

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

November 7, 2013  
9:05 a.m.

MEMBERS:

J. PAUL OXER, Chair  
JUAN MUÑOZ, Vice-Chair  
J. MARK McWATTERS, Member  
LESLIE BINGHAM ESCAREÑO, Member  
ROBERT D. THOMAS, Member  
TOM GANN, Member

TIMOTHY K. IRVINE, Executive Director

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- i) Presentation, Discussion, and Possible Action to adopt the 2014 Multifamily Programs Procedures Manual

**Program Planning and Metrics**

- j) Presentation and Discussion on the Department Snapshot tool for the Section 8 program

**Bond Finance**

- k) Presentation, Discussion, and Possible Action to publish a Request for Proposal (RFP) for investment banking firms interested in providing financial advisory services for single family and multifamily mortgage revenue bonds starting in Fiscal Year 2015
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- m) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 90, Migrant Labor Housing Facilities, '90.8 (a) and (b), concerning Forms, and directing their publication for public comment in the *Texas Register*
- n) Presentation Discussion, and Possible Action on proposed amendments to 10 TAC '1.10, concerning Public Comment Procedures, and directing their publication for public comment in the *Texas Register*
- o) Presentation, Discussion, and Possible Action on the issuance of a Notice of Adoption of Rule Review pursuant to Texas Government Code '2001.039 regarding 10 TAC '1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and directing its publication in the *Texas Register*

- p) Presentation, Discussion, and Possible Action on the issuance of a Notice of Adoption of Rule Review pursuant to Texas Government Code '2001.039 regarding 10 TAC '1.17, Alternative Dispute Resolution and Negotiated Rulemaking, and directing its publication in the *Texas Register*
- q) Presentation, Discussion, and Possible Action on orders adopting new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, '1.9 regarding Texas Public Information Act Training for Department Employees, and directing its publication in the *Texas Register*
- r) Presentation, Discussion, and Possible Action on orders adopting the repeal of 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, '5.430, concerning Allowable Subrecipient Administrative and Assurance 16 Activities Expenditures; and new 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, '5.430, concerning Allowable Subrecipient Administrative and Program Services Costs, and directing their publication in the *Texas Register*
- s) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 60, Compliance Administration, Subchapter B, ''60.201 B 60.211, concerning Accessibility Requirements, and proposed new Chapter 1, Subchapter B ''1.201 1.212, concerning Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and directing their publication for public comment in the *Texas Register*
- t) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 12, ''12.1, 12.4 12.6, 12.10, concerning Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*
- u) Presentation, Discussion, and Possible Action on an order adopting the repeal

of 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10, Uniform Multifamily rules, Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication in the *Texas Register*

- v) Presentation, Discussion, and Possible Approval of an order adopting the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D, concerning Underwriting and Loan Policy, and an order adopting the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter D, concerning Underwriting and Loan Policy, and directing its publication in the *Texas Register*

***Financial Administration***

- w) Presentation, Discussion, and Possible Action on the Computation of Housing Finance Division Total and Unencumbered Fund Balances and Transfers to the Housing Trust Fund

**REPORT ITEMS**

The Board accepts the following reports:

1. TDHCA Outreach Activities, Oct 2013
2. Status report on the HOME Program Contracts and Reservation System Participants
3. Report on the Department=s 4th Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)
4. Report on the Department=s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

**ACTION ITEMS**

**ITEM 2: HOUSING RESOURCE CENTER**

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P R O C E E D I N G S

1  
2 MR. OXER: Good morning, everyone. I'd like to  
3 welcome you to the November 7 meeting of the Governing  
4 Board of the Texas Department of Housing and Community  
5 Affairs.

6 We'll begin, as we always do, with roll call.  
7 Ms. Bingham?

8 MS. BINGHAM ESCAREÑO: Here.

9 MR. OXER: Mr. Gann?

10 MR. GANN: Here.

11 MR. OXER: Professor McWatters?

12 MR. McWATTERS: Here.

13 MR. OXER: Dr. Muñoz is on his way. I am here.

14 Mr. Thomas?

15 MR. THOMAS: Here.

16 MR. OXER: Great. We have five present and a  
17 sixth on the way; we have a quorum, we're in business.

18 Let's start and salute the flags.

19 (Whereupon, the Pledge of Allegiance and the  
20 Texas Allegiance were recited.)

21 MR. OXER: I'm going to do a sound check. This  
22 is our first time in this hearing room so we're getting  
23 accustomed to it. Can everybody hear this at this volume  
24 in the back? Great. All right, we're in business.

25 Okay. Consent agenda. Do I hear any requests



1 to pull any items? I think we've taken most of the things  
2 that will use us up today and moved those into the action  
3 agenda. That being the case, is there a motion to  
4 consider on the consent?

5 MS. BINGHAM ESCAREÑO: Mr. Chair, I move to  
6 approve the items on the consent agenda.

7 MR. OXER: Motion by Ms. Bingham to approve the  
8 consent agenda.

9 MR. GANN: Second.

10 MR. OXER: Second by Mr. Gann. Is there any  
11 comment?

12 (No response.)

13 MR. OXER: There is none. All in favor?

14 (A chorus of ayes.)

15 MR. OXER: Opposed?

16 (No response.)

17 MR. OXER: There are none.

18 Okay. Just for a point of housekeeping here,  
19 we have this front row up here; as we always do, we'll  
20 keep the front row for those who wish to speak. We'll  
21 take those items for the folks, we'll line up from this  
22 chair right here next to the aisle out that way, so if you  
23 guys want to organize yourselves, that will be the first one  
24 right there to come up.

25 Anything unusual here, Mr. E.D.?

1 MR. IRVINE: I'm going to present the first  
2 item on the action agenda.

3 MR. OXER: Well, in that case, let's get  
4 started.

5 MR. IRVINE: First item on the action agenda.  
6 The State of Texas is required by HUD to have in place and  
7 keep current an Analysis of Impediments to Fair Housing  
8 Choice. We call it the AI. As part of the resolution of  
9 a fair housing complaint, Texas has updated its AI in two  
10 phases. The first phase was submitted to HUD in March  
11 2011 and it focused primarily on the use of CDBG Disaster  
12 Recovery funds in regions that had been  
13 impacted by Hurricanes Ike and Dolly.

14 This current phase is phase two, and it covers  
15 the entire state. This got rolling in late 2011 when we  
16 conducted a public procurement process that ultimately led  
17 to the selection of BBC Research and Consulting to perform  
18 this analysis for us, and BBC's work has been pretty  
19 significant. It spanned the compilation and analysis of a  
20 tremendous amount of data, it's assessed complaints and  
21 court cases that have bearing on fair housing issues, and  
22 perhaps most importantly, it's been a very broad public  
23 outreach process.

24 Throughout the project we've been very  
25 intentional about the maximization of outreach, trying to

1 make sure that as many viewpoints were brought in and  
2 represented as possible. There were public forums, both  
3 physical and virtual, there were surveys, there were  
4 hearings, there were focus groups. As you can imagine,  
5 this document reflects a lot of different perspectives  
6 that came out of this input process. And I've got to say  
7 that a really valuable byproduct of this process is  
8 engagement and input. I think as a result of this  
9 process, a whole lot more Texans, local governments,  
10 elected officials, neighborhood organizations, just a wide  
11 array of folks are more aware of the requirement to  
12 further the Fair Housing Act's purposes in an affirmative  
13 manner. I think that the awareness and engagement on fair  
14 housing is just intrinsically a really, really valuable  
15 part of all of this.

16 At this time, staff is recommending that the  
17 Board authorize us to submit this to HUD, but I really  
18 want to underscore this is just one step along the way,  
19 this is a process, and I think it's critical that we  
20 embrace the precepts here, the importance of affirmatively  
21 furthering fair housing all the time in all of our  
22 activities.

