal that -- because you're still underwriting --

MR. GOURIS: Sure.

MR. CONINE: -- the debt amount, and equity amount, you're just acknowledging the fact it's a smaller project, probably in rural Texas, that's got higher expenses to it because they've got to hire a manager, they've got to hire a, you know, a superintendent -- I mean a maintenance guy, or whatever the case may be. Because typically it's those salaries that throw things out of whack.

MR. GOURIS: It's actually -- you're right, except for they will also attempt to point lower targeting rents in areas that maybe don't need to have that lower targeted rent because they're median income is so low there anyway. And often is the case that they're providing rent assistance, even at a 50 percent rent, but they target 30 percent --

MR. CONINE: Mr. Henneberger would like that, you know, be flexible with rents,.

MR. GOURIS: Well, that's right, but that has to balance with is this deal, long term, going to be viable, and that's the concern that staff has is that there's no way to determine what's going to happen in the

future, but there are some predictive tools about where we start to see if it's got enough cushion to work in the future. One of the --

MR. CONINE: If you could pick a number in a project, what would that number be, below which you would consider something over 65 percent?

MR. GOURIS: It would have been 60 percent, but that's not --

(General laughter.)

MR. GOURIS: But we'll certainly -- I mean we'll certainly --

MR. CONINE: Now I know what these guys thing about it. And I know I get into these circular conversations with Gouris --

(General laughter.)

MR. GOURIS: I think we could -- we already have an exception for rural deals that have USDA assistance, we already have an exception for deals that have project based assistance, USDA, or --

MR. CONINE: I'm interested in the local bank making the local --

MR. GOURIS: Right.

MR. CONINE: -- you know, just a heads up deal. And they're bending the rules because they don't

fit into Fannie, Freddie or any other box, because they're out in, you know, Muleshoe, Texas, or wherever it might be.

MR. GOURIS: And if there was some kind -- I mean if there was some combination of if you're over that expense to income ratio, you have set aside funds for future -- you know, an additional amount, you know, that gets more complicated again. But then at least we're doing what -- you know, we're preserving the ability for that transaction to show financial viability for the long haul.

If, you know, 68 percent -- I mean I can throw you a number, but it's not going to be --

MR. CONINE: No, the number of units --

MS. RAY: Number of units.

MR. CONINE: -- was where I was --

MR. GOURIS: Oh.

MR. CONINE: -- where would you break the number of units? I mean because, again, I'm interested in helping the small projects, small town, 20 unit deal in Eden, Texas, you know.

MR. GOURIS: I think we already have a developer fee break at 36 units, and that might just be as good as break as any place.

MR. CONINE: Okay. So if we added some language to the 65 percent rule in the rules that said that staff has the ability to go to 68 percent instead of 65 percent on 36 units or less.

MR. GOURIS: Perfect.

MR. CONINE: How would that be?

MR. GOURIS: I think that would be --

MR. CONINE: Okay.

MR. GOURIS: -- great.

(General laughter.)

MR. CONINE: Whew. Any other discussion?

(General laughter.)

MR. CONINE: Far too much already.

All right. I guess we need a motion on Item 7c. And hopefully someone will amend it to include what we just discussed.

MR. GANN: I'll make the motion, and include that the information we just discussed.

(General laughter.)

MR. CONINE: Thank you, Mr. Gann.

MR. GANN: That's what you needed.

MS. RAY: I second that motion, Mr. Chair.

MR. CONINE: There's a second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Now a motion to approve the rule.

MR. CONINE: We didn't just do that? What did we do?

MR. GERBER: Because that -- or was that the whole rule with the changes --

MR. CONINE: That was the whole rule. Do we need -- which included the repeal of the old one.

MR. GERBER: Yes.

MR. CONINE: Okay.

MR. GERBER: Item 7d.

MR. CONINE: 7d.

MR. GERBER: Item 7d is the draft compliance monitor rules. These draft rules, if adopted as presented, would allow the Board to consider reinstatement of an application that was terminated due to material non-compliance if the Board found the following four factors: first, that it's in the best interest of the Department

and the state of Texas to proceed with the award; two, that the award will not present undue increased program or financial risk to the Department or state; three, that the applicant is not acting in bad faith; and, four, that the applicant has taken reasonable measures within its power to remedy the issue.

Some other notable changes include limitations on the individuals, taking into account the scope of a participation review for a city or non-profit, as well as the Board's ability to temporarily suspend other sections of the compliance rule under certain circumstances, or modifications to the evaluation of the uniform physical condition standard inspection reports, as well as some amendments to the utility allowances.

On August 28, staff received comments from TAAHP regarding application fees, material non-compliance, monitoring for HUBs and non-profits, and commencement of substantial construction. Staff is not recommending any of the changes based on their comments about application fees, material compliance, or the HUBs or non-profits. However, we are comfortable with a recommendation regarding substantial construction.

If the Board agrees, the changes will be made to the rules prior to publication in the *Texas Register*,

and Patricia Murphy and might want to come forward and add to this. Or Tim? There. Sorry. Come up --

MR. CONINE: There she is.

MR. GERBER: Anything you want to add to the mix, or highlight why we're going in this direction?

MS. MURPHY: Good morning. Patricia Murphy, Chief of Compliance and Asset Oversight.

One thing that I would like to point out is that part of the reason staff was comfortable with the changes that TAAHP was suggesting regarding the commencement of substantial construction, was because the date for meeting that criteria was being moved up in the draft QAP, and that has been an item that's been discussed. So if the date moves back, staff may not be as supportive of the changes that TAAHP is recommending.

And I understand there's some public comment. I don't know if you have any questions for me before you hear public comment,

MR. CONINE: Well, we have a couple.

Stella Rodriguez?

MS. RODRIGUEZ: Good morning; it is still morning.

MR. CONINE: Good morning.

MS. RODRIGUEZ: Mr. Chairman, members of the

Board, Mr. Gerber. My name is Stella Rodriguez and I'm the Executive Director of the Texas Association of Community Action Agencies. Joining me today are members of TACAA, including several officers and executive committee members of our board.

Several TACAA representatives, including community action agencies administering TDHCA funded housing programs, reviewed the proposed amendments to 10 TAC Chapter 60, the compliance administration, as published in the board book. We have determined that there are several areas of the rules that are unclear, and we seek further clarification.

I have communicated with Tim Irvine and Patricia Murphy and hope to set up a training session in the near future to assist community action agencies with the necessary tools and understanding to ensure successful and compliant projects.

Regarding 60.122, previous participation reviews, we recommend that this function be applied only to the housing projects because throughout Chapter 60, the rules are clearly written for development projects. 60.101, purpose and overview, identified the development projects. We concur that if an entity is out of compliance with the housing project, the entity should not

receive additional housing funds.

Under Chapter 5 of the TAC there's the section of community affairs. Within that there are specific sections in reference to monitoring, and sanctions, and contract close out that clearly spell out the compliance rules for programs under community affairs.

The administration and implementation of a housing project versus a program in community affairs is vastly different. So we recommend that in 60.122 that the sentence reading, "Assistance includes but is not limited to allocating any Department funds" reference the projects identified in 60.101.

In 60.122(I), there's new next that basically says that if it is determined that the executive director, chair of the audit committee, board chair, or any member of the executive committee of the non-profit controls the rental property, that it is in material non-compliance, owes the Department any fees, et cetera, et cetera, the process described subparagraph (d) will be followed, and that process will be -- the result will be termination of an application.

We concur with the language except for the reference to the executive committee. In a recent poll of our network, executive committee membership ranges from

three -- as little as three to 11 members. These are volunteer board members and they are requested to make disclosures and to sign conflicts of interest policies. And so we suggest that the reference to executive committee be removed from the proposed amendment.

And you have --

MR. CONINE: Go ahead and finish.

MS. RODRIGUEZ: Okay. There's also -- minor technical to add business to the three business days under temporary suspension. We've got community action agencies that are multi-service organizations. They are uniquely governed by a board, they partner with stakeholders in the communities, they each offer each other peer-to-peer systems with the Community Services Block Grant, Weatherization, and utility systems.

Unfortunately, because housing projects are so different, we don't have that kind of peer-to-peer system to help each other out. And so it has been a very painful learning experience for the community action agencies, but we hope to work through this process. We want them to be successful and we look forward to working with the staff to accomplish that. Thank you very much.

MR. CONINE: Thank you.

Barry Kahn, one more time. The hat trick.

MR. KAHN: Hello. Barry Kahn.

Mr. Conine, may I ask a question, because the last Board proposal on the real estate rules kind of -- was somewhat general, was the capture rate removed for four-bedroom single family homes, or not?

MR. CONINE: No.

MR. KAHN: Thank you.

Anyhow, what I'd like to talk about is --
(General laughter.)

MR. KAHN: -- anyhow, that's clarity -- is material non-compliance when it comes to investors, and kind of a carry over to developers. We're in a struggle these days getting equity, and fighting with other states to get our fair share here in Texas. There's lots of burdens in the rules on investors when they remove a developer.

One is they have to get a HUB within a certain period of time, or keep coming in front of the TDHCA Board. Another is, if they make a decision on their own not to support a deal because there was a major development flaw and they decide to turn it back to the lender, they are, in effect, in material non-compliance, which means, if they're in material non-compliance, they can't become a substitute general partner again if they

have to remove somebody else.

So we've got some things that have some chilling effects to investors which need to be -- which I guess should be addressed, and the rules need to create some waivers when it comes to investors.

And then actually what's got me thinking about some of this stuff for an investor, who we've been asked to look at some of these things, is the impact on developers. Because you could be in material non-compliance as a result of a foreclosure that can be for things beyond your control. For instance, if there's a catastrophic loss to a property, everybody decides not to rebuild it, the lender forecloses, it's lost to affordable housing and the developer's in material non-compliance, for three years, he can't participate in the program.

We've heard Mr. Hamby say you can't waive material non-compliance. You have -- we're going to have situations coming due over the next few years where loans come due. If it was today, a lot of them can't refinanced. And, you know, is that a developer cause for being disqualified from the program? You know, the list can go on about certain situations.

There has been proposed where the Board could waive it in the remedies in the new QAP, but some of these

are very stiff. If somebody's in material non-compliance, I think it's going to be hard for the Board to say it's in the best interest of the Department to, in effect, do a waiver for a particular deal. And, you know, when it comes to an investor, what do you mean by the applicant has taken reasonable measures within its power to remedy the issue? I mean if it's a big bank who's the investor, you know, that can be very broad.

I think the rule just needs to be narrowed to be in the Board's discretion, not trying to put any handicaps or limitations, and, you know, create much more flexibility for the program in the long term.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Patricia? Where'd she go?

Any -- Mr. Kahn actually brings up some pretty interesting points. We might be interested in your response to those.

MS. MURPHY: We conduct previous participation reviews before people apply for funding from us, so an investor doesn't apply for funding from us, so it would be unusual that that would impact.

MR. CONINE: But if the investor has replaced

the general partner on a previous deal --

MS. MURPHY: Yes.

MR. CONINE: -- what you're telling me then, and then that deal becomes in material non-compliance for whatever reason, and that same investor then wants to participate in the '09 tax credit round. There's nothing to prohibit his participation?

MS. MURPHY: As an investor, no.

MR. CONINE: As an investor.

MR. KAHN: Mr. Conine, what I'd like to point out though, where the rules kick in is for them to become a substitute general partner on another deal.

MR. CONINE: That's -- I guess I'm -- that's what I was getting at.

MR. KAHN: Okay.

MR. CONINE: Even though he substituted on that, it still doesn't preclude the investor from investing in the next deal.

MR. KAHN: Not investing, but taking over another deal as a substitute --

MR. CONINE: Oh.

MR. KAHN: -- general partner.

MR. CONINE: What if you've got to take over two deals, and he's in the dog house on the first one.

MS. MURPHY: And it's the same entity and -- people are going to be looking at --

MR. CONINE: And here comes -- well, maybe not.

MS. MURPHY: We hope.

(General laughter.)

MS. MURPHY: Kevin, thoughts on that?

(General laughter.)

MR. CONINE: Let me ask you about the community action agencies' request to create a carve out essentially for them simply because it's -- they're written for housing related developments. Can you comment on that one?

MR. GERBER: I think Tim's going to step up and come up.

MR. CONINE: Geez, we've got a cast of characters.

MR. IRVINE: No more cable, no more chairs; the music must stop.

Tim Irvine, Chief of Staff. I do not believe that staff would be generally supportive of that, and I'd like to walk through the rationale. I mean what we're talking about here is really a pretty significant departure for this Board on the way that it treats compliance, and I think it's occasioned by the fact that

we're living in unusual times.

Unusual times such as disasters, stimulus, these kinds of things, place extraordinary demands on all of us, including this Board, to make decisions. And what we're proposing here is really to give the Board the decision to make exceptions rather than creating broad, different treatment.

We're asking -- or recommending for the Board to take back to itself the ability when there are truly circumstances that are unusual and unique and militate in favor of an exception to do that, realizing that there was something about the applicant that was problematic in the first place.

Compliance is really comprehensive. Sure, on some of the community action programs it might involve installing installation instead of insulation, instead of building a multifamily property, but it also requires diligent attention to paperwork, record keeping, reporting, all of those things, and we think that those kinds of abilities really cross -- they transfer, they relate.

And we think that somebody's compliance status, if it's bad enough to be material, that the Board needs to be armed with that information before it ever embarks on

making an exception.

MR. CONINE: Okay. And we're -- by passing this we'd be creating that ability for the Board to do that.

MR. IRVINE: Absolutely.

MR. CONINE: Wouldn't that take -- also take care of the double jeopardy --

MR. IRVINE: It certainly could. Absolutely.

MR. CONINE: -- investment situation?

MR. IRVINE: Yes.

MR. CONINE: Okay. Any other questions from any other members of the Board?

MR. HAMBY: I might like to discuss with you all in the Executive Session some risk in that application stuff because this one's after lunch as well.

MR. CONINE: I've got one more witness affirmation, and I apologize for leaving her out. Jean Latsha. She's probably going to bring something up that we hadn't even talked about.

MS. LATSHA: I am. I am. Good morning. Jean Latsha. I'm with the National Farm Workers Service Center. I appreciate the opportunity. I just want to make a few comments about the compliance rules.

But first I wanted to thank Mr. Gerber and his

staff. In addition to the round table discussions and numerous meetings I'm sure he had with other organizations, he took the time to meet with me personally and with other members of National Farmers Service Center to discuss some issues that arose in the 2009 tax credit application round. And, as always, they were very helpful, informative, and willing just to listen to our comments and suggestions as evidenced by some of the changes that are before you today.

Thank you, Mr. Gerber, Mr. Gouris, Ms. Murphy, Ms. Meyer, all of you.

But to get on to the comment itself -- I just have a couple -- Section 1.21(g), that's on page 22 there, reads as a proposed change that a development score will be reduced by the number of points needed to be one point under the material non-compliance threshold provided that, number one, all issues are corrects, and, number two, the owner has a pattern of timely responding within the corrective action period to the Department requests for corrective action.

This language suggests that an owner could either be penalized twice for one past mistake, or not be penalized at all for a current one. If an owner has failed to respond timely in the past, that issue has most

likely already been addressed and duly penalized. The changes as currently proposed by staff is unclear as to whether the current response or the past responses take precedent in assessing penalties.

If an owner does not respond to current issues, but has already responded timely in the past, is that owner not subject to penalty, and if an owner does respond to current issues, but has failed to do so in the past, is that owner still subject to penalty for past most likely already penalized mistakes?

I appreciate what staff is trying to do here, that's if I'm interpreting it correctly, and I think they're trying to give a break to owners that have a good track record. But just as a point of clarification and to avoid misinterpreting this, I think the term "pattern" may need to be more clearly defined, as well as that pattern's importance in comparison with the current issues at hand.

So I think the term either needs to be revised or deleted altogether I think. We suggested some of the original language be reinserted and the statement regarding owner's patterns, like I said, be deleted or revised.

It would read something like, the development score will be reduced, yada yada, provided that all issues

are corrected and all corrective action documentation for the newly identified non-compliance is provided to the Department during the corrective action period. And then if you did want to leave the language about the pattern in there, to just put it subsequently as like should such documentation not be provided, the owner's pattern of timely responding within the corrective action period will be taken into consideration, or something like -- to that effect.