23 This AI has been a huge task for a lot of  
24 people, not just our consultants, but our staff, Brenda  
25 Hull, Jennifer Molinari, Elizabeth Yevich, a lot of

1 others, devoted a huge amount of time and energy to this.

2 I know that I and Barbara and Michael have spent a lot of  
3 hours reviewing this pretty meticulously. It's a large  
4 and it's a complex document, but anyway, that's where we  
5 are right now, and staff is recommending that we receive  
6 Board authorization to move to the next step.

7 MR. OXER: Any questions from the Board  
8 members?

9 (No response.)

10 MR. OXER: Very well. We'll have a motion to  
11 consider.

12 MR. THOMAS: So moved.

13 MR. OXER: Motion by Mr. Thomas to accept staff  
14 recommendations on the AI.

15 MR. McWATTERS: Second.

16 MR. OXER: And a second by Professor McWatters.  
17 We have some public comment on this. Good  
18 morning.

19 MS. SLOAN: Good morning. Maddie Sloan with  
20 Texas Appleseed. I want to say we certainly appreciate  
21 the hard work of the staff that went into this analysis of  
22 impediments and Texas Low Income Housing Information  
23 Service and Texas Appleseed submitted public comments on  
24 this, written comments. We think some of our most  
25 substantive concerns weren't addressed; our major concern

1 is the lack of meaningful commitment to action steps that  
2 address the identified impediments. We don't think this  
3 meets HUD's standards for an AI and we're concerned it's  
4 going to be rejected.

5 MR. OXER: Any questions from the Board?

6 (No response.)

7 MR. OXER: I have a question. What were the  
8 parts that you felt didn't meet those, or have you  
9 submitted those comments?

10 MS. SLOAN: We submitted, I think, pretty  
11 extensive written comments. Our major concern is that the  
12 analysis of impediments, the analysis and identification  
13 of impediments is the first step and we had some concerns  
14 about the small number of impediments, the split of what  
15 we saw as all impediments and to impediments on  
16 observations.

17 But the second step, and really in a way the  
18 most important, is that the state needs to commit to  
19 meaningful actions that address the impediments  
20 identified. The action steps are almost all in very  
21 conditional language: people should consider this, people  
22 should examine this, people should work with. You know,  
23 it's sort of a concern that the state can't even commit to  
24 considering something. We don't think that's a commitment  
25 to meaningful action steps and we don't think some of the

1 action steps really address the impediments that were  
2 identified.

3 MR. OXER: Hold on just for a second. I'll  
4 explain this to you here in just a second, but hold on.  
5 This is not nearly as interesting as it looks. You can  
6 probably hear me, most of you, without the microphone, but  
7 this is our first time in this particular venue, it's been  
8 recently remodeled, it's a House office building, there  
9 are often hearings in here. The chair position, everybody  
10 has a mic button under here that goes like this to turn on  
11 the mic and turn it off, but in the chair there's this big  
12 white button that's contained in a control box in here  
13 that if you push it, he shows up with a gun. I don't want  
14 to say I was just testing it, but since I hit it  
15 apparently, we're more than glad to see that he showed up.  
16 So let this be a warning to all of you. Apparently you  
17 don't have to push it very hard.

18 (General laughter.)

19 MR. McWATTERS: Mr. Chair, this doesn't reflect  
20 your response to Ms. Sloan's testimony.

21 MR. OXER: I understand that. She's just going  
22 to have to hold on for a second. Make sure that you're  
23 tweeting a timeout here, Michael.

24 MR. THOMAS: The chairman called the cops.

25 MR. OXER: More importantly, they showed up.

1 All right. Ms. Sloan, we'll continue. This is  
2 apparently going to take a minute. Everybody can hear me,  
3 I'm sure. Any questions from the Board? I've got this  
4 microphone right here, I don't mind standing up for a  
5 minute, as tired as I get of sitting down. Are there any  
6 other questions from the Board?

7 MS. BINGHAM ESCAREÑO: Did you have any other  
8 comments, Ms. Sloan?

9 MR. OXER: We heard you, we understand your  
10 comments.

11 MS. SLOAN: And you've got extensive written  
12 comments that I certainly don't want to make you listen  
13 to, as well as read. Thank you.

14 MR. OXER: Okay. Thanks very much.

15 John, good morning.

16 MR. HENNEBERGER: Good morning. My name is  
17 John Henneberger. I'm the co-director of the Texas Low  
18 Income Housing Information Service, a statewide nonprofit  
19 organization that advocates for the needs of poor people  
20 and affordable housing.

21 I'm here to agree with Ms. Sloan's comments.  
22 We have submitted our written comments, and I'd like to  
23 just supplement that by saying that the activity of  
24 creating an analysis of impediments to fair housing is  
25 intended to be a deliberative one on the part of policy

1 decision makers at the state level. Too often in the past  
2 the analysis of impediments to fair housing has been a  
3 consultant-driven document in which lots of research is  
4 poured into gathering demographic data and facts and  
5 assessing information, but that is a meaningless exercise  
6 unless policymakers actually take that information and do  
7 the analysis of the impediments and then translate that  
8 analysis into specific action steps in order to overcome  
9 the impediments that are identified in the AI.

10           You have a 900-page document or something like  
11 that, the last time I counted, and it's a tree-killer.  
12 This is a lot of demographic information. I know because  
13 I actually read it, and I have to say that I came out of  
14 this document thinking well, there's a lot of information  
15 here but where's the plan, where is the commitment on the  
16 part of the state to undertake specific activities to  
17 overcome these impediments to fair housing.

18           I think the problem we're facing here, if I can  
19 kind of put myself in your shoes -- which is a dangerous  
20 thing for both of us -- but I think the problem is --

21           MR. OXER: My position is available, by the  
22 way.

23           MR. HENNEBERGER: I might take it just to vote  
24 on the AI.

25           But the problem is that I believe that the



1 state has become hypersensitized to its fear of being  
2 challenged about fair housing activities under this, and I  
3 understand it. I mean, my organization and Maddie, we  
4 filed a complaint on fair housing, but we filed it after  
5 two years of talking about what all the problems are with  
6 disaster recovery stuff. It wasn't like it just came out  
7 of the blue.

8           What I see going on with this is essentially  
9 there are no substantive commitments to undertake specific  
10 activities, and I believe that that stems from the notion  
11 that if you make an admission that there is a problem that  
12 you're going to get sued. And we will never solve the  
13 fair housing problem until we overcome this structural  
14 problem and until this Board exercises the responsibility  
15 that it really has to assess what these problems are and  
16 come up with a reasonable plan to address these problems.

17       If you are acting reasonably, if you are taking steps as  
18 a board to deliberate and figure out what the problems are  
19 and set some reasonable goals, that is the best insurance  
20 against future complaints and litigation and other things  
21 on fair housing. And that's what's completely lacking,  
22 frankly, in the draft AI before you. It's a 900-page  
23 document that consultants have generated and it contains  
24 no effective policy remedies to address the fair housing  
25 problems in the state.

1 Thank you very much.

2 MR. OXER: Okay. Are there any questions from  
3 the Board?

4 (No response.)

5 MR. OXER: I have a question, John. Your  
6 summary statement is that you see this as something that  
7 should be a call to action rather than something to guide  
8 future action.

9 MR. HENNEBERGER: Yes. I see it as a -- I  
10 believe that the AI requirement of the state is for a  
11 decision-making body to assess what the impediments are  
12 and to come up with specific action steps in order to  
13 address those impediments.

14 MR. OXER: Good. Thanks.

15 MR. HENNEBERGER: Thank you.

16 MR. OXER: There's no further public comment.

17 We have a motion by Mr. Thomas, second by Professor  
18 McWatters, to accept staff recommendation. Any other  
19 comments from the Board?

20 (No response.)