I'd also just like to really quickly comment on the changes on the Board's authority to reinstate applications should they be terminated due to material non-compliance, but really just to say that I'm glad to see that that's in there. We appreciate being able to approach the Board and trust your prudent discretion when those unusual situations do arise.

Thank you for your time. If you have any questions, otherwise, enjoy your Labor Day and college football.

(General laughter.)

MR. CONINE: We most certainly will.

Any questions of the witness?

(No response.)

MR. CONINE: Patricia, could you give -- well,

come on back up to begin with. Would you like to comment on her analysis of the chart?

MS. MURPHY: The current rule allows the points to be reduced one point below the material non-compliance threshold if all of the issues were corrected during the 90-day period. What we're trying to do in this new language is if an owner is not able to correct everything during the corrective action period, but they're following up with us, and they're taking care of things, they're giving us a plan, and working with us to get things corrected, then as soon as everything is corrected, we'll drop their score to below the material non-compliance threshold.

Perhaps, and I guess it's partly my experience in working with owners that I feel real comfortable that we could come up and pretty easily show you patterns of responding and not responding. But if we change it say all issues of non-compliance are corrected --

Do you have an idea?

MR. IRVINE: Yes. This is Tim Irvine. I have an on-the-fly suggestion, but --

MR. CONINE: Well, hang on just a second. I'm not sure it needs to be on-the-fly because we're going to go into --

MR. IRVINE: Exactly.

MR. CONINE: -- Executive Session, so --

MR. IRVINE: Exactly.

MR. CONINE: -- you might can work that out
and bring it back to us after lunch, if that's --

MR. IRVINE: Sure.

MR. CONINE: -- the case.

MR. IRVINE: Yes.

MR. CONINE: Why don't we do that?

MR. IRVINE: Got it.

MR. CONINE: Any other issues you want to
address while -- I have one more issue for you, and that
is I tend to remember the situation a few months back
where we had a public utility come in and tear somebody's
property up, and you came through and inspected it, and
the poor guy got in material non-compliance. Have we
fixed that particular issue in these rule changes, or is
that still problematic?

MS. MURPHY: We have added language to Section
60.116 that talks about how we evaluate property
condition, and we've added some language to address that.

In addition, the rules already had that there no points
for property condition caused by casualty loss, which
those conditions would be.

MR. CONINE: No, I'm talking about the city coming in and fixing the water line on the property, in the middle of the fire lane, and you happen to show up. And let's say it takes them, you know, 60 days to get finished.

MS. MURPHY: We added on page 18 of 32. Do you want me to read it?

MR. CONINE: Yes, please.

MS. MURPHY: Property damage that is the direct result of utility damage or malfunction or repair activity relating to such damage that is beyond the property owner's control, including but not limited to eruption of gas mains and water mains and electrical fires will not be taken into consideration in determining a compliance score provided that the property owner did not negligently or intentionally serve as a proximate cause for the damage.

MR. CONINE: Did you say sewer or storm sewers? I didn't hear you say that.

MS. MURPHY: We said gas mains, water mains, electrical fires.

MR. CONINE: We need to add sewer and storm sewer.

MS. MURPHY: Got it.

MR. CONINE: Please.

MS. MURPHY: Sewer and storm sewer.

MR. CONINE: Yes.

MS. MURPHY: Okay.

MR. CONINE: And if you'll make sure that happens after lunch, we'll take that into consideration.

MS. MURPHY: Absolutely.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: We are going to go to a 45-minute Executive Session. Try to be back here some time before 1:00. We stand in recess. Mike's going to read the language -- whatever the language is.

MR. GERBER: At 12:06 p.m., the Board is going into Executive Session to confer with counsel in accordance with the provisions of Chapter 551 of the Texas Government Code, specifically the section under 551.072 -- excuse me -- under 551.071 subsections 1 and 2, Texas Government Code, to discuss pending threatened litigation, including the inclusive Community Project, Inc. versus Texas Department of Housing and Community Affairs and with respect to conferring with attorneys.

(Whereupon, at 12:05 p.m., the Board convened in Executive Session.)

AFTERNOON SESSION

(Time Noted: 1:05 p.m.)

MR. CONINE: So much for the 45-minute lunch. That's what happens when you add another lawyer to the Board.

(General laughter.)

MR. CONINE: All right. We tabled a couple of items before lunch, and I need a motion to bring them back off the table.

MS. BINGHAM ESCAREÑO: So moved.

MS. RAY: Second.

MR. CONINE: And that was 7a and 7d, was it --

MS. RAY: Let's see here.

MR. CONINE: -- I think, or was it c?

MS. BINGHAM ESCAREÑO: 7a and --

MR. GERBER: Seven --

MS. BINGHAM ESCAREÑO: -- 7d. Correct?

MR. GERBER: 7d.

MR. CONINE: Motion to remove from the table 7a and d. Do I hear a -- and I heard a second by Ms. Ray. Any further -- no discussion. All those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Now we're back to 7a, which was the QAP, I think.

What did I do wrong?

MR. HAMBY: Did you read the language that you took no official action --

MR. CONINE: No.

MR. HAMBY: -- in the --

MR. CONINE: We came out of Executive Session -- we've lost the language.

(General laughter.)

MR. GERBER: The Texas Department of Housing and Community Affairs completed its Executive Session at 1:15 p.m. on September 3, 2009.

MR. HAMBY: And no action was taken.

MR. GERBER: And no action was taken.

MR. CONINE: Okay. Do you have any further clarifying language that occurred during the time out that

needs to come before the Board?

MR. GOURIS: With regard to --

MR. CONINE: The QAP.

MR. GOURIS: -- Dr. Muñoz's comments, we had two items that we are going to add, or change. In the selection criteria under item 9 we are going to -- under the a(I) change the end of that sentence to delete "scoring range" and say "score for each item and the same service may not score more than one item."

And then the next two points, four points, and seven points would be deleted, and instead we would just call out each of the items listed in that next paragraph, and the first item would be "joint use literary center as evidenced by a written agreement with the local school district", and that would be worth two points, childcare would be worth two points, and then each of the other items would be worth point.

MR. CONINE: Okay.

MR. GOURIS: And that would include the last item, which would be any other services provided in writing by the Department -- approved in writing by the Department, and that'd be one point.

MR. GERBER: In total, we're being clear that for the joint literacy center, that facility, that it's

with a formally structured program. Is that --

MR. GOURIS: Well, we -- you know, in an effort to limit language we said that it had to be evidenced by a written agreement with the local school district. We can make that more broad -- or more detailed if you'd like, but --

DR. MUÑOZ: No. No, I think that's sufficient.

MR. CONINE: Do you want any universities in there?

DR. MUÑOZ: No.

(General laughter.)

MR. GOURIS: I will note for clarity one --

DR. MUÑOZ: I have one in mind though.

(General laughter.)

MR. GOURIS: I will note for clarity there's one -- one of the line items -- one of the point items down below is scholastic tutoring, and what -- the way we modified the language is intended to not being able to claim the same points for the same -- or duplicate points for the same service. So they'd have to have -- if they wanted to do both things, have a joint use literary center and do scholastic tutoring, they'd have to be separate service activities. They'd have to --

DR. MUÑOZ: That would entitle them to four

points.

MR. GOURIS: Three.

DR. MUÑOZ: Three.

MR. GOURIS: Three; two for the service --

DR. MUÑOZ: And then --

MR. GOURIS: -- center and one for the scholastic tutoring. They'd be separate activities, separate services is how we'd want to manage that. It's a little -- okay. The second item was we'd add a new number 20. We looked at adding to the tenant -- to number 20 just --

DR. MUÑOZ: Is that the population?

MR. GOURIS: -- the tenant -- special housing needs, but there's a provision in there that you have to set aside 10 percent for those folks with special needs. We're concerned that you may not be able to do that, set aside 10 percent for veterans, so we've taken it and made it its own item, a new item 20 that would come before the tenant population with special housing needs.

And it would say -- and everything else would move down one, and it would say, "Affirmative marketing for veterans, applications may receive six points for this item. The Department will award these points to applications that agree to include in their affirmative

marketing plan for the development of a plan to affirmatively market to veterans. The applicant will be required to report to the Department in the annual housing report on the results of the marketing efforts to market to veterans." So we'll then be able to track and see how successful or unsuccessful that might be.

And those were the two items that you specified.

MR. CONINE: Okay. Any other questions of the staff?

(No response.)

MR. CONINE: All right. I guess we're ready to -- we wanted to, I guess, discuss with staff the comments that we got from several folks, and wanted to have the ability to add those in to the public record and push back the publication till -- from tomorrow, which is Friday, I think, yes, till next Friday so that you guys could have a chance to look over these and publish those so that the public will be aware that those can be commented and changed by November.

If you make sure that happens, I'd appreciate it.

MR. GOURIS: Okay.

MR. CONINE: Any other discussion?

(No response.)

MR. CONINE: Do I hear a motion?

MS. BINGHAM ESCAREÑO: So moved, the Chair's recommendation to make the changes to the draft that you just noted, number 9 and 20, and also to include the comments that we received today, the written comments from the two Sarahs and Mr. Henneberger, and to push back the publication of that draft until next Friday.

MR. CONINE: Do I hear a second?

MS. RAY: Second,

MR. CONINE: Second by Ms. Ray. We need to clarify something.

MR. HAMBY: By including the public comments that you mean, you mean to incorporate those into the rule and put them into the rule as they would exist in the rule?

MS. BINGHAM ESCAREÑO: That is correct. That's what I meant.

MR. HAMBY: Okay. Not a verbatim recasting, and we'll look at those. Great.

MS. BINGHAM ESCAREÑO: That's correct.

MR. GOURIS: And can I ask one more clarification? If staff has proposed a change to the rule, and some of the comments propose changing that back,

is it okay to leave staff's change in to keep the -- till after the comment period?

MR. CONINE: Yes, because we can always just pull it out. It's already been dealt -- well, in my case it's been dealt with.

MR. HAMBY: Correct. Yes.

MR. CONINE: It's the ones that hadn't been dealt with that we need to incorporate.

MS. BINGHAM ESCAREÑO: Okay.

MR. GOURIS: Okay.

MR. CONINE: Any other discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 7d, which was the rules -- no, the --

MR. GERBER: The compliance.

MS. BINGHAM ESCAREÑO: Register the --

MR. CONINE: -- compliance.

MR. GERBER: And Patricia and Tim, come on forward.

MR. CONINE: Okay. I know we had the one change on adding water -- sewer and storm sewer.

MS. MURPHY: Yes.

MR. CONINE: Were there any other changes that occurred during the --

MR. IRVINE: We don't recommend any changes at this time. We believe all the issues that have been raised in public comment would be out there for formal public comment and could be addressed in the final rule adoption.

MR. CONINE: Do I hear a motion to approve?

MS. RAY: Mr. Chairman, I move to approve staff's recommendation on item 7d.

MR. CONINE: Ms. Ray makes the motion with at least the two changes noted.

MS. RAY: With the two changes noted.

MR. CONINE: Any --

MR. GANN: Second.

MR. CONINE: -- do I hear a second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 8a.

MR. GERBER: Ms. Newsom.

Mr. Chairman, Item 8 includes all of our disaster recovery items. Sara Newsom is our Deputy ED for Disaster Recovery, and will walk us through those quickly.

MS. NEWSOM: Sara Newsom, Executive Deputy for Disaster Relief. We can certainly give you an update on our activities to date, but I'll be short and brief, so if you have questions, please feel free to ask me.

Under our Rita I funding we gave funds to three COGs. We're just about finished with that funding. They've drawn just under 83 percent of those funds, so we're moving forward on that allocation. Under Rita II we are moving forward with that state-administered housing program. To date, as of today, there's 816 starts with 283 finished product on the ground. So that is moving quickly.

Under round two, the Rita funds, we also allocated funding to Harris County, the City of Houston, and some multifamily, \$60,000 -- \$60 million in that category. Overall they're about 54 percent drawn under those categories. So we're moving quickly through those

funds also.

Under our multifamily rental program under round two there's been about 838 low income houses -- I mean units restored, and we have had in the last month some ribbon cuttings and those units -- most of those properties are open and ready for business. So that's certainly a boon and they look very, very good.

MR. GERBER: It was very exciting. We actually, in the same day, did dedications -- did a grand opening for three properties, one in Port Arthur, one in Beaumont, and one in Orange, each with about 150 units. So it's a sign of real progress being made on the Rita recovery effort. And they're all beautiful properties.

MS. NEWSOM: They're very beautiful properties. Certainly go far in the communities.

Under Ike I, which is the \$1.3 billion disaster relief, we have been coming to you in the last couple of months to get approvals to negotiate contracts with the 13 subrecipients under that program. To date we have sent out contracts to be signed for all but five of those entities, and those five we're bringing to you today for approval to start that contracting process.

Under Ike I we also have some multifamily. There was \$58 million set aside for rental, and will be

bringing one of those later on to you guys for approval. So we're moving forward with Ike I.

We also have -- this is an update too, for the FEMA alternative housing pilot program that we reported to you previously that we had terminated the contract. We are working on an RFP, request for proposal, to get -- hire another contractor to take over those activities and finish up that pilot program that we have with FEMA. FEMA is requiring us to do a group project in Houston, and we are moving forward with trying to get that off the ground and go forward with that.

The HUD announced \$1.7 billion in continued disaster recovery assistance under Ike, and we have a draft action plan out with ORCA, who is the lead agency. Actually, their name is not ORCA anymore, it's Texas Rural --

MR. GERBER: TDRA, Texas Department of Rural Affairs.

MS. NEWSOM: -- Texas Department of Rural Affairs. Under this draft amendment it splits the funds half between housing and non-housing. We anticipate that we'll have about \$850 million in assistance to the disaster communities.

We have to get that plan out to HUD September

30, so we are going to go forward with that also, and we'll, as one of the agenda items, ask for you to approve the draft, subject to changes that are made because of public comment.

So far there's been five public hearings that we've attended across the country, and heard public opinion on the plan. So we are assimilating that public comment and we'll be visiting with the parties that be to make the amendments to the plan.

MR. GERBER: In general, what we've heard on the plan is that most folks are supportive of providing additional dollars to those local initiatives that we're funding already. So these funds -- they don't want to build two programs, so hopefully it will be simply you see the 19 contracts that we're rounding out today, hopefully these additional funds will be dollars layered on top of those existing programs to go and serve additional Texans.

We'll also have, obviously, an affordable rental housing recovery component of it, which is \$170 million, of which 40 million is going to be set aside for single family rental stock, which was clearly damaged during Hurricane Ike; 50 million for public housing, which also was heavily damaged in the Ike impacted area; and there's also smaller funds that are allowed for title

clearance and legal assistance of \$500,000.

And then the last legislative session we had an impact of -- we had a new law that requires a demonstration be done for -- to see whether or not we could build houses in the Ike, or Dolly, or any natural disaster impacted area more quickly. It's a unfunded requirement. We've decided to \$6 million to do three \$2 million demonstrations, two in the Ike area, one in the Dolly area, to see how many houses we can build with the emphasis being on speed and fast deployment and building a safe, quality product.

And so the only outstanding issue that I think we heard from public comment was that most folks did not like the creation of a small state plan, a state-operated housing program, believing that it would just be duplicative. And I think that we're going to work through that issue.

It's clear that, particularly in the Lower Rio Grande Valley, there's probably going to be a need unless someone steps up, either the COG or some other entity, to run a housing program. So we might, in fact, be the operators of that. We're going to have to work through it with locals in the other areas to see whether or not there are other entities like the COGs who could serve as the

catch basin for these small towns that, you know, are eligible for funds, but may not ultimately have capacity.

So those are some of the issues that we're dealing, but in general you'd say that from the public hearings that we held, that the reviews were favorable of the housing plan that we --

MS. NEWSOM: Yes, I think so, very favorable.

MR. GERBER: There are issues with ORCA's formula, that I think Maddie Sloan referenced earlier, that are going to cause and trigger two more hearings before the plan is actually submitted to HUD, so we're going to have the opportunity for refinement.

But what we're asking the Board to do today is to approve the draft amendment which is the TDHCA portion of this action plan to basically allow us to do in no small part more of the same, but hopefully bringing a little greater consistency and effort to try to more deeply target more families who are at lower incomes, and to provide some assistance, particularly for title clearance and other legal issues that became so problematic with Hurricane Rita.

So that's --

MS. NEWSOM: So that gives you kind of an update of what we've been doing, and --

MR. GERBER: Moves into --

MS. NEWSOM: -- moves into --

MR. GERBER: Item 8b.

MS. NEWSOM: -- the next agenda item.

MR. GERBER: Yes.

MR. CONINE: I've got -- Don Atwell turned in a witness affirmation form. Do we need to listen to him?

MR. GERBER: No, he's taken a pass today.

MR. CONINE: He's taken a pass. Okay.

MR. GERBER: We're glad you're here, Don.

MR. CONINE: Okay. Move on into 8b.

MR. GERBER: And, again, Mr. Chairman, we would ask for a motion to approve the draft amendment to -- which is the housing component of the Texas Action Plan for the second Ike round of funding.

MR. CONINE: Okay. I've got some comments.

John Henneberger.

MR. HENNEBERGER: I'd like to yield my time to Joe Higgs.

MR. CONINE: You would. Okay. Joe Higgs. You've got five minutes.

MR. HIGGS: Thank you, Mr. Chairman. My name is Joe Higgs. I'm an organizer with Gulf Coast Interfaith, which is a coalition of congregations in the

Texas Gulf Coast. I've been working on disaster recovery really for the last four years, since a group of ministers in Orange and Jefferson Counties formed Southeast Texas Interfaith Organization.

Our organization really repaired and rehabilitated 200 homes in West Port Arthur, and worked with other organizations that have rehabilitated or put roofs on about 2,000 homes over in East Texas. Since Ike, I've been working exclusively in Galveston County where we've created Galveston County Restore and Rebuild, and we've rebuilt 125 homes in the last six months.

Today, however, my concern is about this amended action plan, and there really are two parts. There's the program, which I think I'm fine with. You've done an excellent job and all the housing elements are terrific. But I have a real concern about the funding part of it.

MR. GERBER: Joe --

MR. HIGGS: Yes.

MR. GERBER: -- can I interrupt? The Department has no jurisdiction over the formula that's being used.

MR. HIGGS: Correct.

MR. GERBER: It's solely --

MR. GERBER: Correct.

MR. GERBER: -- resides within the purview of the Texas Department of Rural Affairs.

MR. HIGGS: I understand. I just don't -- I just --

MR. GERBER: It's beyond the scope of this Board.

MR. HIGGS: Well, let me just say, I recognize that I am here today talking to TDA and not the ORCA board. But you are charged with really overseeing housing for low income people in the state of Texas. And so what I wanted to talk with you about today is not to -- I don't have a dog in the fight about which area gets how much money. My big concern is that there is enough money for housing and that it gets appropriately and properly distributed around the state. And I think the funding formula, as it exists now, does not do that.

And so I'm suggesting that I think you do have a role in talking to the Governor and the Governor's staff to improve the plan and maybe even prevent a train wreck that's going to take everybody down with it, and that's really what I wanted to talk with you about today.

Let me just point out to you, if you haven't had a chance to read all this voluminous material, there's

really two relevant documents. ORCA has put together a funding allocation model which is what HTNB prepared in its -- it's basically a model that bases allocations on wind, rain, and storm surge. And then there's the plan, which is what you're voting on today.

ORCA felt it necessary to create this funding model because they said when Ike hit right on the heels of Dolly, all the FEMA staff was pulled out of the Valley and they could not do a proper damage assessment of the Valley. And so to quote their plan, or their formula, it says, "Consequently, a special funding allocation model was designed to help fairly distribute the funds between the areas affected by Hurricanes Dolly and Ike."

So their purpose was to create a formula to divide it between Dolly and Ike. The problem is, is that formula is now being used to drive all of the money, not just the division between Dolly and Ike, but all of the housing money is being allocated according to a formula which really doesn't make sense.

Now let me just give you an example. For those of you who aren't from the Texas Gulf Coast, the counties from west to east are Galveston County, Chambers County, Jefferson County, Orange County. And if you, you know, if you want to dig around in these formulas that they have,

what that tells you, according to the damage formula, Chambers County had a storm surge twice the storm surge of Galveston County, and Jefferson County had a storm surge four times greater than Orange County. And if you think about that, that makes some sense, the storm surge washing in over those two areas and it caused a lot of damage.

But the -- and so since money follows storm surge, Chambers County generates more money than Galveston County, even though Chambers County has 3200 damaged homes; Galveston County has 10 times that. And it also gets more money than Harris County, which has 30 times more damaged homes than Chambers County. Same thing in Jefferson and Orange Counties. Jefferson County generates four times the funding under this model than does Orange County, but if you look at the FEMA damage assessments, Orange County actually has more damaged homes, and people in Orange County have received twice the amount of money for damages from FEMA than has Jefferson County.

Now how could this happen? Well, because the storm surge, which is what they're measuring, washed over Chambers County, which is a lot of pasture land, and western Jefferson County, which is, again, a lot of pasture land, it didn't hit Port Arthur because of the levy. It went around Port Arthur and it flooded Bridge

City, wiped it out, and it went all the way into Orange. So on both sides of the storm surge people got hit because that's where people were living.

But we're giving money on a formula that's allocating it for going over a pasture land. Okay. So literally 100 acres of pasture land that got hit by wind, rain and storm surge, would get three times the money than 100 acres of urban city that got hit only by 10 foot of storm surge, or 100 mile an hour winds. That doesn't make sense.

Another example is in rural areas. ORCA had 20 -- there's seven COGs, which they have now formed into a pool.

MR. CONINE: Was that five minutes?

FEMALE VOICE: Yes.

MR. CONINE: You need to wrap it up.

MR. HIGGS: Okay.

MR. CONINE: Go ahead and finish.

MR. HIGGS: I'll make two other quick points.

The problem with this is, is it's going to allocate too much money to areas which don't have damage -- that don't really have damages. So it's going to put in about \$200 million into three different areas, debt COG, into this pool of counties, and into the Lower Rio Grande Valley.

All three of those COGs have said they don't want to spend money on housing. They've said that publically. We want to convert it into infrastructure. And right now your request that they put 50 percent of the money is optional. They've already said, We're not going to do that; at our first opportunity we're going to convert that money into infrastructure.

The problem with that is, is that's -- right now you're at 50 percent housing, and housing is the way you improve low to moderate income. If they reallocate 200 -- if they allocate to exactly the same formula they did in round one, you're going to move \$219 million out of housing and into infrastructure. It's going to move your housing figure from 50 percent to 43 percent, and I think it puts the state at risk for not making the LMI requirement of 51 percent housing.

I have three quick suggestions that I'd like to make. Number one is, the weather model only be used to divide funds between Dolly and Ike, like they said. So use it for what you said you made it for. Number two is, the problem is we have an infrastructure friendly model, which basically spreads the wealth, anybody that gets rained on gets some money, used to allocate housing dollars. What we should do is divide the two pots, say 50

percent housing, 50 percent infrastructure, so that's \$712 million, in that neighborhood, for housing, and we should use the existing FEMA damage information to allocate the housing pot.

There's about four or five different sources of very good data that you can use, and they're very consistent. I don't know if you've passed those out yet, but they're very consistent in showing how much money -- how much damage was probably in each region. We shouldn't be ignoring that data. If you don't like that data, then file a partial action plan to the federal government and say, We're going to get back to you in three months after we have done our own damage assessment.

You know, why would we allocate \$712 million for housing when we don't really know where the housing damage is. All I'm saying is that's a lot of money to allocate without -- using this weather model that clearly is giving money to areas that don't need it.

So I would -- the other part -- half of that money, let them use the model to allocate the -- you know, that's really what they want, is let them allocate the infrastructure money using their model, because that spreads the money around and makes everybody in the rural counties happy.

Finally, if you don't do those things, if you don't find you can do it, then you absolutely have to stand with the staff and oppose ORCA's proposal that a COG is able to say, We can't use this money, but we're going to convert it to infrastructure. Your staff is saying, Use it or lose it. If you don't use it on housing, it ought to go into a pool and be used somewhere else in the state. That's absolutely the right policy, because otherwise it's a perverse incentive to set up a very unfunctional housing program and say, Oh, look, nobody needs it, we're going to convert it into infrastructure dollars.

So you've got -- I think you've got to talk to the Governor's staff and help them see this is potential train wreck if you don't get the -- if you don't get enough money into housing.

MR. CONINE: Okay. Any questions of the witness?

(No response.)

MR. CONINE: Staff response, I guess, at this point.

MR. GERBER: Joe makes a lot of important points, and we have worked diligently to try to make sure that housing is as much of a component of this action plan

as we can make it. Unfortunately, we do not have any responsibility or jurisdiction over determining how the formula was derived at. And, you know, we, I believe, have worked hard to try to empower, it's been -- the decision's been made, not by this Board or by this staff, to go and to allow COGs to make the decision ultimately about how much money will be allocated for housing, infrastructure, and economic development.

So while the numbers that are in the plan are real numbers that the formula popped out, there still remains maximum authority by the COG to go and move dollars from housing to infrastructure, or infrastructure to housing. We certainly hope that in many regions where the housing damage is profound, as we saw for example in the Houston-Galveston area council region, a tremendous amount of those dollars went appropriately so to housing.

I agree with you, and no formula is perfect, and one thing we discovered, Joe and I together during Hurricane Rita, was that the thing we can all agree on with the FEMA numbers was that they were inaccurate universally. And so -- but they were the best we had. And the attempt was made to try to address that with this formula, and I don't know that they're closer.

But, and by virtue of this Department not being

in the lead agency role, and we certainly respect TDRA's role as lead agency on the formula, we will work to ensure that any funds that the Department gets based on this process go once again to those persons of lowest income and of greatest need on our side of the grant. Whatever we have to administer, we will ensure that we will at least be at 51 percent on the meeting low to moderate income, which is a requirement placed by HUD.

Because we try -- you want to serve people of low to moderate income, you should serve people with low to moderate income, and we feel good that on Hurricane Rita we are overwhelmingly serving people with low and moderate income. And on the first round of Ike funds, these 19 contracts, as best we can tell, we're probably at 67 or 68 percent serving low to moderate income. So we're, to some extent, feeding the infrastructure and economic development side to be able to have more flexibility.

So hopefully the folks on that side are incented to put more money into housing and we'll recognize those needs and we'll try to get that message out as well. But it's, again, local choice has been -- there's every effort being made to respect local choice here, and it's a challenge because serving the poor people

who have been impacted by these storms is very hard and we're trying our level best to serve the same folks, Joe.

And, Sara, you want to add anything?

MR. CONINE: Didn't you say there was a couple more hearings that are --

MR. GERBER: We will do two more, one with ORCA. ORCA told us yesterday that they would be doing one on September 18 in Weslaco, and September 22 in Houston. I don't think those dates have been confirmed, but that's tentative.

MR. CONINE: Okay. Any other questions of the witness at this point?

(No response.)

MR. CONINE: Thank you for your --

MR. HIGGS: The only thing I'd like to say also, I'll be happy to provide to your staff kind of the analysis that went to this. But I think if you really look carefully, you're going to have -- if this doesn't change, you're going to have some regions getting as much as \$550,000 per, you know, seriously damaged homes, and others getting 30,000. You're going to have, you know, some counties, individual counties getting more than a million dollars per seriously damaged homes. And I think that's going to look silly. And I just think it's all --

we're all one state, and somebody better get ORCA to wake up.

MR. CONINE: We will do our best. Thank you for your testimony.

Any other discussion?

(No response.)

MR. CONINE: Then I would entertain a motion, I guess, on the agenda item, 8b, on the approval of the plan.

MS. BINGHAM ESCAREÑO: Move to approve.

MR. CONINE: Motion to approve. Is there a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 8c.

MR. GERBER: Mr. Chairman and Board members. Item 8c is the last of those 19 Ike contracts for round

one of funding. So we're asking your approval of funds for Liberty County, Brazos Valley, Chambers County, City of Mission, and Willacy County in the amounts that are listed in your board book.

Each has provided to us a description of how they will use their funds, and we believe that they are appropriately targeting low to moderate income households and are achieving the national objectives of serving those folks who have no other means of assistance.

MR. CONINE: Do I hear a motion to approve?

MS. RAY: So moved.

MR. CONINE: Motion by Ms. Ray.

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 8d.

MS. NEWSOM: 8d is the recommendation for approval of the multifamily application under the NOFA.

It is -- the NOFA closed August 14, we got about 22 applications for this \$58 million. This is the first recommendation out of that pot of funds, and we anticipate bringing the rest in the next couple of months.

MR. CONINE: Okay.

MS. NEWSOM: This particular one is Orange-Navy II which is located in Orange, Texas. It consists of a rehab or 25 units in an apartment complex that was damaged by Ike, and is currently vacant. And an additional 11 single families scattered site homes, rental homes in that area. And it's in that same area that we put funds in, in an apartment complex, disaster funds in and we just had an opening. So it will go far to revitalize this neighborhood.

There is one little thing, a disclosure that I think that we need make, and that is that our NOFA refers to the QAP, and the QAP, in the QAP it says that we cannot rehab properties that are located in the flood zone, the hundred year flood zone. Nearly everything that we're trying to do in disaster is located in a hundred year flood plain. It is okay under the CDBG funds to rehab in a disaster area or a flood zone, as long as flood insurance is carried on the property itself.

So with our -- advice from our legal --

advisories.

MR. CONINE: You want me to think of a name for it?

MS. NEWSOM: Yes, thank you.

(General laughter.)

MS. NEWSOM: That was pretty good.

MALE VOICE: They go for a time for the praise you think they need.

MR. CONINE: We could probably sell that opportunity and raise some money for the Housing Trust Fund. Right?

(General laughter.)

MS. NEWSOM: So, yes, we are going to go with the CDBG requirements because they do allow the rehab of properties in a flood zone, or new construction, and we are asking for approval of this site.

MR. CONINE: Okay. I have one, two, three, or four, or however many witness affirmation forms here.

Bill Fisher.

MR. FISHER: I'm yielding my time to someone else.

MR. CONINE: Oh, okay. Who would that be?

MR. FISHER: Mark Viator.

MR. CONINE: Okay. Mark, come on up.

MR. VIATOR: Thank you, Commissioner, Board, Mr. Gerber. Before you get started, I'd like to say that the remarks by Mr. Higgs, I would counter those remarks because the -- I felt the TDHCA did a great job from a standpoint, and even the Governor's office, of involving the COGs. I personally worked with the Southeast Texas Regional Planning Commission, Kandi Anderson, who works for TDHCA on Rita; I led the recovery coalition and -- you know, for Hurricane Rita, and they got plenty of input. We were -- we did have issues with FEMA numbers, and as Chairman of the Port Arthur Chamber of Commerce, I'm very familiar with what's taking place in Southeast Texas.

The COGs have received great -- have had great appreciation for the input that they've had, and they have been very responsible at having infrastructure and housing addressed. And in addition to that, I'd like to commend the TDHCA on the Rita program. There are many houses being built, we're seeing them pop up everywhere, and it may have started slow, but ACS and Shaw have done a great job, and that program is really running in a great way. I mean there's no place that you drive that you don't see these new houses in Beaumont and Port Arthur and other places.

The second thing I want to share with you is

that there is a great need for multifamily in Southeast Texas. A lot of multifamily projects have been placed in Port Arthur and Beaumont. There's a great need in the rural areas such as Kuntz and Vidor and some of the outlying areas, some of the areas that have been impacted and, you know, so the Orange-Navy II project's a great project.

The third thing I'd like to share with you is I've been working with Mr. Fisher in Galveston. We met with the mayor there, met with Jeff Sjostrom with Economic Development. There's approximately 100,000 people who work on Galveston Island, 70 percent of those people rent and only about 30 percent own homes. There's a great need for multifamily housing for their workforce housing, as well as for the disadvantaged on that island.