21 MR. OXER: All in favor?

22 (A chorus of ayes.)

23 MR. OXER: Opposed?

24 (No response.)

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

1 Thanks very much.

2 Ms. Murphy, we have a few rules to talk about.

3 MS. MURPHY: Good morning. Patricia Murphy,  
4 chief of Compliance.

5 Item 3(a) is the compliance monitoring rules.  
6 These rules were approved for public comment at the  
7 September Board meeting. We got comment from five people,  
8 and staff is not recommending changes based on most of the  
9 comment received.

10 Two commenters provided a list of items that  
11 they suggested should be deleted from our inspection  
12 protocol. Several items on the list are not part of our  
13 current inspection protocol, and therefore, do not need to  
14 be deleted. Staff does not recommend deleting the  
15 remaining items as they are specific requirements of the  
16 Uniform Physical Condition Standards which the IRS has  
17 confirmed cannot be modified.

18 Another commenter made several suggestions  
19 about the utility allowance section of our rules. The  
20 rent limits published by TDHCA include an allowance for  
21 utilities, so unless a property is all bills paid, the  
22 owner is responsible for estimating a resident's utility  
23 bill. The utility allowance plus the amount of rent  
24 charged cannot exceed the rent limits. Treasury  
25 Regulation 1.4-10 sets out the allowable methods for

1 establishing a utility allowance.

2 The commenter remarked on several different  
3 aspects of the utility allowance section of our rules with  
4 the underlying theme that we are overstepping the IRS  
5 rule. Staff acknowledges that our compliance rules  
6 include some additional safeguards not specifically  
7 required by the Treasury regulation.

8 Noncompliance with the utility allowance  
9 provisions can have extreme consequences. A  
10 miscalculation of the utility allowance by just a few  
11 dollars could result in all or most of the households  
12 being overcharged rent, resulting in the potential for  
13 significant recapture of credit. To avoid this situation  
14 and ensure that rents are properly restricted, our  
15 compliance rules require approval to use certain methods  
16 at initial lease-up and clearly put owners on notice that  
17 they are required to provide backup and a reasonable  
18 explanation of how they calculated their utility  
19 allowance.

20 Staff has contacted the IRS about the concern  
21 that we're overstepping the rules and the Treasury  
22 Department has confirmed that our rules are consistent  
23 with the Treasury regulations.

24 Lastly, we had one commenter suggest that an  
25 acceptable correction for the finding failure to provide

1 the Fair Housing Disclosure Notice should be providing the  
2 next household with the required notice. Staff does not  
3 agree that providing the notice to a new household  
4 corrects the noncompliance of not providing the notice to  
5 the previous household. In addition, this commenter  
6 requested deletion of some new subparagraphs that require  
7 owners to give households written notice of the required  
8 services and amenities. Staff did not find the reasons  
9 cited by the commenter for eliminating this notice as  
10 sufficient justification.

11 Staff recommends approval of these rules as  
12 presented in your Board book. And it looks like we do  
13 have some public comment, but do you have any questions  
14 before comment?

15 MR. OXER: Let me ask a procedural question  
16 here. Are we taking these one at a time so this is 3(a)  
17 only?

18 MS. MURPHY: That's correct. This is the  
19 compliance rule.

20 MR. OXER: I'm sorry. 2(a) only.

21 MS. MURPHY: So this is 3(a), this is the  
22 compliance monitoring rule, and the next rule is the  
23 previous participation rule.

24 Any questions?

25 MR. OXER: Are there any questions from the

1 Board?

2 (No response.)

3 MR. OXER: I have a question. You're talking  
4 about the previous household, that would be the existing  
5 household or the previous one with the unit being vacant?

6 MS. MURPHY: So as part of the ICP remedial  
7 plan, we have agreed that owners will provide households  
8 with the Fair Housing Disclosure Notice, and they're to  
9 provide them with that prior to move-in. So if they fail  
10 to provide the household with the notice and the household  
11 skips, so they take off in the middle of the night and  
12 they break their lease, there's really no way for the  
13 owner to fix that. So a commenter suggested why don't  
14 you, as corrective action, say that as long as they tell  
15 the next household about the Fair Housing Disclosure  
16 Notice, that you'll consider the past noncompliance  
17 corrected. Well, they're required to give the next  
18 household the notice anyway, and telling the Smith  
19 household about this required form doesn't do anything for  
20 the previous household that didn't get the notice.

21 MR. OXER: So what remedy is there for not  
22 having delivered to the previous household?

23 MS. MURPHY: There is not. We're not able to  
24 identify a way to fix it. If you can't give them notice  
25 because they're gone, you can't give them notice. If you

1 didn't give them notice when they moved in and they don't  
2 skip on you, then we're providing that you should give  
3 them notice within 120 days of their lease renewal, of  
4 when they need to renew their lease, to provide them with  
5 the notice to tell them that they have options about where  
6 they live and to consider fair housing in their choice of  
7 housing. But Barbara and I have kicked it around and  
8 we're not able to find a way to say how do you provide  
9 that previous household with the notice. Giving the new  
10 person the notice doesn't really change the fact that the  
11 other household didn't get it.

12 MR. OXER: All right. Motion to consider, and  
13 then we'll hear public comment.

14 MS. BINGHAM ESCAREÑO: Move to approve staff's  
15 recommendation to repeal the previous 10 TAC Chapter 10  
16 and replace it with the new one.

17 MR. OXER: Okay. Motion by Ms. Bingham to  
18 accept staff recommendation.

19 MR. GANN: Second.

20 MR. OXER: Second by Mr. Gann.

21 We'll hear public comment. A housekeeping item  
22 here, we expect a fairly long meeting today, going to have  
23 some points at which we expect a lot of public comment, so  
24 we're going to run a pretty tight clock today, and we'll  
25 have three minutes to start, and if we need to, we'll

1 expand that, and I'd like you to please observe the time  
2 requirements we have so we can make sure that everybody  
3 gets heard today.

4 Okay. Barry.

5 MR. KAHN: I think everybody will be pretty  
6 surprised, but I'll go along with the proposed rules.

7 MR. OXER: Good. Now sit down and let's vote,  
8 everybody.

9 (General laughter.)

10 MR. KAHN: However, the second part of it  
11 really extends to -- I mean, 3(a) and 3(b) kind of run  
12 hand in hand, and I think what the big concern of the  
13 industry is where all this goes with EARAC. If the  
14 Department needs to report stuff to the IRS and that's the  
15 law, and maybe there's been some confusion in all this, we  
16 aren't trying to interfere with the law. That's correct  
17 and that's why I say I will go along with the rules as  
18 written.

19 Over the course of the last couple of meetings,  
20 I've proposed some items to be excluded from the  
21 inspection process. If they can't be excluded from the  
22 pure inspection process and have to be reported on 8823s  
23 to the IRS, it's up to the developer then to decide if he  
24 wants to correct it from that perspective.

25 What the real issue gets to be in the



1 development community and as we're getting squeezed in  
2 older properties -- and I've explained, I don't think I  
3 need to repeat it today -- we really only have 1 percent  
4 increases rather than 2 percent rent increases. And this  
5 is squeezing budgets, particular going seven, eight, nine  
6 years out, and these projects need to last at least  
7 fifteen years.

8           The Department can win the battle by making us  
9 spend the money and then deals possibly going under then  
10 down the road, but that's not where I think we want to go.

11       The big overall goal is to preserve affordable housing,  
12 so I think until true rules come out on EARAC, what goes  
13 to EARAC, what repeat violators are, and a lot of this is  
14 not clearly defined, that what we need to do is  
15 incorporate the proposal which is in the Board book on  
16 page 433 to 434 on items that perhaps just don't go to  
17 EARAC, and then it's up to the developer does he want to  
18 cure the stuff for the IRS or not.

19           And basically, what these are are all  
20 housekeeping items that's under the tenant's  
21 responsibility. It's not trying to tackle preserving the  
22 property, preserving the grounds. I mean, as Tim had said  
23 at one meeting when we were first discussing the rules,  
24 you can pretty much drive on a property and tell if it's  
25 in good shape or not. And I think what the real goal is

1 is let's protect the properties but let's figure out a  
2 different way of dealing with the housekeeping issues.  
3 Fine, report them to the IRS, but let's not hold them  
4 against everybody as far as getting future allocations.

5 And I'm happy to answer any questions on it,  
6 but I think there's something we can all work with,  
7 particularly as new rules come forth.

8 MR. OXER: Good. Thank you. Any questions  
9 from the Board?

10 (No response.)

11 MR. OXER: No other public comment. Motion by  
12 Ms. Bingham, second by Mr. Gann to accept staff  
13 recommendation on item 3(a). All in favor?

14 (A chorus of ayes.)

15 MR. OXER: Opposed?

16 (No response.)

17 MR. OXER: There are none.

18 Okay. Ms. Murphy, again.

19 MS. MURPHY: Patricia Murphy, chief of  
20 Compliance.

21 Item 3(b) is the previous participation rule.  
22 This rule was also approved for public comment at the  
23 September Board meeting. We received comments from three  
24 people and we are recommending changes based on some of  
25 the comments. A lot of the changes simply reword things

1 to make the rule clearer, however, staff is not  
2 recommending changes based on all the comment received.

3 Two commenters suggested that events of  
4 noncompliance that cannot be corrected during the  
5 corrective action period should be excluded from an  
6 applicant's compliance history considered by EARAC. This  
7 suggestion was not contemplated in the recent revision to  
8 our governing statute. In addition, these commenters  
9 suggested that in instances where an owner owns multiple  
10 properties, the number of violations should be divided by  
11 the number of properties such owner owns when comparing  
12 violations to other owners with violations. One owning  
13 twenty properties with ten violations going to EARAC is a  
14 lesser violator compared to somebody owning one property  
15 with two violations.

16 It's not anticipated that the number of  
17 properties versus the number of violations will be  
18 determinative in the evaluation of the applicant's  
19 compliance history. Instead, the responsiveness of the  
20 owner, the reasons for the finding of noncompliance, steps  
21 the owner made to avoid the situation in the future are  
22 expected to be the focus of the decision. So staff does  
23 not recommend any changes in response to these comments  
24 and we recommend approval of the rule as presented in your  
25 Board book.

1 MR. OXER: Good. Thanks, Patricia.

2 Any questions from the Board?

3 (No response.)

4 MR. OXER: Motion to consider?

5 MR. GANN: I so move.

6 MR. OXER: Motion by Mr. Gann to accept staff  
7 recommendation on item 3(b).

8 MR. THOMAS: Second.

9 MR. OXER: Second by Mr. Thomas.

10 Okay. There's no public comment. All in  
11 favor?

12 (A chorus of ayes.)

13 MR. OXER: Opposed?

14 (No response.)

15 MR. OXER: There are none.

16 All right. Cameron.

17 MR. DORSEY: That was far too fast. I move to  
18 have some of the people that were going to make public  
19 comment on the QAP make public comment on Patricia's rule  
20 instead.

21 MR. OXER: There's only so many seats up here  
22 you can't get everybody in the front, Cameron.

23 MR. DORSEY: If I wink twice and look to the  
24 right, push the white button.

25 (General laughter.)

1           MR. DORSEY: Item 3(c), this is an item that is  
2 for the repeal of the existing Chapter 11 which is the  
3 core kind of piece of the QAP, and an order adopting the  
4 new proposed QAP.

5           I'm not going to go in depth into the specific  
6 changes, I'll let these folks make comment and then I can  
7 respond to the comment however you all would like me to  
8 accomplish that, but I wanted to talk just a little bit  
9 about the process. This is a tough process, it's a very  
10 tight time frame every year, and so we started back in  
11 July, really, kind of figuring out what changes we may  
12 need to make.

13           Certainly throughout cycle we were gathering up  
14 changes as J. Paul said fix that, but we actually kind of  
15 dove into the document and started really the tedious  
16 process of figuring out what changes we needed to make,  
17 what changes made sense from a policy perspective, and  
18 these types of things. Certainly, also, we had the 83rd  
19 Legislative Session, so we have some statutory changes.  
20 There were three bills in particular that had pretty  
21 sweeping effect on the rules, so we needed to incorporate  
22 all those things.

23           And so the other thing is despite the kind of  
24 very tight time frame, I consider it an extremely  
25 important thing to make sure that we share as much

1 information with the folks in the room here that are going  
2 to make public comment and the folks that aren't making  
3 public comment because we made the changes they wanted, to  
4 have a really meaningful dialogue with those folks. The  
5 rulemaking process kind of has a very dry method of  
6 getting comment in a written form and then we consider it  
7 over an extended period of time, and then the response is  
8 our reasoned response and whether we incorporated it into  
9 the rule or not, but there's all kinds of stuff that  
10 happens in between that I think is really important to  
11 know.

12 We sat down and we met with the group from the  
13 Texas Affiliation of Affordable Housing Providers and had  
14 a really meaningful dialogue about what their comments  
15 were and shared our own kind of perspectives, what was  
16 going through out head as we drafted certain items. We  
17 did the same thing with a group of public housing  
18 authorities throughout the state. And I do the same thing  
19 and Jean does the same thing on a daily basis as we  
20 consider these things. Our knowledge and expertise is in  
21 certain very specific areas, and the rules cover more than  
22 just what our expertise is, and sometimes I need to reach  
23 out and ask for help, and these guys are always willing to  
24 provide help.

25 A great example would be there was a comment

1 that we should consider basically the kind of lick-n-stick  
2 kind of stone work, give it the same consideration that we  
3 give normal masonry veneer in terms of the percentage that  
4 we incentivize putting into the interior design of a  
5 building, and I'm not the expert on the different types of  
6 stone, so I call up a few developers, ask them what their  
7 perspective is, ask them what the cost is associated with  
8 this type of construction method, what the quality is and  
9 these types of things, and I got the same answer from  
10 everyone that I called.

11 And I really appreciate that kind of level of  
12 honesty and that kind of partnership that we have with the  
13 folks in the room. It makes things much, much smoother  
14 and a lot better, and the hope is at the end of the day is  
15 even if we disagree, we kind of have an understanding of  
16 where each other comes from and a mutual respect for kind  
17 of the constraints that we all have to face, despite those  
18 being oftentimes very different constraints. So I thank  
19 everyone that made public comment and that's going to make  
20 public comment today, and I will do my best to give very  
21 meaningful responses and insight into why we did or did  
22 not accept a particular issue.

23 Beyond that, I'll cut this part off and let  
24 folks make public comment, unless you have questions.

25 MR. OXER: Are there any questions from the

1 Board?

2 (No response.)

3 MR. OXER: Okay. Let's get started. We do  
4 have to have a motion first to consider.

5 MR. THOMAS: So moved.

6 MR. OXER: Motion by Mr. Thomas to accept staff  
7 recommendation on item 3(c) with respect to the QAP.

8 MS. BINGHAM ESCAREÑO: Second.

9 MR. OXER: Second by Ms. Bingham.

10 Now you're on.

11 MS. CHAPA-JONES: Hi. Good morning.

12 MR. OXER: Good morning.

13 MS. CHAPA-JONES: I'm Veronica Chapa-Jones.

14 I'm the deputy director for grants management and  
15 compliance at the City of Houston Housing and Community  
16 Development Department. I have two specific issues that I  
17 want to speak to on the QAP this morning, so I'm going to  
18 try to bifurcate my comments because they can be a little  
19 bit complicated.