Odyssey currently had a tax credit project with Bay Walk. They need additional CDBG funds, and they have the other -- there's Champion Homes at Bay Walk, and Champion Homes at Marina Landing. These are two projects that are ready to do, he has tax credits on one. I would just ask that the Board would support these projects because the bottom line is as we -- and the state has done so well. It took a while after Rita, but it's done so well with Ike.

We need these projects that are ready to go to be able to be put in place to be able to help those help those people who are disadvantaged, impacted by the hurricane. That's all I have. Thank you.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Robert Onion.

MR. ONION: Chairman, Board members, Executive Director. My name is Robert Onion, Odyssey Residential. What I wanted to talk to you today is to see if you could help me with a timing issue.

As you learned, the 58 million in NOFA funds, the majority of the awards are going to be made next month. We, Odyssey Residential, has filed two applications. We were one of the first to file these applications after the 36 units and below were allowed first priority.

The issue that we run into is a timing issue. The timing issue is, from a feasibility of funds, with the Tax Credit Department. And if that determination is made in this month, and yet the award for CDBG funds, or the 48 million, is awarded in October, then we are told that we are not feasible and that our application is denied.

And so I'm basically asking you to consider the CDBG funds as a feasible source of funds. We did make application, there seems to be sufficient available funds, it's not over-subscribed, and so we would like for you all to consider this. Now this may not become an issue, but certainly it's something that could, from a timing standpoint, with the two different divisions.

MR. CONINE: Okay. Any questions of the witness?

(No response.)

MR. CONINE: I assume those two guys talked to each other? Occasionally? CDBG and tax credit folks talk to each? Okay.

MR. ONION: Thank you.

MR. CONINE: Great. They talk to each other. That's good.

Okay. That's the -- no, Chris Igbari [phonetic].

MR. IGBARI: Only if you have questions about Orange-Navy II.

MR. CONINE: Sounds like the Orange-Navy is doing okay. Thank you.

Okay. Any further discussion, questions?

(No response.)

MR. CONINE: I'll entertain a motion.

MS. BINGHAM ESCAREÑO: Move to approve.

MS. RAY: Second.

MR. CONINE: Move to approve by Ms. Bingham, second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 9a.

MR. GERBER: Robbye.

MS. MEYER: On 9a -- Robbye Meyer, Director of Multifamily. 9a is the amendments for the tax credits. The first amendment we have is the Villas at Henderson. The owner's requesting acceptance of the development to contain 17.765 acres of land as specified in the cost certification instead of 19.89 acres as originally approved by the Board.

The staff reviewed the relevant documents in the application and concluded that it was the intention of the owner to develop the 17.7 acres and provide a right of way with the remaining acres. Staff recommends the

approval with no penalties.

MR. CONINE: I have a witness affirmation form from Justin MacDonald. Would you like to come forward?

MR. MacDONALD: Thank you, Mr. Chairman, Board members. My name is Justin MacDonald. I'm part of the group that developed and owns the Villas at Henderson.

I think Robbye pretty well laid out what's going on here. I'm not really sure where the 19.8 acres actually came in. It appears to have been maybe from an ambiguous note on a survey, or something of that nature. But consistently throughout the application we had the 17.7 acre number. That was with the two acres that was subtracted for public road right of way that it was part of the original tract we purchased.

Because of that we are -- we filed the amendment as requested by our cost cert reviewer just to keep things on track. We actually had sent this cost cert in on January 14, and it's still in process with the Department at this time. So just get things going, we sent the amendment in, we sent in our \$2500. We'd respectfully request that that be refunded because we don't feel that we made an error or misrepresentation anywhere in our app.

I also kind of take exception to the fact that

our cost cert has been in the Department's hands since January 14. It took till March 26 before we received any response with questions or deficiencies on that. We responded immediately and then throughout the process, again on May 21, and again just recently on August 20, we've continually been asked for more information from our underwriter basically wanting to reunderwrite the project over and over again, which has also placed an undue burden on our staff. They have to take basically a day out of their time to respond to these questions, which are generally the same questions over and over.

So I just wanted to take this opportunity to sort of air those grievances, but also to ask for your favorable consideration of our request.

MR. CONINE: Okay. Any questions of the witness?

MR. GANN: I move we accept -- if you're ready.

MR. CONINE: I'm ready.

MR. GANN: I move we accept staff's recommendation, including the no assessment of the fee.

MR. CONINE: You move staff recommendation including no assessment of the \$2500. Is there a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further

discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Next one.

MS. MEYER: The next one is Cambridge Crossing Apartments. The owner's requesting an approval to changes to optimize the site plan in conformity with grating and drainage requirements. The request asks to increase the number of buildings from nine to 20, reduce the number of building types from five to two, increase the unit types from four to seven, increase the total parking spaces from 65 to 120, and change the ratio of hardy plank siding to masonry veneer.

Despite the number of changes, the documentation reflected in the final plan is unit mix and the mix originally proposed is the same, 46 one-bedroom units and 14 two-bedroom units. Similarly, staff reported that the redesigned units would meet the applicant's minimum unit size requirements. Staff has found the final net rentable area square footage would be approximately .5

percent larger than the original square footage, and staff has also considered the original and final features of the development to be substantially similar.

Staff found that neither the threshold requirements, nor the scoring of the application was affected by the changes, and utilizes the same site. Staff recommends approval without penalties.

MR. CONINE: Any discussion?

MS. RAY: Any public comment?

MR. CONINE: No public comment.

MS. RAY: Mr. Chairman, I move staff recommendation.

MR. CONINE: Whoa, whoa, whoa, whoa, wait, wait, wait, wait, wait, wait, wait, wait. No public comment on that one.

MS. RAY: Then my motion to approve staff recommendation stands.

MR. CONINE: Motion to approve staff recommendation. Is there a second?

DR. MUÑOZ: Second.

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Dr. Muñoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: The next amendment is Southern View Apartments. The owner is requesting to change the site plan and building floor plans. The amendment proposes a site of 5.03 acres of land instead of 4.56 acres recorded in the application purchase contract. The amended development site includes 23 residential lots in the application purchase price, and the alleys between the 23 lots, and a vacated 65-foot right of way of a portion of Oklahoma Street that were included in the original plan.

The building plans, the owner proposes to build four residential buildings instead of the original three buildings, and to redistribute both of the residential and common buildings over the site. The owner has affirmed that the net rentable area unit mix and amenities would not change. The changes were said to enable the construction around the existing utility easements without relocating the utilities. The staff is recommending approval without penalties.

MR. CONINE: No witness affirmation forms. Do I hear a motion?

MS. BINGHAM ESCAREÑO: Moves staff recommendation.

MS. RAY: Second.

MR. CONINE: Move approval, second by Ms. Ray. Is there any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: For this last amendment that you have, it's a little bit different than the others. You heard public comment earlier of the Blackshear amendment.

The owner is requesting approval to add eight additional sites to the development plan. The development is comprised of single family residences, and the number residences, unit mix and net rentable area would remain the same under the amended development proposal of the plan.

Staff is not recommending this amendment

because it would not continue to meet the threshold requirements. And to give you an idea of what we're doing, if you look in your Board materials, they're actually adding additional single family sites. And if you see mine, the green site -- the green spaces is what actually was the original sites, and the pink ones are the ones that they're adding.

The threshold requirements is they have to have an environmental assessment on all of the sites at the time of application, and they have not done that for this application, for the new sites. And they don't meet the threshold. So they're -- they don't meet threshold at this time, and that's the difference between this application and this amendment as opposed to the other amendments that you've heard, and that's why staff is not recommending this particular amendment over the other ones, even though it does have changes, and the others do have changes as well. But this one does not still meet threshold.

MR. CONINE: I have one witness affirmation form. Granger MacDonald.

MR. MacDONALD: Thank you, Mr. Chairman. I'm here speaking for my opposition. When we went to -- we were the competing project last year with the Blackshear

folks, and I'm speaking on their behalf because of the need in San Angelo, Texas. In 1997 Mr. Ford and I developed 112 units in San Angelo. There was one Ike rehab since then, and we're under construction with 120 units -- we're held up now waiting for TCAP, but we're under --

(General laughter.)

MR. MacDONALD: -- hope to be shortly under construction with 120 units. So basically you've had 232 units in a town of 100,000 people since 1997.

These units are very, very definitely needed. I understand the threshold problem. I understand it better than anybody else in this room because my Victoria project was terminated over the same issue of not having a contract on the land the same period of time.

I would recommend that the Board take and consider this very strongly. Of course I'd love for you to reconsider my Victoria deal as well --

(General laughter.)

MR. MacDONALD: -- and reinstate this project with the amendment. And use your discretion to look past these threshold issues because I think that there's a heck of a hardship here in San Angelo. Thank you.

MR. CONINE: Thank you.

Any questions of the witness?

MS. BINGHAM ESCAREÑO: Robbye, the SKG document that was passed out earlier in public comment, did you get to see that?

MS. MEYER: No, ma'am.

MS. BINGHAM ESCAREÑO: I'm not knowledgeable enough to know that when the gentleman passed it out he said that it addressed the environmental issue. Do you want to grab --

MS. MEYER: I don't --

MS. BINGHAM ESCAREÑO: Did you get to see it?

MALE VOICE: Who didn't get a copy?

MS. BINGHAM ESCAREÑO: I'm sure it's --

(Pause.)

MS. MEYER: Well, it still doesn't meet the -- we still don't have the environment assessments on all of the properties that are being --

MS. BINGHAM ESCAREÑO: Okay.

MS. MEYER: -- submitted. No, it doesn't address the threshold issue.

MS. BINGHAM ESCAREÑO: Okay.

MR. CONINE: I wanted to ask about the city council evidently reserving 20 of the tax lots in some motion, ordinance, whatever they do. Did you guys have

record of that when it came through?

MS. MEYER: No, we didn't. They did have -- they made a motion and the city had control of those lots, from what I understand. As far as the applicant -- and they didn't -- they only proposed the original lots, and that's the lots that I just showed you, and that's what they had in their application and that's what they proposed to us.

Now what they actually -- what the city had -- the city's donating the properties.

MR. CONINE: Right.

MS. MEYER: And so I mean that's -- what they had -- what they set aside for this --

MR. CONINE: When did it change from eight to 16 units, I guess is my question.

MS. MEYER: That's been -- well, to us it's been recently when they made the amendment. Now what the city decided -- now, they might have done that earlier. This was back -- this was actually a forward commitment from last year. But they actually were able to take an '08 -- and we actually did a carry over for them in '08. They went on and closed.

MR. CONINE: So --

MS. MEYER: Well, they didn't close --

MR. CONINE: -- just the basic --

MS. MEYER: -- they actually --

MR. CONINE: -- question, taking it from eight to 16 units with the same amount of credits, that just kind of blows my mind.

MR. GERBER: The number of units isn't changing.

MS. MEYER: The number of units --

MR. GERBER: It's the lots, the number of lots they're going to build on is what's changing.

MS. BINGHAM ESCAREÑO: Oh, okay.

MR. GOURIS: The number of units is still 20. Right?

MS. MEYER: Correct.

MR. GOURIS: It's always been 20, they were going to build it on --

MR. CONINE: So it's 20 different lots -- or eight different lots.

MR. GOURIS: Yes, they've added some --

MS. MEYER: Right.

MR. GOURIS: -- lots and they're going to spread them out more than they were originally.

MS. MEYER: Right. They're giving additional land to the single family homes.

MR. GOURIS: Right.

MR. CONINE: In the same general area, but granted, different from what was turned in.

MS. MEYER: Correct.

MR. CONINE: Okay. I think I understand now.

MS. RAY: But -- Mr. Chairman, if I may?

MR. CONINE: Go right ahead.

MS. RAY: But the hang up is the additional lots that are highlighted in pink --

MS. MEYER: Correct.

MS. RAY: -- did not have environmentals done on them, and this doesn't address that.

MS. MEYER: Correct. They weren't -- and that all wasn't submitted during the application process.

MS. RAY: Okay. So you're saying it wasn't submitted during the application process, but the environmentals have been done as evidenced by this letter.

MR. GOURIS: We haven't seen that.

MS. MEYER: No.

MR. CONINE: So if we turn this down, can they go back to the original lots that they were going to build the 20 lots on and --

MR. GOURIS: Yes.

MR. CONINE: -- move forward with the project?

MS. MEYER: Correct.

MR. CONINE: Is there anyone here from the development team?

(No response.)

MR. CONINE: Nobody here from the home team. They all went back to San Angelo, I guess.

MS. RAY: That don't make sense.

MR. CONINE: I mean I'm just curious -- so we're not killing the deal, we're just changing it back to the way it was, and I'm curious to why they changed it to begin with. Do we know why they changed it to begin with?

MR. GOURIS: We don't know. But the -- my thought process was that they were maybe doing a second phase thing and these were -- you know, this is how they could do this phase of it and then they decided to give everyone a little bit more room.

MR. CONINE: But you said it's the same number of units, so that's not --

MR. GOURIS: Right.

MR. CONINE: -- I mean it's not making sense to me, other than it's just changing lot locations for some specific reason.

DR. MUÑOZ: And giving a slightly larger lot.

MR. GOURIS: Potentially, yes.

MR. CONINE: Okay. What's the pleasure of the Board? You know, my --

MR. KEIG: Can I follow up with a question.

MR. CONINE: Sure.

MR. KEIG: On the environmental assessment, you know, what it is about this letter that you think does not cover a Phase One concern? If it's the general area, what am I missing here?

MR. GOURIS: Well, generally we don't accept general area environmental assessments. We need project specific. We've actually gone to court on this issue before. We want to make sure that property that is being represented by the ESA provider is actually the property that they're talking about and not something close to that. If they could give up -- if they'd given the whole area and surveyed the whole area and, you know, that's one thing. But I don't get the sense that they can make that kind of broad statement without specifying lots and specifying the --

MR. KEIG: Can we give it a conditional approval of the amendment subject to acceptable Phase Ones for those new sites?

MR. CONINE: I guess I would have an issue with that because, again, I'm a little bit -- I don't want to

let folks do these applications on the fly and let them turn things in late and keep changing and rearranging. We'll open the barn and all the horses will run out. But I am curious why they're changing lots to a certain extent.

So kind of what I'm thinking -- or would like to I guess pose as a question, can we go ahead and accept staff recommendation but if there is a substantive reason the developer needed to change lots, he could appeal it again next month and/or just table this thing until next month and we'll let that answer come to fruition, whatever it is? I mean --

MR. KEIG: Table it.

MR. CONINE: What do you want?

(General laughter.)

MR. HAMBY: If the Board takes an action today, the -- under Rule 1.8 of the Texas Administrative Code, the applicant can request a rehearing at the next meeting.

So all they would need to do is within the next seven days, if they disagreed with your decision is --

MR. CONINE: Right.

MR. HAMBY: -- request a rehearing on that subject and it's in the rules, and so it's not a unique thing to do.

MR. GOURIS: The only other point is that they have applied for at least exchange, and so they're in line -- in a line for exchange.

MR. CONINE: This is an '08 deal?

MR. GOURIS: Yes. And so that would be --

MR. HAMBY: But the dollars aren't changing, are they, Tom?

MR. CONINE: And --

MR. GOURIS: But --

MR. CONINE: -- there's nothing changing other than the lots evidently, so I mean I'd just as soon -- if we go ahead and accept staff recommendation, they can -- and they decide they can build on the original lots, then they can proceed right on with their game, you know. I don't want to hold them up from doing that, but if there's an extenuating circumstance that they need to come to tell the Board, I want to give -- make sure they had an opportunity to do that, and I think counsel has clarified that.

MR. HAMBY: And I guess you're directing staff to notify them of your --

MR. CONINE: I am.

MR. HAMBY: -- decision.

MR. CONINE: Make sure they do something in a

week, if that's the case.

DR. MUÑOZ: And you're certain that this won't imperil -- if we were to accept the staff recommendation, that won't imperil their initial application?

MR. HAMBY: No, they'll keep the initial --

DR. MUÑOZ: Right.

MR. HAMBY: They keep their allocation of credits on the existing lots.

MR. GOURIS: Right. If the original application is valid in that they could build what they said they could build, then, in fact, they could continue to build. And we thought it was --

DR. MUÑOZ: On the original lots --

MR. GOURIS: Correct.

DR. MUÑOZ: -- with the original allocations.