20 The first comment that I want to make is  
21 regarding the city's public comment on permanent  
22 supportive housing. I talked a little bit about the  
23 program that the city has put together to end chronic  
24 homelessness over the next four years. There's been many  
25 millions of dollars of city resources dedicated to this



1 effort, and the goal is to actually end the bane that is  
2 chronic homelessness by producing a unit count of 2,800  
3 affordable units to take those people off the street with  
4 permanent solutions for housing.

5 In four different parts of the section in the  
6 QAP, 11.9, that specifically talks about criteria to serve  
7 and support Texans most in need, what the City of Houston  
8 requested was that proposed projects that meet the City of  
9 Houston designation for permanent supportive housing be  
10 offered equivalent points to the TDHCA program. So the  
11 difference is there's a couple of nuances that make our  
12 programs distinct, they have the same goal, they serve  
13 Texans most in need. The challenge was the Department  
14 also has a goal to affirmatively further fair housing and  
15 increase housing in high opportunity areas.

16 So the City of Houston would like to request,  
17 again, consideration in the four different comments that  
18 we made in the section, specifically for the criteria to  
19 serve and support Texans most in need, could we allow the  
20 City of Houston's program to be equal to the TDHCA program  
21 in high opportunity areas and allow for those proposed  
22 projects to receive equivalent points.

23 MR. OXER: Good. Thanks, Veronica.

24 Any questions?

25 MR. THOMAS: What specific section, 11.9 what?

1 MS. CHAPA-JONES: The citation is 11.9(c),  
2 Criteria to serve and support Texans most in need. And we  
3 made public comment specific to rent levels of tenants  
4 where points were provided, tenant services which is  
5 section (3), section (7) for tenant populations with  
6 special housing needs, and sub point (A) there as well.

7 MR. THOMAS: So that's (c)(2), (c)(3).

8 MS. CHAPA-JONES: (c)(7)(A) because we had  
9 added language in both (7) and then (7)(A).

10 MR. OXER: Let me ask this, does anybody else  
11 who wishes to speak have a comment on this particular  
12 component?

13 (No response.)

14 MR. OXER: Cameron, let's talk about that one.  
15 Let's address that one, Cameron, while we're at it.

16 MR. DORSEY: The City of Houston's original  
17 comment didn't have kind of that caveat for if located in  
18 a high opportunity area. I think our reasoned response  
19 reflects kind of a general hesitation to identify one  
20 specific city's program when we're not identifying any  
21 other city's particular programs. But to the extent that  
22 you all would be comfortable with that kind of thing, I  
23 think the addition of the language that would only allow  
24 access to these three points spread across two point items  
25 in instances in which the City of Houston's -- well, in

1 instances in which the development in question is in a  
2 high opportunity area, I think that that would mitigate a  
3 large amount of the kind of general concern that we had  
4 about the item. Certainly, I mean, we still have the  
5 issue of calling one specific program out in the state,  
6 but that's more of a policy type issue that you all can  
7 consider.

8 MR. OXER: Tim, did you have a thought?

9 MR. IRVINE: I think it's a proposal that I  
10 don't object to it. In fact, I think in a certain way it  
11 makes sense to develop communities that have more diverse  
12 populations.

13 MR. OXER: Okay. Thanks.

14 Any other questions from the Board?

15 (No response.)

16 MR. OXER: Veronica, did you have a second item  
17 that you wanted to speak to?

18 MS. CHAPA-JONES: I do. I want to shift gears  
19 a little bit then.

20 Specifically community revitalization plans,  
21 and I apologize, I don't have the exact citation, but I  
22 want to speak to, I guess, Section (b) for developments  
23 located in urban areas outside of Region 3.

24 So the request from the City of Houston at the  
25 last Board meeting, I talked a little bit about the

1 disaster recovery plan that was an 18-month process that  
2 we went through in order to select areas in Houston for  
3 revitalization. So these were areas that were impacted by  
4 Hurricane Ike, and the populations are low-mod income. In  
5 a lot of places it's a lot of poverty areas in the city  
6 that we knew were really impacted. And so through this  
7 18-month process, we went through a community-based  
8 planning effort, along with consultants, fair housing  
9 advocates, community stakeholders, and we've put together  
10 a document that we've submitted to TDHCA that kind of  
11 demonstrates that even though specifically the plan  
12 doesn't contain the same tenets that the revitalization  
13 plan does -- and the revitalization plan is Section (7)  
14 and (7)(A), is that right, and (7)(B) which is the  
15 disaster recovery piece -- we do strive for  
16 revitalization, we just don't have the same definition of  
17 it, and there's a lot of effort there to demonstrate that  
18 it's there.

19 So what we were asking for was could a  
20 revitalization plan that we know that the purpose is to  
21 lift these areas out of poverty, that there is massive  
22 federal, local and other investment going in, not to  
23 mention a lot of partnerships, could this count if it  
24 didn't meet the same kind of tenets. And what we're  
25 asking for is there is equivalent, and there's two

1 specific changes that we're looking for.

2           The first is that it's considered tantamount in  
3 points to a revitalization plan. We're asking for the  
4 Board to consider that the disaster recovery plan that we  
5 put together that targets these areas, that dedicates  
6 funding, that these are the objectives that we're going to  
7 perform, meets the same point parameters that we have with  
8 a revitalization plan.

9           The second piece that we talked about a little  
10 bit with TDHCA staff about before coming here was  
11 specifically looking at the issue of leveraging funding,  
12 how much funding does it mean per area. We currently have  
13 nine areas, nine smaller neighborhoods that combine to  
14 create the disaster recovery investment. And so one of  
15 the things that Cameron was asking us, could we match the  
16 \$6 million requirement in the revitalization plan, because  
17 the revitalization requirement says you have to have at  
18 least \$6 million to kind of get there.

19           And so what we said is yes, but rather than  
20 saying we want to have \$6 million per area -- because my  
21 attorneys wouldn't let me say that today because I'm not  
22 allowed to commit funds on behalf of the City of Houston,  
23 I'm just a spokesperson; I have language, actually, that,  
24 of course, the attorneys provided that we worked on  
25 between 10:00 and midnight last night, and I still look

1 good.

2 (General laughter.)

3 MS. CHAPA-JONES: Got a chuckle. Okay. Sorry.

4 This is so dry, I don't know how to make it more razzle-  
5 dazzle. I'm nerdy about it, I love this stuff.

6 MR. McWATTERS: Mr. Chair, press the white  
7 button.

8 (General laughter.)

9 MS. CHAPA-JONES: So for the record, the  
10 language that we worked on with the attorneys to  
11 demonstrate that the city is putting a dollar investment  
12 is that we ask that we add to Section (2) that the city,  
13 that we affirm that the specific target areas that are  
14 referenced in the sub-clause of this clause -- which is  
15 the disaster recovery clause -- have an aggregate budget  
16 or projected economic value equal to or greater than the  
17 product of \$6 million times the number of specific target  
18 areas identified in the plan. So what this basically  
19 commits to is for the whole plan we're saying we're going  
20 to get to \$54 million.

21 MR. OXER: There's some higher math here.  
22 These attorney types came up with that? Always the love.

23 MR. THOMAS: I need a section, please.  
24 Cameron, what section is she specifically referring to?

25 MR. DORSEY: Hold on. It's on page 23 of 29 of

1 the supplemental, and it's 11.9(d)(7).

2 MS. CHAPA-JONES: And we have (7)(A) and  
3 (7)(B), and we're asking that (B) be equal to (A) with six  
4 points, and that the city's amended language be accepted  
5 to demonstrate that we will have either to or greater than  
6 the product of the \$6 million times the number of specific  
7 target areas identified in the plan.