MR. GOURIS: Correct.

DR. MUÑOZ: Okay. So this decision doesn't endanger that --

MR. GOURIS: Right.

DR. MUÑOZ: Okay.

MR. GOURIS: And, Dr. Muñoz, this really gets to I think a key point. I mean at some point, one of the things we try to stress with real estate analysis and with our application process is I mean it seems somewhat

bureaucratic, but these are very complex deals with a lot of dollars and a lot of different funding streams. And so at some point we've got to stop the action long enough to evaluate whether or not it's a viable deal, and whether or not it can ultimately be built with the benefits that we're going to be providing to it through tax credits or HOME or bond or whatever else it is.

Having site control is one of those key thresholds, among many other things that we look at. And that's one of the things that has to stop at some point for the evaluation to move forward. There may be those extenuating circumstances and I think the Board's approach is the right one to --

MR. CONINE: Do I hear a motion?

MS. RAY: Mr. Chairman, I would like to -- for the record to show that the Board is concerned about this project, and we want to give the City of San Angelo an opportunity to move forward under the rules, and that we in no way are intending to imperil the project. Therefore, I move staff recommendation.

MR. CONINE: Motion to staff recommendation.
Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Ms. Bingham. Any

further discussion?

(No response.)

MR. CONINE: Furthermore, I want to go eat at Lowake Steakhouse.

(General laughter.)

MR. CONINE: All those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 9b.

MR. GERBER: 9b. All right.

MS. MEYER: The next -- this is a presentation and discussion of possible approval of an extension to the closing deadline for 2008 Housing Tax Credit awards of forward commitments. At the November Board meeting of last year, the Board approved all the remaining applications on the 2008 Housing Tax Credit application waiting list.

The Board's approval was subject to the development's closing the construction and equity funding at the April 15, 2009 deadline. At the -- May 15, 2009 -- at the May meeting, the Board extended that deadline to September 30. The Department has received requests to

extend that deadline once again to December 30 to allow applications the ability to use the TCAP and exchange funds, and staff is recommending that the Board extend the closing date to December 30, 2009.

MR. CONINE: Is there any discussion?

MS. RAY: Mr. Chairman, I move staff's recommendation to extend --

MR. CONINE: Motion to approve staff's recommendation on 9b. Do I hear a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 9c.

MS. MEYER: Once again, this is a tax exempt bond transaction, a 4 percent transaction with a local issuer with the San Antonio Housing Finance Corporation as the issuer. It's a priority two application proposing 172 units targeting the elderly population in the San Antonio

area. The Board previously approved this transaction in November of 2008, along with a HOME rental development award of 500,000, and also a Housing Trust Fund award in the amount of 384,000.

The staff's recommendation at that time was to not recommend due to the infeasibility of the HOME and Housing Trust Fund financing structure. The Board did approve an alternative structure to allow the repayment to begin three years after stabilization is achieved making the first possible payment at least five years from that award.

Both of those contracts were subsequently executed and an allocation of Housing Tax Credits in the amount \$695,738 was also approved at that meeting. That application was unable to close due to the credit pricing fluctuations and the equity investor that they were working with allocated all their funds in 2008 and they were unable to close that transaction.

They have since been able to retrieve another equity investor, MMA Financial, and they've come back to this Board to receive another determination for their tax credit award for 2009, and they've received another Bond Review Board reservation, and they've kept their HOME and Housing Trust Fund awards and they did not return those

awards, and they still have those outstanding.

It should be noted that the real estate analysis report reflects 13 permanent sources of funding in addition to the deferral of 100 percent of the developer fee and a significant portion of the contractor fee. Of those 13 sources, four are HUD home loan and grants from three different entities, TDHCA, Bexar County, and the City of San Antonio, which are also contributing other local funds and fee waivers to the transaction.

Finally, in addition to the deferred fees, the development is also anticipating a related party of below market funding from NRP Holdings, LLC in the amount of 1.6 million. Combined, the owner is proposing to provide over four million in loans and deferred fees to this transaction.

It should be noted the applicant is indicating that they would likely apply to the TCAP funds to reduce the related party loan and deferred fee portion of the sources of funds. But the development would not be eligible to apply for TCAP without this determination notice at this time.

Staff is recommending the Board deny the issuance of the determination notice in the amount of \$775,146 for The Mirabella development due to financial

infeasibility.

MR. CONINE: Okay. I've got multiple witness affirmation forms here.

Mr. Palmer, start us off. And if you could let me know the other two that are going to speak.

MR. PALMER: Yes, David Casso and Debra Guerrero. And then I believe I have some time ceded to me by Tammy Adulla [phonetic].

MR. CONINE: Yes, you do.

MR. PALMER: Good afternoon. My name is Barry Palmer with the Coats Rose law firm, and I'm here to speak on behalf of The Mirabella apartments in San Antonio. The Mirabella Apartments would provide 172 affordable units to the senior citizens of San Antonio. The project has tremendous community support, supported by the State Senator, the State Representative, the Mayor, and a number of community groups. And as you heard Ms. Meyer describe, there are a number of sources of funds locally that have been dedicated to the project. You'll hear from the later speakers about the tremendous support the project has, and the importance to the City of San Antonio.

This project came before the Board in November and received a 4 percent tax credit and bond award, Housing Trust Funds, and HOME funds. We were unable to

close because of the steep decline in equity prices which caused our equity investor to be unable to meet their commitment. We went out and have obtained a new equity investor and a new commitment and they're ready to close, but the equity price is substantially less and that has resulted in a gap in the financing.

We have proposed to fill that gap in one of two ways, either through the deferral of developer and contractor fees that would be paid off over time, or through TCAP funds. Staff has determined that the project is financially infeasible because in their underwriting analysis they show that the deferred developer fee can't be paid off within 15 years. And as to the TCAP funds, they have not been willing to use that as a source in the project because they say we don't have the TCAP funds yet.

We disagree with the underwriting analysis showing that we can't pay off the developer fee within 15 years. This is a variable rate bond transaction, and in projecting cash flows over the next 15 years, you have to make some assumptions about interest rates. And the assumptions that the Department is using is substantially above historical averages. If you use the historical averages of interest rates over the last 15 years, and you project that out to the next 15 years, we would be able to

pay off the deferred developer fee and the contractor fee.

And as to the TCAP funds, the way that that's being handled we feel is particularly unfair to 4 percent bond transactions. As you know, in order to get TCAP funds, you have to have a tax credit allocation. And yet the way that the underwriting department is analyzing this deal, they're saying that they can't count the TCAP because they don't have them yet -- we don't have them yet. So it's really a catch-22 where in order to get TCAP funds, you have to have a tax credit allocation, and yet staff is saying in order to get a tax credit allocation, you have to already have your TCAP funds.

The fact that so many tax credit deals have financial gaps is the reason that Congress included the TCAP program in the economic recovery bill. And in that legislation the Congress provided that 4 percent deals would be eligible to access the TCAP funds. But the way that staff has interpreted the program here in Texas, it's virtually impossible for a 4 percent deal to access the TCAP funds because, again, in order to get TCAP funds, you've got to get tax credits, you can't get tax credits if you can't prove that you've got TCAP funds, so.

We're merely asking the Board to give us the 4 percent allocation of tax credits so that we're eligible

to apply for TCAP funds. Under the legislation you have to have your tax credit allocation by September 30 of this year in order to be eligible for TCAP funds.

And there's really no downside to awarding the credits. This is a 4 percent allocation, it's not a competitive allocation, there's plenty of available bond cap and 4 percent credits out there that's going unused, so we merely implore the Board to give us the 4 percent allocation to allow us to participate in the TCAP round to fill our gap and to close this important transaction. Thank you.

MR. CONINE: Okay. Mr. Casso?

MR. CASSO: Good afternoon, Mr. Chairman and Board. My name is David Casso, the Asset Manager at the San Antonio Housing Authority. I've been there five years. I am here on behalf of Lourdes Castro Ramirez, our new president and CEO at the Housing Authority. And she asked me to attend and speak in her behalf in support of The Mirabella senior apartment complex.

We have been involved in this -- in predevelopment of this project for -- since 19 -- I mean since 2007, and are looking forward to hopefully moving forward on the project. It provides additional senior apartment complex units for 50 percent of median residents

and lower, approximately 24 units. We have extensive experience in the development with our partner, NRP. We have support from different local and county entities in San Antonio, and we just would like the -- we are fully committed to the project and would like your support and commitment as well.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Ms. Guerrero?

MS. GUERRERO: Thank you very much. My name is Debra Guerrero and I am representing the NRP Group. And, Chairman Conine, Mr. Gerber, Board members, thank you very much for the opportunity to just tell you a little bit about why this particular development is so significant to San Antonio, not only because it serves seniors and provides much needed senior housing, but also it's an economic development generator and it's down a corridor that's deteriorating in San Antonio, Bandera Road, and it's going to be an investment that truly does make an impact.

And that's why we have garnered so much community support, as you've seen the last two years. And as is evident in not only support through letters, but also financial commitments from all of our partners,

including TDHCA, but the City of San Antonio, city public service in implementing a solar program for our seniors to reduce their utility bills. Bexar County, the fact that they county and the city both have put HOME funds into this particular development means a lot in our community because it doesn't happen very often.

And then our commitment, NRP's commitment which is very important, and it's significant. For the last two years we have garnered at least 1.5 million in predevelopment costs. At least. And that doesn't even include the fact that we've closed on the property. That's how committed we are to this particular development.

And we're one of the few developers in the state of Texas that are actually still using the 4 percent financing mechanism. And you know that because you don't see a lot of us coming and talking about 4 percents. And I really do believe that it's probably one of the reasons that the rules that have been implemented don't necessarily address our special circumstance.

And then you add the challenge of not only using the 4 percent financing structure, but using it for a senior community in a city, a city of San Antonio that tends to have lower income levels than other parts of the

state. Therefore, the rents that we get are much lower.

So just to remind you about the time line, and really this is where we've gotten caught up in this web of rules basically. We originally had submitted a bond application in 2008, and even though we didn't receive our determination under that original bond application, we went ahead and resubmitted a bond application and we did receive a tax credit determination in November of 2008.

And that tax credit determination could have gone with us into our next bond application, but because of your rules, TDHCA rules, we are required to have an '08 bond application that goes with an '08 tax credit determination. So since we reapplied in '09 it required that same thing, an '09 tax credit determination.

And that's why we're here with you today, asking for your help as a partner to recommit, to help us get -- to help us create a successful senior development in San Antonio. And we appreciate your consideration.

MR. CONINE: Okay. Any questions of the witness?

DR. MUÑOZ: I've got a question for Barry.

MR. CONINE: Dr. Muñoz.

DR. MUÑOZ: Sir, you said that the -- that underwriting has used an historic average of the interest

rate that's you think exaggerated or --

MR. PALMER: Well, they used a -- I don't know about exaggerated. They used our strike rate on our cap as an assumption of what interest rates are going to be --

DR. MUÑOZ: For the future.

MR. PALMER: -- over the next 15 years. And the fact is there's never been a 15-year period when interest rates have been that high as the rate that they're using. So I'm merely saying --

MR. CONINE: What rate was that?

MR. PALMER: What's that?

MR. CONINE: What rate was that?

MR. PALMER: Four percent -- the BMA at 4 percent.

MR. CONINE: And that's --

MR. PALMER: And it's -- right now it's .4 percent, .40.

MR. CONINE: Okay. On the variable rate.

MR. PALMER: Yes. Right. That's --

MR. CONINE: But -- okay.

MR. PALMER: So they take the 4 percent and add the stock onto it.

MR. CONINE: Okay.

MR. PALMER: Yes.

MR. CONINE: Okay.

Go ahead, Dr. Muñoz.

DR. MUÑOZ: That's it.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: I have a question of real analysis, I guess. You guys determined that the project was financially unfeasible, which is the reason you're suggesting we turn this down. Is that because of the 15-year deferred fee not being -- I mean the development fee not being able to be repaid? Is that what the -- is that the sole reason?

MR. STEWART: Yes, sir, that's the reason for the do not recommend --

MR. CONINE: So if they shrunk their deferred developer fee down and increased their NRP loan, that would make it feasible in your mind?

MR. STEWART: We, on this deal, as well as the next deal you're going to look at, have characterized that NRP loan, because of it being a non-conventional below-market-rate loan, is essentially the same thing as a deferred fee. Like you suggest, they could increase that loan, reduce the deferred fee to a point where it's

repayable. So we've characterized it as basically the same thing.

On Mirabella, the cash flow doesn't cover the deferred contractor and developer fee, exclusive of the NRP loan.

MR. CONINE: You want to say that to me one more time?

MR. STEWART: On Mirabella, the 15 years of cash flow does not repay the deferred developer and deferred contractor fees.

MR. CONINE: But if it shrunk --

MR. STEWART: We would --

MR. CONINE: -- you get a different number.

MR. STEWART: We're still characterizing the NRP loan, the related-party loan, because it's below market rate, it's a non-conventional source of funds, as essentially the same thing as a deferred developer fee.

MR. GOURIS: Because not doing so would essentially render the 15-year requirement useless. Right? Because anybody could say, Well, I'm just going to take out a personal loan for -- I'm going to provide the cash myself and --

MR. CONINE: Right.

MR. GOURIS: -- support this. The problem is

that that isn't serviceable in a conventional way, and if it was serviceable in a conventional way, then they'd be able to increase their first length.

MR. CONINE: Well, I'm sure the partnership agreement would have a waterfall as to preferred payments coming back out, wouldn't it? I mean have you seen that? Not yet? We haven't seen that.

MR. GOURIS: They certainly could. The problem, again, is that the whole reason for our fee issue and determining if there's enough financial sources to make the deal work, is because some of what we're providing is credit, the credit is based on developer fee, the developer fee has to be seen to be reasonable and, in fact, actually repaid. And if it can't be determined to be repaid -- in fact, in this case it can't be determined to be repaid, and they have to provide additional contributions that can't be inferred to be repaid. The transaction --

MR. CONINE: Ms. Guerrero --

MR. GOURIS: -- has to be --

MR. CONINE: -- could you answer -- could you respond to that?

MS. GUERRERO: Me?

MR. CONINE: Yes.

MR. GUERRERO: Actually, I'm going to defer to --

MR. CONINE: Or, Barry, could you -- okay.

MR. PALMER: Could I just say one thing. The whole analysis of repaying the developer fee would become moot if you would just allow us to count the TCAP money as a source.

MR. CONINE: Forget TCAP for a minute.

MR. PALMER: Okay.

MR. CONINE: Just assume TCAP doesn't exist, because right now it doesn't exist. My concern is for the GP loan here, or the NRP loan, why they are counting it as a deferred developer fee, because that seems kind of unusual to me. And if you call it something else, or we're willing to call it something else, then the project becomes financially feasible in my mind. That's where I'm headed with this thing. And I don't --

MR. GOURIS: And the GP loan is at 1 percent, and it's not slated for any payment, it's slated for an accrual at 1 percent.

MR. CONINE: Okay.

MS. GUERRERO: And, Mr. Conine, if we could allow Andy Tanner, he's our CFO, he signed to up speak just as a reference.

MR. CONINE: You become the fourth, but I'll let you under the circumstances.

MR. TANNER: Yes, I guess our position is exactly -- I think getting to the exact point that you were questioning. If NRP decides to loan the project funds, I'm not understanding this characterization of it being developer fee, or why it would even be, you know, considered in the same light as developer fee getting paid off.

If we have a loan and it takes 30 years for us to get our funds back, that's really up to us for what we would want to do for a loan for the project. I don't understand this characterization.

MR. CONINE: You want to respond to that?

MR. GOURIS: Well, again, a part of that is developer fee, that if it doesn't ever get paid back, or if it's not anticipated to get paid back, didn't ever exist, and therefore should have never gotten credits, should never have been in the formula to create the credit amount. Part of the credit allocation is, ineligible basis, is the developer fee, and that has to be a real dollar that's paid.

MR. CONINE: Right.

MR. GOURIS: If it's not -- if it's just a

shell movement that says, Okay, we're going to pay it, but we're going to then take out this loan against ourselves and never really pay that -- be able to pay that loan back, then that developer fee didn't really ever exist.

MR. CONINE: But if they shrunk the deferred fee to get within the 15-year window and increased the other loan to the project that occurs from -- say that pays from year 15 to year 30, what's wrong with that?

MR. GOURIS: It's a phantom loan. The loan to themselves is not a loan that can be repaid.

MR. CONINE: I mean the landscaper's got to be paid, and the sheetrockers got to get paid. It won't be phantom. The costs have got to get paid.

MR. GOURIS: A part of that will be developer fee that will never get repaid. That's sort of the point. Part of that fee to themselves would never get paid --

MR. CONINE: You're missing my point. You're missing my point.

MR. GOURIS: I get that they're going to have to contribute some real dollars into the transaction. But some of those dollars that they wouldn't have to contribute because it was their own fee, wouldn't be contributed, or could potentially never --

MR. CONINE: You don't know that it's coming

from that fee. I mean these guys have got thousands of projects, it could come from whatever pocket.

MR. GOURIS: You're right, it could, but it's going into a pocket and coming out the other side.

MR. PALMER: And, Mr. Conine, the tax rule, the test is, you know, in order to treat the developer fee as basis to get credits on, is whether you can show a reasonable likelihood of it getting repaid over the 15 years in order for it to stay in basis. And in doing that, if you have reasonable assumptions, and we believe that it's reasonable in our assumptions to take an historic average of interest rates over the past 15 years and project that forward, then we can show that it can qualify for basis and maintain the tax credits.

And the GP loan becomes a back end analysis that the investor will have to sign off on and the tax accountants will have to sign off on, but you just -- again, the tax test is just that you show a reasonable likelihood that it can be repaid at some point before the loan matures. And you can make that loan for 30 years, or even 40 years, which we often do in transactions. And you can show in your projections a reasonable likelihood that it gets paid off, and that passes the tax test. So really underwriting's imposing a more severe tax test than the

Tax Code does.

MR. CONINE: Have you guys explored a 15-year swap on that variable rate debt and what rate that would produce?

MR. TANNER: We have looked at that and the swap market has just been very volatile and those rates have bumped up recently where it's not feasible to look at under that --

MR. CONINE: Pretty higher than the 4 percent he used?

MR. TANNER: Probably, yes.

MR. PALMER: But we are going to have a cap, we are buying a cap on the --

MR. TANNER: Right. It's more advantageous to buy a cap today and let the rate flow. And --

MR. GOURIS: But I'm not sure that the cap was engaged, or incorporated into the cost here, because I'm not sure we know what cap number is.

Is that right, Brent?

MR. STEWART: We included an estimate for the cost of the cap, yes.

MR. GOURIS: For the full 15 years, or for the initial period of the cap?

MR. STEWART: I believe it was for the 15

years.

MR. CONINE: And did you ramp interest rates up on some basis between .4 and 4?

MR. STEWART: We used the cap rate plus the spread --

MR. CONINE: Year two?

MR. STEWART: -- to come up with a 652 rate.

MR. CONINE: Year two. That's a little unreasonable, don't you think?

MR. STEWART: Year two?

MR. CONINE: Yes, in your year two, three and four you think it's going to be 6-1/2 percent on a variable rate debt next year?

MR. STEWART: No --

MR. CONINE: Or a year after that?

MR. STEWART: -- not at all.

MR. CONINE: I don't either.

MR. STEWART: Not at all.

MR. CONINE: So then you're making his argument that you're imputing too high an interest rate --

MR. STEWART: But --

MR. CONINE: -- for the --

MR. STEWART: -- PNC, for example --

MR. CONINE: -- pac man of the deferred --

MR. STEWART: Right.

MR. CONINE: -- developer fee.

MR. STEWART: Any lender's going to underwrite it at what that maximum rate could be. They're going to take that cap price plus the stock. We got the 652 rate out of the PNC commitment as their underwriting rate.

MR. PALMER: But they're going to do that to size the debt, not to establish the cash flow going forward for the next 15 years.

MR. CONINE: I'm not sure we can solve this problem up here. And I don't think -- at least I'm not willing to pass a financially unfeasible project if my staff says it's financially unfeasible. Not today. But it sounds like to me there needs to be a lot more communication between the two folks, and it sounds like to me there can be a manipulation of what you're calling certain contributions, or sources, to this particular project to get it within the framework that these two guys need to adhere to.

If you can't, you can't. I mean that's it, but it seems to me like you can do -- there needs to be some more conversations.

MR. PALMER: And we would agree with that, Mr. Conine, and the problem we have is that with the

legislation requiring that you have a tax credit allocation by September 30 in order to be eligible for TCAP, we really need a tax credit determination letter at this meeting, and if we could make that subject to satisfying underwriting's concerns and having underwriting sign off on the fact that the transaction is financially feasible before we close. But it will at least give us the opportunity to participate in the TCAP round and potentially fill the gap that way.

Because this transaction was determined last November to be financially feasible and was granted tax credits. The only difference between now and then is the tax credit price has gone down so much. That's what's created this gap, and that's what TCAP money was designed to address. So if we can just get a tax credit allocation today, apply for the TCAP, and satisfy underwriting's concerns before we close, that would allow us to live another day.

MS. GUERRERO: And, Mr. Conine, I just want to say one thing. We have --

MR. CONINE: Sure.

MS. GUERRERO: -- actually been working with staff to try to get them comfortable with the financial feasibility, and that's where we came up with the idea of

the GP loan and the deferrals. That was actually Tom. Tom said we needed a financially feasible deal. So we have been working with them to get to that point. I didn't want you to --

MR. CONINE: You just didn't get him over the line.

MS. GUERRERO: I didn't. I tried.

(General laughter.)

MR. CONINE: Okay.

MS. RAY: Mr. Conine?

MR. CONINE: Yes, ma'am.

MS. RAY: The September date is looming, and since this is not a competitive project, it is a 4 percent bond project, I think Mr. Muñoz wants to make a motion.

DR. MUÑOZ: Yes --

(General laughter.)

DR. MUÑOZ: I'd like to move that we deny -- or that we approve the allocation of credits now, and I'm trying to incorporate some of your language, Barry, and that we -- in order to have it in place prior to the legislatively required September 30 date and eligible for TCAP, contingent upon underwriting's reconciliation of their concerns.

MS. RAY: Second the motion.

(General laughter.)

MR. GOURIS: Can I ask a clarification?

MR. CONINE: Sure.

MR. GOURIS: So when we look at this again, or look at this tomorrow, are we looking at it with the likelihood of TCAP then being part of the picture, because that would change their --

DR. MUÑOZ: Well, what I understand --

MR. GOURIS: -- scenario considerably.

DR. MUÑOZ: -- is if we -- you all visit and sort of maybe redesignate, or recategorize some of what you've categorized a particular way, then it becomes -- it may well become financially feasible.

MR. CONINE: My assumption -- I would assume that the developer would make sure the price -- that you're happy with the financial feasibility of the project without TCAP. Okay.

MR. GOURIS: Okay.

MR. CONINE: And if they can't do that, because TCAP will solve a lot of problems, okay, but they still need to demonstrate to this Board member that it was financially feasible when they brought it in here.

MR. GOURIS: And does that --

MR. CONINE: And so far they're not there.

MR. GOURIS: Does that then include the loan that they make to --

MR. CONINE: Yes.

MR. GOURIS: -- themselves is repayable at a conventional --

MR. CONINE: My personal opinion --

MR. GOURIS: -- interest rate?

MR. CONINE: -- it can be from year 15 to 30. I'm okay with that, you're not, so you and I differ there.

MR. GOURIS: I think even if we amortized it, it wouldn't work at 1 percent. But if you think --

MR. CONINE: That's your job to check it out, not mine.

MR. GOURIS: Okay.

MR. CONINE: Okay?

MR. GOURIS: Fair enough.

MR. CONINE: Any other additions or corrections to the motion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Cevallos Lofts, or whatever is next.

MS. MEYER: The Cevallos Lofts is another tax exempt bond allocation. It's San Antonio Trust Finance Corporation as the issuer. This one is a priority three application proposing 252 units targeting the general population in the San Antonio area as well.

This development is only proposing to include 25 percent of the units as tax credit units, and thus is only seeking 5 percent, or 1.6 million of its funds, for the syndication of tax credits. This should be consistent with the tax credit syndicator for such transaction being 30 percent of the tax credit portion of this development.

Underwriting has changed significantly since we posted the -- this to the website, so I'm going to let Brent explain the underwriting and what has changed in this one.

MR. STEWART: This deal, in some ways, is similar to the deal that you just looked at, and in other ways very different. We received this application on August 6, and the sources of funds on this deal have shifted around, been very fluid over the course of the past month. As a result of that, the market study section

was completed literally a couple of hours before the posting deadline for your board book.

That underwriting -- that market study analysis produced a do not recommend based on a problem with the capture rate. Since then, we've been able to work with the market analyst and we very much appreciate his working with us to get our -- to get a handle around that capture rate issue, which we've solved and so the capture rate is not longer a problem.

This deal is different in that it's a mixed income deal, only 25 percent of the units are tax credit units. The costs on this deal are roughly 20 percent higher than our underwriting number, and that in large part is due to the fact that it is a mixed income deal with different amenities and different specifications. The third big difference is that the other income that's projected on this deal is about \$80 a unit compared to the \$15 a unit that our rules allow us to underwrite at.

Because of these differences, it doesn't really fit the parameters of our underwriting rules, which are designed for a typical tax credit, or a 100 percent set aside bond deal, and not so much to a, you know, significantly mixed income deal. This deal also has a related-party loan. In this case it's about 7.1 million

in total between the developer -- the deferred developer fees and that related-party loan. There's about 12 million in total sources coming from NRP.

Again, based on our rules, the cash flow over 15 years cannot repay the developer fee, the contractor fee, and this related-party debt. Yes, so that's -- you know, the do not recommend is coming from and basically the same as what you just saw in Mirabella. The characterization of the related-party loan being repayable within 15 years. There isn't enough cash over that time period to repay all that.

We did analyze this one using what we believe would be a more anticipated interest rate over the bonds, which is about 3 percent less than the 652 that our standard underwriting would suggest.

MR. CONINE: Why? Is this a fixed rate deal?

MR. STEWART: It's a variable rate also.

MR. CONINE: Why did you use two different methodologies?

MR. STEWART: I just wanted to see what it would take to produce cash flow to repay that debt.

MR. CONINE: Okay.

MR. STEWART: And so if you kind of go through and massage the deal to the point that you accept that \$80

worth of per unit other income, you accept their development costs, which are 20 percent higher, and you basically take that related-party debt, amortize it over 35 years, plus use an interest rate that's 3 percent below what that underwriting rate's at, you know, theoretically you get there.

MR. CONINE: Okay. Any other comments, any other questions?

(No response.)

MR. CONINE: I've three witness affirmation -- or four witness affirmation forms here. Barry Palmer, Peter Clark, Andy Tanner, John Kenny.

MR. PALMER: Barry Palmer, Coats Rose. I guess from our perspective this is really the exact same issue, the only difference is this is a family development as opposed to elderly, and we're trying to do something different here which is mixed income, which as model found in a lot of parts of the country that we haven't done that much of in Texas, but that we think is an exciting opportunity.

If we -- we would just ask you to treat this the same way as Mirabella, that if we -- and I think you heard Mr. Stewart say, if you use a more likely anticipated interest rate and trend that, that you can pay

off the developer fee and the contractor fee, and then the issue of the related-party debt, we need to work that out with underwriting and get them comfortable on that. And so we would ask for the same, I guess conditional approval for this transaction.

MR. KENNY: I'm John Kenny. I'm the Executive Director of the San Antonio Housing Trust Finance Corporation. Thank you for the opportunity to be able to speak.

The San Antonio Housing Trust Finance Corp, which consists of five of our city council members, thought this idea was so great we decided to become a partner with this project, mainly because the city wants to see mixed income housing come to the inner city of San Antonio. It's tough enough to get market rate, but also to be able to combine that with lower affordable rates in the same project. We think it's quite exciting. Our mission is to increase the availability of affordable housing. We think that this project will do it.

We cannot miss the opportunity to receive available TCAP funding, and we feel that we worked very diligently, we've vetted this project, we've got community input, we're using leverage of our own city HOME and NSP allocations for this project, and I think that, as you all

know, deals are hard to get done, and we want to see this one done. Thank you.

MR. CONINE: Thank you.

MR. CLARK: Thank you, Chairman, Board, and Mr. Gerber. My name is Peter Clark. I'm here on behalf of State Representative Mike Villarreal, who represents District 123 in downtown San Antonio. I've a letter from Representative Villarreal to the Chairman, and I'll share that with your staff.

Just to summarize the message from the Representative, he's very excited about this project, the community is very excited about this project, we believe that it can really transform the southern part of downtown San Antonio, so we would just like to urge the Board to help to make this happen.

MR. CONINE: Any questions of the witness, or witnesses?

(No response.)

MR. CONINE: Okay. Where's Brent? Come on back up. We're out of whack on costs, and if you were to run the same model like you did on the other one at six point whatever, it'd be out of whack on the deferred developer fee. Right?

MR. STEWART: Correct.

MR. CONINE: And we're only getting 25 percent affordable on this transaction. What size are the bonds going out on this one, 15 million?

MR. STEWART: 21,850,000.

MR. CONINE: You know, Mr. Palmer, it's one thing to -- on one project for a developer to want to contribute 1.6 million. Here it's 3.575 million. And at some point, you know, I guess I've got the same concerns that staff does, is that from whence does the money come? And where is the proof in the pudding? Are you -- how would you get the Board over the hump that the NRP Group has \$5 million to put into both of these projects?

MR. PALMER: I'll defer to --

MR. HELLER: I can speak to that. I think we've shared our financial -- David Heller --

MALE VOICE: You need to come to the microphone.

MR. CONINE: Come to the microphone, Dave.

MR. HELLER: David Heller, principal owner of the NRP Group. We've shared our financial statements with the Board, with -- I'm sorry, with the staff on all of our transactions as a requirement. And as we stand before you here today, we have the wherewithal to make the financial commitments for this project. Now keep in mind that this

is a 80/20 deal. So this transaction is really a large market rate component, so the investment and the return on the investment is derived principally from the 80 percent portion.

MR. CONINE: Right.

MR. STEWART: Mr. Conine --

MR. CONINE: Yes, sir.

MR. STEWART: -- the latest sources that we received, which we actually received on Monday of this week, showed that the related-party loan was seven million one seventy-five. We've had a number of sources presented on this deal, but that's the most current.

MR. CONINE: Mr. Heller, again, no disrespect to you or anybody else --

MR. HELLER: That's fine.

MR. CONINE: -- in these days and times, that's an unusual thing to do. If underwriting were to say that the priority of those funds would have to be on the front end and not the back end, would that give you any sort of grief?

MR. HELLER: Well, I think in any transaction in today's world you -- the commitments are there, the dollars are there to make those commitments. It doesn't stop us from looking for additional sources to --

MR. CONINE: Right.

MR. HELLER: -- reduce that amount of commitment. But the financial wherewithal, which I believe is the question that you asked, is available. What I want to --

MR. CONINE: No, the question I asked was priority.

MR. HELLER: Priority. The --

MR. CONINE: In other words, if we said that your loan had to be funded at the initial closing as opposed to the back end of the project, are you okay with that? To take our issue of is he going to have it a year and a half from now away from us?

MR. HELLER: Right. And --

MR. CONINE: We have risks in that time period.

MR. HELLER: Sure. And during the underwriting process, the final underwriting process, if we are successful today in getting the credits, and we are unable to get additional sources but the project still goes forward, then the answer would be yes.

MR. CONINE: Okay.

MR. HELLER: But we would still be continuing to look for additional sources. I don't want to mislead you in the fact that ongoing discussions are going on with

multiple sources, but all of those will tied up before closing.

MR. CONINE: Gotcha. Okay. Any other questions?

(No response.)

MR. CONINE: Seeing none, I'd entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to issue the determination notice in the amount of A\$285,205 in Housing Tax Credits for Cevallos Lofts.

MR. CONINE: Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 9d.