8 MR. OXER: So essentially what you're saying is  
9 that you would have \$6 million per unit, or per area.

10 MS. CHAPA-JONES: In the aggregate. I'm not  
11 allowed to commit as far as the geography, but, yes.

12 MR. OXER: I get it.

13 MS. CHAPA-JONES: And Cameron and I talked  
14 about this, and Tim, thank you for your time this morning,  
15 because this is a really large effort and there's a lot  
16 happening very quickly, and we operate in our little  
17 bubbles, especially because we're in two different  
18 communities doing different things. There definitely  
19 needs to be a commitment to work together.

20 MR. OXER: You could be essentially working and  
21 put \$10 million in one and \$3 million in another, as long  
22 as there's six times the aggregate, that's generally what  
23 you're thinking this would cover.

24 MS. CHAPA-JONES: That's what we're thinking.  
25 And part of the problem is that last night I couldn't get

1 you numbers. If I really want to look at investment  
2 numbers, there's management districts, TRZ districts,  
3 there's CIP, there's really ways to put this funding  
4 together to understand how it's impacting the areas, just  
5 haven't done that piece yet.

6 MR. OXER: All right. Thanks, Veronica.

7 Cameron, do you have a response? Do you want  
8 to make a suggestion or talk to that?

9 MR. DORSEY: I think on this one, bear with me  
10 for a moment, because the way the scoring system works,  
11 you know, it's a really dynamic system. You have, first  
12 off, the specific points and you can add up. There are  
13 kind of two different avenues we've got in the QAP, I  
14 think most of the folks in the room recognize. There's  
15 kind of the high opportunity route for accessing points  
16 and creating a competitive scoring application, and then  
17 there's the revitalization route, and those are, to some  
18 extent, mutually exclusive, certainly the points under  
19 each are mutually exclusive.

20 And you can't just kind of add all the points  
21 up and say, Oh, look, this doesn't create kind of a fair  
22 playing field, because when you overlay the real world  
23 constraints that people actually experience out there, you  
24 end with a very different picture than the simple math of  
25 adding all the items up. And unfortunately, it takes



1 quite a bit of experience kind of being entrenched in this  
2 program and a lot of observation to kind of see how all  
3 these scoring items work together to result in kind of a  
4 total package and a specific score.

5           The concern that I have with this issue, and  
6 what Veronica laid out, is not one that's a definitive,  
7 you know, I believe that this doesn't comport with statute  
8 or anything like that, it's based on the hours of time  
9 that Jean and I and Tim and Barbara spend theorizing about  
10 all the different possible avenues that these things can  
11 go. These guys are very good in the audience at kind of  
12 reverse engineering the system and determining where the  
13 path of least resistance is and pursuing that path of  
14 least resistance, because at the end of the day, they want  
15 a competitive scoring application, otherwise, the process  
16 is a fruitless process for them.

17           And so while we had four points on item, and  
18 not six, for example, the feeling was that when we look at  
19 the scoring system as a whole, the difficulties that folks  
20 encounter accomplishing high opportunity area deals versus  
21 some of the lack of resistance that's frequently  
22 encountered, and obviously already having city support for  
23 pursuing the path of revitalization, you know, while the  
24 simple math would suggest that the path of least  
25 resistance or the path to a competitive application is

1 high opportunity area, the reality is that that's  
2 moderated to some extent by all of the real world  
3 difficulties in pursuing that path.

4 And so we end up with we felt as if the scoring  
5 system as a whole allowed viable options for pursuing  
6 revitalization with the four points, and also that we  
7 would have viable options for pursuing high opportunity  
8 area deals, and that hopefully those outcomes would  
9 produce a diverse set of awards that also comport with our  
10 responsibilities to not only make sure that the rules are  
11 facially compliant but that we have a lawful outcome at  
12 the end of the day. And you know, it's a process of  
13 guesswork, educated guesswork.

14 So I don't have a specific objection to moving  
15 it to six points or at least the same kind of six points  
16 that's available under the other option. In the other  
17 option there's only one development per city or county  
18 that can get those six points, and it's for a resolution  
19 that that particular development most meaningfully  
20 contributes to the revitalization efforts of the city. So  
21 basically, that's the development, of all the developments  
22 that have been proposed, that most meaningfully  
23 contributes to the revitalization effort. It's, first  
24 off, not a six points across the board, it's just for one  
25 development per city.

1           MR. OXER: So in that case, it's essentially a  
2 local choice to pick out which one they want to front.

3           MR. DORSEY: Right, that's right. And so I  
4 don't have a specific objection to that, it's just a risk  
5 analysis that we have to kind of do, and everyone might  
6 come up with a different result at the end of the day.  
7 Jean and Tim and Barbara and I, in looking at this  
8 particular issue, came up with: You know what, four  
9 points is what make sense for this particular item, given  
10 all of the real world constraints out there and how these  
11 things interact.

12           With respect to the other change which is to  
13 remove the requirement that they actually have a  
14 commitment of DR funds and have in place of that,  
15 basically, the city will be investing \$6 million times the  
16 number of target areas, it's the same thing. If you don't  
17 have to have a commitment of DR funds, then your universe  
18 of possible applications pursuing this path kind of begins  
19 to expand because you don't have that kind of governor on  
20 it.

21           MR. OXER: So it essentially becomes something  
22 that has no discriminatory meaning, making a choice -- not  
23 discriminating but differentiating on the various  
24 applications.

25           MR. DORSEY: Right. It becomes difficult to

1 anticipate the outcome based on the language because it's  
2 less specific and we know kind of how much CDBG DR funding  
3 there is out there. We don't know how many folks might  
4 assess that this is the path they want to pursue because  
5 they feel as if it can produce a competitive application,  
6 perhaps it's fifteen, perhaps it's two, and so it's a  
7 prediction process.

8 I think on the other side of the equation here,  
9 in discussion with the City of Houston and Veronica,  
10 they've indicated they do not believe that they will have  
11 a plan that's compliant with option (A) for getting points  
12 under this, so I think to some extent that mitigates some  
13 of the concern about the universe being really wide open  
14 here. If they don't have an option (A) for folks to  
15 pursue and they only have this kind of option (B) because  
16 their focus is on CDBG DR revitalization type efforts,  
17 then that, to some extent, mitigates those concerns.

18 Again, though, it's that guess work: at what  
19 point do you tilt the field just enough that you don't get  
20 that kind of balance in the allocation you're looking for.  
21 So I think that's the judgment call that has to be made,  
22 and we can certainly, from a year-to-year basis,  
23 recalibrate but I think we're in a situation where we need  
24 to be really focused on kind of what kind of outcomes we  
25 believe are necessary to comply with the law.

1 MR. OXER: Okay, good. Thanks. Does anybody  
2 have a question of Cameron?

3 MR. McWATTERS: I do.

4 MR. OXER: Professor McWatters.

5 MR. McWATTERS: Cameron, given these two  
6 proposals, what effect do you think it will have on the  
7 number of non-elderly developments in HOAs in Region 6.  
8 Will it increase non-elderly developments in HOAs in  
9 Region 6, or will it decrease it?

10 MR. DORSEY: I would suggest that it would  
11 decrease it. That would be my educated assessment.

12 MR. McWATTERS: Thank you.

13 MR. OXER: Any other questions? Mr. E.D.

14 MR. IRVINE: Actually, I have three sort of  
15 comments and/or questions. First of all, I always get  
16 nervous when you've got a very large and complex document  
17 and you're trying to navigate substantive changes on the  
18 fly, especially given the amount of the allocation that  
19 goes to the Houston area, so I would certainly offer that  
20 while you have a motion on the table and you're receiving  
21 public comment, it certainly would be appropriate for the  
22 lawyers to have a moment to look at the language and  
23 noodle over it, and also, it would probably be appropriate  
24 for them to give you legal advice in executive session  
25 with regard to that matter.