MR. GOURIS: Okay. The next item is the

approval of the TCAP list so they move forward. The Board adopted the Department's TCAP policy on June 25 to distribute \$148 million in American Recovery and Reinvestment Act funds to eligible 2007, 2008 and 2009 tax credit developments. The TCAP policy called for applications from the developments holding 2007 and 2008 allocations or determination notices to be provided to the Department by July 17.

That deadline was extended to July 24. The Department received 57 applications in that round totaling \$213 million in requests. Since that -- since those were submitted, four have formally withdrawn, one was terminated, 35 of the applicants have applied for exchange program funds, and since most of these will not be able to qualify for both of these programs simultaneously, staff has already asked these applicants to disclose their preferences.

We think we have a handle on that to such an extent that we believe that the remaining applications in the round one could fully be funded if they -- we go forward with the statewide collapse as is planned under the policy as it was written in order to meet the demand for existing show ready developments.

After the statewide collapse is employed, and

assuming the developments indicate preference for exchange, and assuming they withdraw, we think that there'll be 30- to \$40 million remaining for round two that will be available for the 9 percent transactions to apply, and their deadline for application is October 1.

Of the 38 remaining applications in round one, eight are associated with private activity bond transactions, 4 percent credits, with valid determination notices that are issued in 2007 and 2008.

MALE VOICE: Mr. Chairman, I think that's important that there are eight 4 percents that were part of this. Four percents on an equal playing field for purposes of TCAP, and did apply and are part of this section.

MR. GOURIS: That's correct. And the log that you have before you that was passed out to the audience that the yellow highlighted ones are the bond transactions. The green reference which transactions are within -- or which areas are within funding allocation. And you can see in the far right columns there the deals that were funded based on how much money is available in the region, and then the second to the last column is if it's got funded under the rural collapse.

And then the final column is if we proceed as

planned with the statewide collapse, which transactions, based on who's applied and who's in the money right now would be in that statewide collapse. Again, if the transactions we believe will fall out because of the exchange -- switching to exchange fall out, there would be more deals in the statewide collapse.

Let's see. Staff is requesting that the awards based on the log be approved conditionally subject to the completion of application review, score and threshold, and review of underwriting and reunderwriting, and that all -- as applications withdraw, the next regional or statewide applicants be allowed to move forward so we can keep these moving as quickly as possible.

MR. CONINE: Okay. We've got several witness affirmation forms. Jeff Spicer.

MR. SPICER: I'll give my time to --

MS. BINGHAM ESCAREÑO: Never mind?

(General laughter.)

MR. CONINE: Come on, Jeff.

MR. SPICER: No, I'll pass --

MR. CONINE: Where's Jeff? I don't see Jeff.

MALE VOICE: He's given his time up.

MR. CONINE: Oh, here he is.

MR. OGAMAGU: It's my turn. Right?

MR. CONINE: It's your turn, yes. Ogamagu.

MR. OGAMAGU: Yes, sir. My -- Joseph Ogamagu [phonetic]. Chairman, and the rest of the Board, I want to just make a request that 2008 cycle is what we are under at Sphinx at Fiji. And with this approval, I have a problem with the lender. We are going TCAP and that regards the environmental, we have some issues. I have not been able to get issues with the Department, get affirmative clearance that's required.

The lender is ready to go and just in case, we are really making a request to also consider the placement in service for 2008 in our cycle applications. That's the request that I'm really making. I do know that there are some other 2008 applicants here who may have the same concern.

MR. CONINE: I don't know that we got the power to move that date.

MR. OGAMAGU: I believe you do.

MR. CONINE: I don't think so.

MR. OGAMAGU: You are the Board, you have a lot of power.

MR. CONINE: I'm afraid we don't. He's asking on 2008 deals to move the placed in service date, what, back another year? Is that what you're asking?

MR. OGAMAGU: Six months is plenty for us. Six months would do for us.

MR. GOURIS: Yes, the only extensions of placed in service dates are based on disaster related issues.

MR. CONINE: Right.

MR. GOURIS: We don't have the authority --

MR. CONINE: I don't think we've got the power to do that, Joe.

MR. OGAMAGU: We're a financial disaster.

(General laughter.)

MR. GOURIS: I think the Governor has to declare that.

MR. CONINE: I don't know that I can disagree with that.

(General laughter.)

MR. CONINE: Thank you for your testimony.

Granger MacDonald.

MR. MacDONALD: I'm Granger MacDonald representing TAAHP. Our present Executive Director planned wonderful vacations this week, as you can tell.

I'm going to fill in and go through, again, some more of the emails that I received regarding QAP and this. The placed in service date that just came up, and you know there's a reg out that just hit the last few days

that says that the state can consider '07-'08 receiving TCAP or exchange to be '09 deals, which would allow you the placed in service date of '09 deals which would be very beneficial to '07s and '08s. I'd like you to look into that a little bit if you could.

Also, in general, policy issues that we see with TCAP and the exchange is that we would like to see everything done possibly to encourage the '07 and '08s, as many as possible, to go exchange and free up that much more TCAP so that those funds could be used in other places, because there is no limit on the '07-'08 exchange as you know.

Again, with the exchange, we've got many projects that are shovel ready, and we need to get going as quickly as possible, and we need to try to figure out which will be the simplest of the programs. Many people out there I think put in TCAP applications because they thought it was -- they might close first. In essence, I believe you can see that some of the exchanges could close first based on the environmental review and the amount of hoops you have to jump through for TCAP, and that word really needs to get out so we could encourage more people to go with the exchange.

And also on that line, the timing. We would

really to see if we could get some definitive dates about when we might be able to get paperwork, documents, start the review process with our attorneys as well, and more or less know what we're getting into on the TCAP side of that. We're going to have to be going to syndicators and the like and getting their approval, upper tier investors like Fannie Mae and Freddie Mac and try to get them to make a decision. It's going to be a lot of fun.

Underwriting, a general comment considering the current lending climate. We would propose that the underwriting assumption for both programs currently seem maybe a bit unrealistic, and we'd suggest at a minimum using the current Fannie and Freddie guidelines in funding deals as they need to, to meet these requirements. We think those are generally accepted requirements that would be good for all of us in the industry.

There's been some issue about whether we could blend the two programs together. If you use TCAP, can you use exchange, and can they be used together? Is there a federal rule on this? If so, where? And let's talk about how we could get the most amount of dollars to the state of Texas and get the most amount of housing on the ground.

In the exchange program, the addition of the 30 percent units. We have some concern that there was no --

in the rules allowance for people that had already taken 30 percent rental units, and also the consideration on the encouragement of people to go to deeper targeting, what that does to effect community relationships.

Many of us went through our towns and said, We're going to have 10 percent of our units at 30 percent of median income, and now we're going to go back to those same people and say, Whoops, it's 20, it's 30 percent of median -- 30 at the median, and this could really cause some hardship notification issues, et cetera, and might be some areas that we could look back at that as well.

MR. CONINE: Okay. Any questions?

(No response.)

MR. CONINE: Tony Sisk.

MR. SISK: Tony Sisk, Churchill Residential. I split my comments between public and this agenda item. On TCAP, a number of the comments that I was going to make have already been made, but I would just like to re-emphasize Board giving staff increased direction to be able to ferret out which of the TCAP applications from prior year deals can close within this time window with building permits, with an investor, with environmentalals done so that we can quickly reduce the amount of staff time being spent on TCAP for prior year deals, try to

shift it to the exchange program, and then quickly move that staff time to underwrite the '09 TCAP applications that are coming right behind.

We have a 2009 TCAP application we're getting ready to put in. We are able to get 10 percent more tax credit pricing and score very high, but we are also possibly forced into asking for a lot more in TCAP funds than we could possibly get to gap the difference if the scoring were somewhat adjusted. But we are somewhat forced into, to get the higher score, ask for a substantially greater amount of money, which reduces the number of deals that could be closed. So that's something that I would like for the Board to give staff some consideration or possibly make some amendments next month to the TCAP policy.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Okay. Tom, could you hurry up?

MR. GOURIS: Yes. I'm right there.

(General laughter.)

MR. CONINE: David Garza. I had David, I probably got you on the wrong agenda item, but I've got you --

MR. GARZA: That's fine. Thank you.

Good afternoon, Mr. Chairman and members of the Board, and Mr. Gerber. My name is David D. Garza, and I'm the Director of the Housing and Neighborhood Services Department for the City of San Antonio.

I'm here today to express a need for additional affordable rental housing units in San Antonio. San Antonio's population is approximately 1.3 million, which represents almost 600,000 households. Of these 600,000 households, 66 percent, or 396,000 are owner occupied, which means that 34 percent, or 204,000, are rental units.

Today in San Antonio we currently have almost 170,000 rental units in the market. Consequently, leaving almost 34 households in need for affordable rental housing.

The Department of Housing and Neighborhood Services implements the rental rehabilitation program, which provides gap financing to non-profits and for-profit housing developers to rehabilitate rental properties. Over the last three years alone, this program has assisted to create over 1,600 affordable rental housing units.

While these efforts have certainly addressed the problem, we still have a great need.

And as you make your decisions to provide housing for low income families in Texas, I respectfully request that you be mindful of the affordable housing

needs that we have in San Antonio. And thank you very much for your time.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Keep an eye on Ms. Ray, would you?

MR. GOURIS: I certainly will.

MR. CONINE: Thank you.

All right. That concludes the witness affirmation forms on that particular agenda item. Any other comments from staff at this point?

MR. GOURIS: No, sir.

MR. CONINE: Okay.

MR. GOURIS: We ask -- recommend the approval of the award.

MR. CONINE: I would entertain a motion.

MS. BINGHAM ESCAREÑO: Excuse me.

MS. RAY: No, go ahead.

MS. BINGHAM ESCAREÑO: Sorry, Ms. Ray.

MS. RAY: No, go ahead.

MS. BINGHAM ESCAREÑO: I'll make the motion to approve the recommendation for the award of the TCAP funds to the list as provided by staff.

MR. CONINE: Is there a second?

MS. RAY: I second the motion.

MR. CONINE: Second by Ms. Ray. Any further discussion?

MR. KEIG: I have some questions.

MR. CONINE: Yes, sir.

MR. KEIG: Being new on the Board, you might be able to clarify some of this for me. So we have 148,354 -- I'm sorry -- anyway --

MR. GOURIS: 148 million.

MR. KEIG: What's the total -- yes.

MR. GOURIS: We have a 148 million in funds available. Right now, eligible applicants that have not withdrawn total to a \$185 million in --

MR. KEIG: Okay.

MR. GOURIS: -- applicants. We think that a large -- you know, maybe somewhere in the area of 70 to 80 million, will fall out. We don't know for sure because it's their choice, they've just given us some preference information. We'll be figuring that out over the course of the next four weeks. As they turn in their exchange applications, we're going to ask them to make a decision are they going exchange --

MR. CONINE: And that deadline is when?

MR. GOURIS: September 10 is when we expect for

them to give us their full exchange things. We -- that's probably something that's going to come up in the next item because we haven't been able to evaluate the '09 exchange deals to see which ones are in, which are out. And we may want to ask for a little bit more time for those folks, the '09 folks to be able to respond. It's all a very, tight, tight, tight time frame for everyone involved.

MR. KEIG: And to get that 148 million funded, would we have to do the collapse? Or is that above and beyond the 148 million?

MR. GERBER: The collapse happens within the 148.

MR. GOURIS: Yes.

MR. GERBER: So we'll fund as many as we can within the remains and then --

MR. GOURIS: If you look at the last page of the sheet --

MR. KEIG: Right.

MR. GOURIS: -- the fund had initially totaled to \$89 million.

MR. KEIG: Right.

MR. GOURIS: The folks --

MR. KEIG: It would have been helpful, by the

way, to put that 13 million in there after the seventy-five eight.

MR. GOURIS: You mean --

MR. KEIG: Just for future reference. This was pretty confusing here.

MR. GOURIS: I'm sorry. Thirteen million after the 75 --

MS. RAY: No kidding.

MR. CONINE: Thirteen from the at-risk.

MR. GOURIS: Oh, I'm sorry. That was in the next line. The 89 million is in --

MR. KEIG: That's right.

MR. GOURIS: -- that means 13 million.

MR. KEIG: You know, it just would have been nice to --

MR. GOURIS: Yes, the other way around I guess.

MR. KEIG: -- itemize it there.

MR. GOURIS: The 89 million is what was funded initially, what's funded out of the rural collapse would be almost \$15 million.

MR. KEIG: All right. So we've already done, back in June, 89 million? Is that what you're saying?

MR. GOURIS: This is all being done right now.

MR. KEIG: Okay.

MR. GOURIS: These applications are --

MR. KEIG: So --

MR. GOURIS: -- current.

MR. KEIG: -- what do mean by funded initially?

MR. GOURIS: Funded out of the region, what's available in the region if we do no collapses whatsoever.

MR. KEIG: That would be 89 --

MR. GOURIS: It'd be 89.4. And then the rest would just sit waiting for additional applications which has some other issues that we may want to talk about if you're going to go down that road. But then the rural would add another 15 million, and then we'd fill the rest with statewide collapse, so there would be 39 million in statewide collapse to get to a total of 140. It'd be just shy of 148 million, because the last deal --

MR. KEIG: And to get to that 89 million, did we use some type of prioritization or --

MR. GOURIS: Yes, there would be a scoring criteria and applicants who scored within their region to be the highest, and within their region to fill the need in the region. We can go through and look at Region 1, just for an example, which is -- Region 1 has Jason Avenue Residential. It had -- there was 2,052,000 just on the

first page of the sheet, the colored sheet that I gave you.

Under Region 1 and urban, that's what the U stands for, the first highlighted yellow item. Right above that line it says, Available in urban, \$2,052,000. The request is for \$2.2 million, so there's not enough money in the region to fund that transaction. So that would stay open, it would not be funded initially. It's not rural so it wouldn't collapse. But as we went through the gyrations of the collapse, it would get funded in collapse because it would be an under-served region with an application that could be funded.

MR. KEIG: So could we come back and fund that later on after getting answers on the exchange program?

MR. GOURIS: We would need to right now. Right now with the collapse as it is, it would get funded. There would be -- if did a regional collapse. The question is --

MR. KEIG: No, I'm just saying, you know, without the collapse --

MR. GOURIS: The question is, do we hold the application -- or the implementation of the collapse, hold that open until the '09s get a chance to apply.

MR. KEIG: Right. Can we do that?

MR. GOURIS: And if we -- we can, but now all of the '09s will have an advantage because they know what their '08 -- '07 and '08 competitors scored, and they will just score below it and fit within the region. So it would be an unfair situation, and everything would have to go back through -- the plan would have to go back to HUD and be reapproved as well.

MR. KEIG: Okay.

MR. HAMBY: Correct, Mr. Keig, the -- Kevin Hamby -- the issue is that we put out a policy and people applied under that policy. And part of that policy that we gave to HUD and the people applied under, represented the collapse to give the preference to '07 and '08 deals.

And so whenever that happened, that's, if you will, a public contract, and so to stop the collapse, I would say you'd have to not fund any of these deals and do a new application round after HUD had approved. I don't think you can sever the collapse because it was part of the overall policy and it's what people applied under.

MR. KEIG: And did the regions know that they might be subject to collapse at the time that we did that?

MR. HAMBY: It's the way we do all of our tax credit programs, and, in fact, we do most of our program funding that way. We have a statewide collapse because

the regional allocation formula in statute requires that we provide the regions out first and then if the money's not taken, we collapse it and we can use it statewide. The tax credit program has a requirement that we do that with both rural and -- the rural has to stay in rural until it's done, and then the -- then it can collapse.

But we can do that, but it just means stopping this process and doing an amendment because that's not what we submitted to HUD.

MR. CONINE: Any further questions from the Board?

(No response.)

MR. CONINE: Seeing none, I'll call the question. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. All right. 9e. Who's doing it? Let's go, let's go.

MR. GOURIS: Okay.

MR. CONINE: Let's hurry.

MR. GOURIS: The Board adopted the exchange policy and supplement, collectively called the exchange

policy, on July 30, 2009. It called for potential applicants to provide notice of intent by August 7. We received 120 notices. However, so far 12 have been identified as potentially ineligible because they did not have a determination or allocation of funds.

Staff is recommending the acceptance and return of 45 allocations from the 2007-2008 totaling 37,000,820 in annual tax credits. These credits will be exchanged for 321 million and some change in Treasury Grant Funds and will be available to award to all 45 applicants in accordance with the Department's exchange policy. It will fulfill their request for \$313 million, which will net out a difference \$8 million in extra cash to go to '09 transactions.

In addition, three 2008 awardees had additional 2009 credits as a result of it meeting the \$2 million allocation cap in 2008, and therefore are also returning \$560,000 in 2009 credits. Those will be treated as 2009 credits though the applicants will receive their full amount of exchange request out of the pot from 2007-2008.

The net proceeds and reward from the Grant Funds is the \$8 million, as I mentioned, and will be used for 2009 transactions. In addition, there are four 2008

forward commitments which received an allocation from 2009 funding pool, but prior to the July allocation. And they're eligible for exchange with priority ahead of the remainder of the 2009 pool in accordance with the Board's previous decision. These four represent \$3 million in tax credits to be returned, and \$24 million in exchange funds requested.

We were hopeful that we could have the delineation of the '90s for you today. We have -- we don't -- we're not comfortable with providing that at this point because there's still a lot of the regional allocations formula and addressing that, we don't have it available.

What we would like to do though is get your approval for the return of the 2007-2008 and the maximum proportion, or portion, that allowed for 2009 because we know that there's an over-abundance of requests for 2009, so we exchange the full amount and then we kind of figure out who's going to get what as we move forward. So we're requesting your authority -- the authority to go ahead and make that exchange happen with Treasury, and then move forward with allocating that at the future Board meeting.

MR. CONINE: Any questions of staff?

Do they wire that money, or do they --

MR. GOURIS: I don't believe so. I believe they put it in a little account for us and we draw it, one little draw at a time.

MR. CONINE: Do I hear a motion on sending Treasury a love letter asking for the money?

MS. BINGHAM ESCAREÑO: Move staff's recommendation.

MR. CONINE: Oh, we've got -- we have a few witness affirmation forms. I almost forgot about them.

MS. BINGHAM ESCAREÑO: They may challenge that.

(General laughter.)

MR. CONINE: Jerry Wright. Do you not want us to get a \$552 million wire?

MR. WRIGHT: Only if I get a piece of it.

My name's Jerry Wright, and I'll be rather fast, since it seems like you don't want to hear from us.

(General laughter.)

MR. WRIGHT: I just wanted to have a little bit of caution, and we spoke a little bit with staff. It's on the exchange program, but also on TCAP as well, but specifically on the exchange program.

As the Department starts to administer subordinate debt, in particular HOME funds, Housing Trust Funds, things of that nature, please remember that lenders

are viewing, though not everybody has a formal policy yet, they're viewing the exchange program as a lot riskier than the tax credit transactions in the past. Looking at them really more like conventional debt, or I'm sorry, conventional projects.

So when you're structuring Housing Trust Fund, HOME funds, or when you're even structuring TCAP or non-exchange program transactions, it's, I think, imperative to work with staff to work with the two GSEs that are out there as probably the lender on 90 percent of the deals, to actually have a inter-creditor and subordination agreement that's appropriate for the transactions.

I think you're going to see in the coming 12 months, 18 months, that it'll be a little bit more difficult to actually have transactions approved with non-standard subordination agreements. And so what we'll try to do over the next month, two months or so, is have the two GSEs come work with staff and have an appropriate transaction inter-creditor subordination agreement hammered out in advance, so with any luck we'll actually be able to proceed with these transactions in the future.

Thank you.

MR. CONINE: No disrespect, Jerry, but you didn't speak at all to the subject matter, which was we're

going to go get \$552 million in Treasury.

MR. WRIGHT: I think I did, is that if you go
get --

MR. CONINE: So --

MR. WRIGHT: -- the \$552 million --

MR. CONINE: -- you want to talk about the --

MR. WRIGHT: -- but you can't fill the gap,
it's irrelevant.

MR. CONINE: For the rest of you, if you have
something you want to visit on, let's make it relative to
the amount of money we're going to exchange to Treasury,
not the exchange program in general.

Mahish?

(General laughter.)

MR. MAHISH: I'm not going to comment -- I
wanted to comment on the program, but not on the --

MR. CONINE: Terri Anderson.

As you can tell, I'm short for time.

MS. ANDERSON: Good afternoon, Chairman Conine,
members of the Board, Mr. Gerber. Terri Anderson,
Anderson Capital, LLC. I am commenting on the amount of
funds that are going to be exchanged for '07 and '98
transactions, as well as 2009 deals. I firmly believe
that the amount of money is -- the highest and best use of

the money is to actually have all of the funds available to the state to come to the state.

And in disbursement of those funds, I do believe it's important, certainly for the older transactions, primarily '07 and '08, to have an opportunity to be underwritten and finance those developments up to 85 cents on the dollar. And once your funds do come in from Treasury, I think it would be really, really important to have policies and procedures in place so that we can begin to draw down those funds for predevelopment costs. Thank you for your time.

MR. CONINE: Thank you.

Doak Brown.

MR. BROWN: Actually, I'm a bit confused. Doak Brown, Brownstone Affordable Housing. Are you talking about exchanging all '08 deals automatically, no TCAP to them. Is that what I'm understanding?

MR. GOURIS: All the '07 and '08s that requested exchange --

MR. BROWN: Only the ones that request --

MR. GOURIS: -- we're going to give them notice saying that we are going to go ahead and take on their request and exchange it, and the Board has given us the authority to do that. I presume that if you choose to

change your mind at this point, you still can, and the Board will say, Fine, keep your credits, but this is your shot at getting an exchange. So this next week or so when you tell us, yes, I really do want an exchange, we're going to take it and go with it. And we're getting the authority to do all of it that's been requested so far.

MR. BROWN: I want to exchange to give the state more monies that would benefit the state. If I can exchange, but I'm being told by staff that I can't amend my exchange -- my notice of exchange -- or notice of intent to exchange amount. So I guess it goes along with the 552 --

MR. CONINE: You can only go down, you can't go up.

MR. BROWN: Well, I made the mistake assuming that if we could combine TCAP and exchange. And nowhere in any of the written material does it specifically state that you can't do both programs, and consequently when I applied for exchange, I didn't request enough. I was assuming I could do a TCAP loan replacement, therefore I'm being forced into the TCAP round and get funded out of TCAP. That doesn't seem to benefit the state if I'm being forced into TCAP. That's 9.4 million for Parkview Terrace --

MR. CONINE: So you didn't --

MR. BROWN: -- for TCAP.

MR. CONINE: -- tell staff you wanted to exchange the whole bucket for the credits?

MR. BROWN: I've told them that, but they have since told me that I can't amend the amount that -- no, I didn't the whole bucket I guess is probably the answer.

MR. GOURIS: So if that's okay with you all, we'll --

MR. CONINE: Yes.

MR. GOURIS: -- loan him the amount of funds that are --

MR. CONINE: He wants to add to it, if he wants to do it, why he would do a partial, I don't understand, but you need to have one more conversation with everybody. And when you make sure everybody's going to --

MR. GOURIS: Great.

MR. CONINE: -- say, We're going to exchange, is this the right amount, and he's going to give you that amount.

MR. GOURIS: So to be clear --

MR. CONINE: He can't give you more credits than he has, so --

MR. GOURIS: So to be clear though, the numbers

I referred to previously then would -- could be modified based on what happens and what --

MR. CONINE: We'll have to amend our motion that's on the floor, but we'll do that.

MR. GOURIS: And potentially would you allow them to change if they originally asked for 77 cents and they're going to ask for --

MR. CONINE: No, the rates are not at issue. The amount of the credits is what's at issue here.

MR. GOURIS: And they all have requested -- and the amount of requested exchange.

MR. CONINE: Right. I mean if he's got -- if he's sandbagging more credits and he now wants to give them up, you need to put them in the hopper now.

MR. GOURIS: I'm guessing there's somebody behind me that wants to speak to the issue, but there are a couple of folks that applied for -- said they weren't going to be able to do any more than 30 percent units, but still applied for 85 cents.

MR. CONINE: The rate is immaterial right now. It's the amount of credits he's given up to exchange to the Treasury. That's all I'm concerned about.

MR. GOURIS: But they're requesting an amount that is greater than the amount that they're going to be

eligible for.

MR. CONINE: That's a separate issue.

MR. GOURIS: And they're expecting to get -- if we accept their documents, they're going to expect to receive that amount, and so I want to make sure that we're clear that we can tell them we are -- if you're clear --

MR. CONINE: I think I'm clear.

MR. GOURIS: Okay. I want to make sure that --

MR. CONINE: I'm clear.

MR. BROWN: I'm not certain. So if I requested 7.5 -- I mean let's say I requested --

MR. CONINE: How many credits does your project have right now?

MR. BROWN: It has \$1.5 million.

MR. CONINE: That's all you're going to turn in to go get -- for us to exchange. Now you're not guaranteed 1.5 million coming back. Do you understand that?

MR. BROWN: Yes, but --

MR. CONINE: Good.

MR. BROWN: -- does that mean I'm eligible for 77 cents?

MR. CONINE: You're eligible for whatever you qualify under the policy that we've got on the floor,

which is 77 cents, I guess.

MR. GOURIS: Somewhere in that range.

MR. DORSEY: I think he's -- what he's saying is that because -- I'm sorry, I talked -- this is Cameron Dorsey, I'm the HOME Program manager -- I talked to Doak about this issue. They put in a notice of intent to exchange at 77 cents, but I think they actually may have requested less than 77 cents ultimately because they recognized that if they requested TCAP funds they would have been gapped. So they went ahead and did it for us instead of letting -- requesting more than they needed, all the way up to the 77 cents.

MR. BROWN: I'm a nice guy.

(General laughter.)

MR. BROWN: And I'm being told by staff that I can't get 77 cents now.

MR. GOURIS: I think what the Chair had indicated though is that you're going to be able to adjust the amounts --

MR. BROWN: Okay.

MR. GOURIS: -- that you've requested.

MR. BROWN: That's all I'm asking.

MR. GOURIS: If they amend their motion.

MR. HAMBY: I believe -- Kevin Hamby -- and I

believe what Mr. Conine is saying is that if you turn in a tax credit, we're going to request the tax credit back for the full amount that doesn't matter what you get back.

MR. BROWN: Right.

MR. HAMBY: And so it's a question of whether or not you're going to turn in every tax credit you have, all \$1.5 million, and whatever you get back it's a different thing, but the state's going to request all \$1.5 million times .85 regardless of what you get back.

Correct?

MR. CONINE: Correct.

MR. HAMBY: So it doesn't matter what your percentage is at this point, it matters how many dollars you're going to give us to give to the state, or to give to the Treasury so that we get the money back. And then we may fund other deals with the balance of the difference.

MR. GOURIS: We're going to go -- in other words, we're going to go forward with the exchange before we know if you're new structure, how it works, how it fits out, and how much that -- what that amount is.

MR. BROWN: Am I going to be allowed to request the full 77 cents?

MR. HAMBY: Yes.

MR. CONINE: I don't know why not.

(General laughter.)

MR. CONINE: Any other questions, Mr. Brown?

MR. BROWN: No.

MR. CONINE: Make sure you give him the right number.

(General laughter.)

MR. CONINE: Tim Lang.

MR. LANG: I'll waive my time.

MR. CONINE: Oh, thank you.

David Saling.

MR. SALING: Saling.

MR. CONINE: Excuse me.

MR. SALING: I'll pass.

MR. CONINE: Thank you.

Charles Shelton.

MR. SHELTON: I pass.

MR. CONINE: Doak Brown again. You got two.
We're done.

MR. BROWN: Actually --

(General laughter.)

MR. BROWN: -- the HOME funds, I'm not sure --

MR. CONINE: Oh, I did. That's does say 10a.
I'll wait for just a minute on that one.

Okay. We have a motion on the floor that sounds like it may need some tweaking.

MS. BINGHAM ESCAREÑO: I'd accept a friendly amendment from someone. I assume it's just on the Parkview Terrace one, or is it --

MR. CONINE: No, it's on anybody that they call in the next week before they submit a number to Treasury that wants -- for some reason gave a partial number on the '07 and '08 credits, if they want to go up to the full, nor they want to reduce down, he's able to adjust that number between now and next week when he sends the request to Treasury.

MS. BINGHAM ESCAREÑO: So amended.

MR. CONINE: Thank you.

Any -- is there a second?

MS. RAY: Second.

MR. CONINE: Okay. Thank you.

Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those is favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 10a.

MR. DORSEY: Cameron Dorsey, HOME Program Manager. Item 10a is the HOME program awards. On July 16, 2009 the TDHCA Board approved the 2009 rental housing development notice of funding availability.

MR. GERBER: Just go to the awarding. Just go to the actual award.

MR. DORSEY: Okay. Staff is recommending the remaining \$5 million in general set aside HOME funds be awarded from the Department's current available -- I'm sorry, be awarded to five pending applications. In addition, staff recommends using 267,237 from the Department's current available and deobligated balance of HOME funds to fully fund these applications. Staff recommends that the Board approve these awards.

MR. CONINE: Okay. Any questions for Cameron?

(No response.)

MR. CONINE: Seeing none, I'll hear a motion -- oh, we've got Doak.

Doak, come on up.

MR. BROWN: This particular deal we were in line. We're being skipped for HOME funds because apparently there's a Board policy which states that you can't make an award of HOME funds to a project that has

another pending source of funding. If you -- I think in this particular situation, that policy shouldn't apply because essentially we are -- we're no different than the 2008 applications that have now come in for TCAP and have TCAP pending applications.

There's three projects that are being funded, which are after us, for more than the amount that we requested. There's really no difference -- I mean they've now filed notices of intent. We're all in the same boat.

I don't understand why we're being skipped for this particular project.

MR. PENDER: Excuse me, Board members. Jeff Pender, Deputy General Counsel. I just want to let you know that you really can't discuss his particular application today. It's not listed on the agenda. About the best you can do for this applicant is agree to hear this at another Board meeting.

MR. BROWN: Then all the HOME funds will be gone.

MR. CONINE: We'll be glad to listen to you next time. And there'll be more HOME funds, I promise you. They just keep coming.

Any other -- well, I guess we need a motion on this particular agenda item.

MS. RAY: Mr. Chairman, I move staff's recommendation to award --

MR. CONINE: Move staff --

MS. RAY: -- the HOME funds.

MR. CONINE: -- recommendation to approve. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Mr. Gerber, do you have a Executive Director's report?

MR. GERBER: There's a report on outreach activities. I'll say in the month of September we'll be doing home ownership events around the city, and we'll look forward to including many of you in those activities.

We're also looking forward to the National Council of Safe Housing Agencies holding their annual meeting in San Antonio at the end of October. And we'll

work to include Board members in that as well as staff in the myriad training opportunities. We'll be assisting with that conference, this national conference being held in our state. So it's a great privilege for us.

MR. CONINE: Good way to host 50 -- 49 other folks to the great state of Texas.

Is that it?

MR. GERBER: That's all we got.

MR. CONINE: Lowell --

MR. KEIG: Yes.

MR. CONINE: -- thanks for being here today. I'm sorry about the rush at the end. That normally doesn't happen, but --

MR. KEIG: Singed my sideburns.

MR. CONINE: Appreciate you being here, and I look forward to your involvement on the Board as time moves along.

MR. GERBER: We're probably going to need to reschedule the November Board meeting, Mr. Chairman, in order to accommodate the time line for the QAP. We'll get back to the Board members to coordinate that.

MR. CONINE: Well, the other thing is I kind want to understand the time line on TCAP and exchange dates, so if you could send us out an email so we can all

understand that, that would be helpful. We may want to push some of those in the October time frame, but based on some of the discussion here, I'd like to have in my head firmly those dates so we know what's going on.

Any other thing to come before the Board today?

If not, we stand adjourned.

(Whereupon, at 3:45 p.m., the meeting was concluded.)

CERTIFICATE

IN RE: TDHCA Board Meeting

LOCATION: Austin, Texas

DATE: September 3, 2009

I do hereby certify that the foregoing pages, numbers 1 through 309, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

9/11/2009
(Transcriber) (Date)

On the Record Reporting, Inc.
3307 Northland, Suite 315
Austin, Texas 78731