1           Two real questions I've got, perhaps they're  
2 rhetorical, perhaps they're actually questions. One is  
3 we've talked about the timing issues and the urgency and  
4 so forth. One of the questions I've got is how  
5 specifically does this intersect with the timing, both of  
6 the City of Houston's governance processes and the GLO's  
7 processes with regard to CDBG Disaster Recovery, and when  
8 would it be clear how much funding is actually going into  
9 the specific region in which a particular development  
10 might have received an award. And sort of another aspect  
11 of that question is is it possible under this proposal  
12 that a development could receive an award because it got  
13 these additional points and it was in a region that did  
14 not, in fact, ultimately receive the recovery funds.

15           MR. OXER: Veronica, you have to identify  
16 yourself again.

17           MS. CHAPA-JONES: Veronica Chapa-Jones, deputy  
18 director, City of Houston Housing and Community  
19 Development Department.

20           So the first question specifically was when we  
21 would know with certainty funding amounts for different  
22 projects moving forward, and the answer that you're not  
23 going to like is it's going to depend on the project  
24 piece.

25           MR. IRVINE: An outside date.

1 MS. CHAPA-JONES: Well, for example, the  
2 Disaster Recovery funded housing has to be done by  
3 December 2015. The infrastructure is slated supposed to  
4 be on the same timeline, but given the design of the  
5 infrastructure and that we still haven't had projects  
6 selected, we're assuming those are going to go beyond  
7 that, the design-build piece. Other projects that could  
8 also be leveraged locally, I just don't know because I  
9 don't know the areas well enough to know what's on the  
10 CIP, so that's, again, why it would be tiered.

11 One of the things that Cameron and I talked  
12 about when the workshop happened in Houston on December 4  
13 is to talk about the inventory and look at those pieces,  
14 and we can work and collaborate on that. It's not a lack  
15 of concern that they're not going to happen, it's just the  
16 timing of when. And I think the important piece for the  
17 revitalization is happens over time, it's not going to  
18 happen in two years, it may take three years, five years  
19 and seven years, based on the project development. And  
20 when we get those projects, when the funding is officially  
21 committed by council, we know it's moving.

22 So then the part B of the question, as I recall  
23 it, Tim, is whether or not a specific project may get  
24 funding for tax credits but may not get a disaster  
25 recovery award. Am I understanding that correctly?

1 MR. IRVINE: No, that's not it at all.

2 MS. CHAPA-JONES: Okay.

3 MR. IRVINE: The question is whether if this  
4 proposal were enacted, a development that got an award  
5 could be in an area, one of these designated areas -- I  
6 believe you said there were seven, earlier -- could it be  
7 in an area that did not, in fact, receive CDBG Disaster  
8 Recovery assistance in some meaningful amount.

9 MS. CHAPA-JONES: At this point I would say no  
10 because all of these areas -- there's two types of areas,  
11 without getting into technical detail, but I guess we're  
12 there -- and it's basically a concentration of whether  
13 there's going to be a multifamily anchor, because we have  
14 a single family suburban neighborhood type as well, so all  
15 of the areas that were selected for the disaster recovery  
16 plan will receive housing disaster recovery funding, it's  
17 the infrastructure and the other pieces that we just  
18 haven't scaled and finalized in a timetable yet with  
19 funding committed by council.

20 MR. IRVINE: And my specific concern was really  
21 directed more to the Section 42 requirements for community  
22 revitalization that we, in fact, know that there will be  
23 some meaningful funding for revitalization in an area that  
24 surrounds each of the projects that might receive these  
25 points.



1 MS. CHAPA-JONES: Understood. I think there's  
2 just a lot there when we're talking about revitalization:  
3 is it a tipping point neighborhood, is it a neighborhood  
4 that requires more. That goes into it, along with the  
5 timeline and the type of investment that we're doing.

6 MR. IRVINE: And that also sort of tangentially  
7 raises the whole issue: is disaster recovery the same  
8 thing as revitalization.

9 MS. CHAPA-JONES: In this case it is, because  
10 we had the fair housing advocates working hand in hand,  
11 along with the Texas Organizing Project, and it was an 18-  
12 month process to select, and the goal was revitalization.

13 So I'd like to make this emphasis, if I may. I  
14 understand the need and the issue with high opportunity  
15 areas because people need choice, completely get that. I  
16 think what we're missing in the debate is the argument  
17 that there has to be meaningful revitalization and that  
18 that can occur and it can occur on balance.

19 And what you're going to see in the City of  
20 Houston is while we are committed to support the  
21 Department, we cannot effectively export and allow for  
22 people just to leave. There are neighborhoods that are  
23 historic neighborhoods that need reinvestment, the  
24 neighbors are coming out and they're telling us that they  
25 want this investment, so you're going to see the City of

1 Houston for the next couple of years really working hand  
2 in hand with the neighborhood groups to say what does  
3 revitalization look like and how much are we going to put  
4 in there to do it.

5 MR. OXER: Thanks, Veronica.

6 To Tim's earlier point, we're going to hear  
7 comments on this, and to the extent that we have to, we're  
8 going to heed counsel in executive session before we'll  
9 come to an end on this, so we're going to go through each  
10 of these to be considered in the QAP and then take a  
11 break.

12 All right. More comments. Next one, please.  
13 Good morning.

14 MR. MILK: Good morning. My name is Richard  
15 Milk. I'm with the San Antonio Housing Authority where we  
16 serve 70,000 low income children, adults, seniors,  
17 disabled individuals and veterans.

18 Now, right off the bat I want to say on the one  
19 hand you're going to hear from some of our colleagues  
20 shortly regarding the RAD provisions, and we preemptively  
21 support those comments, so have that in the record.  
22 Housing authorities in Texas, there are over 400 housing  
23 authorities that serve 200,000 households, the vast  
24 majority of whom earn below 30 percent area median income.  
25 We are able to do that because of three critical

1 resources: HUD subsidy, tax credits and public-private  
2 partnerships. These resources are threatened by language  
3 in Section 11.9(d)(2)(B), referencing the commitment of  
4 funding by local political subdivisions, so I want to  
5 focus my remarks on that section.

6 We're very troubled by the related party  
7 funding language that was added last year. To preserve  
8 the communities that serve the poorest Texans, many of  
9 which are 50 to 75 years old and in desperate need of  
10 redevelopment, we strongly recommend the removal of the  
11 related party language to again allow housing authority  
12 monies as a leveraged source of funds.

13 I would remind the Board that we received and  
14 shared with you letters of support reflecting the same  
15 concern and making the same recommendation from State  
16 Senator Letitia Van de Putte, State Representatives Roland  
17 Gutierrez and Ruth Jones McClendon, Mayor Julian Castro,  
18 our president and CEO, Lourdes Castro Ramirez, and our  
19 board chair, Ramiro Cavasos.

20 The current related party language denies the  
21 fact that housing authorities are public entities, we are  
22 units of local government, with no potential financial  
23 gain and no opportunity for self-dealing. Public housing  
24 authorities have unique resources that can only be  
25 provided by them and for the purpose of building and

1 operating low-income housing. In fact, a good portion of  
2 housing authority funding is limited to transactions where  
3 the authority is a participant. The resulting public-  
4 private partnership is a proven generator of both low-  
5 income housing units and economic development.

6 When an authority participates in a  
7 transaction, it procures the services of development  
8 partners and other private entities. This provides an  
9 open and equal opportunity for any developer, lender or  
10 investor to participate. Our developments house the  
11 hardest to serve, maintain long-term affordability, and  
12 rebuild projects into sustainable mixed income  
13 neighborhoods.

14 We urge you to reverse the recent addition of  
15 the related party language and return to language that  
16 recognizes the role of housing authorities in our  
17 communities and throughout the state. Thank you.

18 MR. OXER: Good. Thank you.

19 Any questions from the Board?

20 (No response.)

21 MR. OXER: Good. Thanks. Don't forget to sign  
22 in, each of you, as you come to the podium.

23 MR. COCHON: Good afternoon, everybody. Gerry  
24 Cichon here, Housing Authority of the City of El Paso.  
25 I'm the CEO out there. We actually house 40,000 people,

1 6,500 units of public housing alone.

2 And the reason I stand before you is our  
3 infrastructure is crumbling, the federal government has  
4 tried to change the way we do business. We are going to  
5 be the largest housing authority, we're the fourteenth  
6 largest in public housing alone in the United States, and  
7 we're going to have to invest about \$500 million in the  
8 next five years to do something about it.

9 Now, the rules that you're changing are  
10 significantly impeding our ability to do just that. That  
11 being said, you look at it like this, it's a light switch  
12 test. The rule has been the rule for the last fifteen  
13 years, it was accepted under previous administrations,  
14 it's been accepted by this governor, and now, all of a  
15 sudden, the staff has chosen to change it. And I have  
16 great respect for Tim and for Cameron and for all the work  
17 that they've done in meeting with us, and even your  
18 indulgence in being able to speak here today.

19 But we're a unit of local government until we  
20 get involved. As soon as we put our money in it, the  
21 light switch goes off and all of a sudden, we don't get  
22 the points. So why are we a unit of local government if  
23 we're not involved, and when we put our money into it, all  
24 of a sudden we lose that opportunity. It doesn't make any  
25 sense, especially when right now any, quote-unquote, self-

1 dealing goes to the benefit of the taxpayers.

2           The money that we use doesn't just go to  
3 support public housing. As you know, you also run Section  
4 8. Well, with the cuts that have happened with  
5 administrative fees being reduced, we have to compensate.

6           And it's not that we just do public housing, we also  
7 house over 180 homeless veterans that we work closely with  
8 to try to get them into homes and buy their own houses.  
9 We work very closely with homeownership with our overall  
10 population. We work very closely with the city with  
11 development of economically blighted areas. There's a lot  
12 that we do that inures to the benefit of the taxpayers.  
13 But yet, somehow this rule has said, Hey, listen, we don't  
14 want you to compete with the local developers.

15           Well, you know what, we're not a local  
16 developer, we're government, we've been government, we are  
17 a unit of local government, and our money should be looked  
18 at as government money. So why change the rule now? Why  
19 is the rule changing? I've sat here and I've come up here  
20 and I've had those discussions, and no one has been able  
21 to answer other than: Hey, we don't want you to compete  
22 with the developers, you're the same as them. But we're  
23 not.

24           So this doesn't even take having to go to  
25 executive session. It's not a discussion like: Hey,

1 what's the change going to be? Just don't make the  
2 change, just leave it alone. Because \$500 million is what  
3 we're going to invest in El Paso, we're going to have to  
4 move 20,000 people out of their houses and move 20,000  
5 people back somehow. We're going to have to remake public  
6 housing just so that it is self-sufficient, because the  
7 way it's happening in D.C., we're getting ready to lose  
8 everything that we have.

9 And so as we stand here, this rule that seems  
10 so innocuous, well, it's a light switch, if you're  
11 involved, it's self-dealing, taxpayer money should not be  
12 taken advantage of or looked at in a way that is to the  
13 detriment of the people that have put it forward. Thank  
14 you.

15 MR. OXER: Thanks, Gerry.

16 Any questions from the Board? Okay. Question  
17 by Mr. Thomas.

18 MR. THOMAS: I have a question, Gerry. Good  
19 morning.

20 MR. CICHON: Good morning.

21 MR. THOMAS: Help me understand. We've had  
22 lots of testimony in my short tenure on the Board -- and  
23 I'm very sympathetic to it -- of private developers  
24 discussing the increased the cost, the difficulty  
25 associated with being able to put together deals and then

1 be able to manage, from a profitable perspective, the  
2 delivery of the housing services. How do you reconcile  
3 the fact that those developers don't have access to  
4 taxpayer dollars and then they still feel like they'd have  
5 to compete with you for some of those projects?

6 MR. CICHON: Well, look at it this way, I mean,  
7 we're in the same situation, it costs us the same amount  
8 of money too. In that regard, when you think about  
9 putting together a deal, we still have to have staff, a  
10 lot of times we're doing private-public partnerships,  
11 those costs are still the same costs that they do, and we  
12 still have to run it at a deficiency level with what we're  
13 being given from the federal government, and that's the  
14 reason why we need outside sources.

15 Like right now we've got 5,600 families in  
16 Section 8. With sequestration we've had to decrease that  
17 by 700. We're currently covering the cost of that side of  
18 it with the money that we're receiving from the cash flows  
19 of our tax credit properties. And so we're doing a lot  
20 with these monies to try to help not just that aspect of  
21 tax credits, but also the overall citizenry. So if you  
22 look at it with the costs, we're the same regarding those  
23 costs, but overall, the monies that we receive go right  
24 back to the taxpayers.

25 MR. THOMAS: But the whole system is broken. I



1 mean, effectively, you're saying we're a private developer  
2 as well, we have the exact same cost structures, even  
3 though our access to public funds exists in that way.  
4 You're just saying there is no good solution so don't  
5 treat us as a double-dipper, effectively.

6 MR. CICHON: No. What I'm saying is, one,  
7 we're government, and two, we have an infrastructure  
8 that's crumbling. So the question is do you want us just  
9 to create slums that are currently there. Because we're  
10 already in the cities, we're already in your downtowns,  
11 we're already in those high occupancy urban areas, and the  
12 question is right now if we can't get access to 9 percent,  
13 we can't rebuild them. So do we want them just to  
14 continue to degrade, because they're covered in asbestos,  
15 they're built in 1940, we're keeping down the overall  
16 property values around us. Do we want to leave it that  
17 way?

18 MR. THOMAS: Tell me the flip side of the  
19 argument. Help me understand, from the other hat that you  
20 would wear, why private developers would be concerned  
21 about maintaining the rule. Honestly.

22 MR. OXER: We're going to have commentary to  
23 that effect, I'm sure.

24 MR. THOMAS: I still would love to hear it,  
25 particularly because this really helps me in this regard.

1 MR. OXER: Okay. Sixty seconds, Gerry.

2 MR. CICHON: I think when you look at it, I  
3 think if you look at developers as partners in the  
4 community, I think you need to look at them as what's best  
5 overall for the city. If you have a dying infrastructure,  
6 if you have a dying interior of the city, like we have in  
7 El Paso -- right, you're looking at Segundo Barrio right  
8 along the Mexican border, you're looking at property  
9 values down there that are worth \$50,000 -- if we don't do  
10 something to shore that up, all we're going to keep doing  
11 is pushing everything to the outside, building on the  
12 outside, and in the end, I think it hurts the community  
13 overall.

14 I do recognize that the developers themselves  
15 would like to have us be involved because we're doing  
16 private-public partnerships. I mean, we're not in this  
17 alone, we know that we're not massive developers, we  
18 recognize that we're not huge construction companies, and  
19 that by leveraging the 4 percent, which we'll be asking a  
20 lot of, and 9 percent, we're going to be, one, able to  
21 help the community overall, and two, you're talking about  
22 a 2.2 times magnifier that we're going to bring into play.

23 And this all has to happen in the next five years under  
24 the RAD program.

25 And so the effect upon El Paso is about a \$1.4

1 billion economic swing, and that's why, at least for El  
2 Paso, it would be good not only for the citizenry but for  
3 developers too.

4 MR. OXER: Thank you.

5 One of the things that we have to use a  
6 criteria for some of the decisions we make is that there  
7 are a number of tools that are available to satisfy some  
8 of the housing requirements that the State of Texas has.  
9 The Tax Credit Program is one of them, it's a very big  
10 tool, it's a very useful tool, it's not the only tool and  
11 it can't be the only tool that has to be in a city's  
12 toolbox or in anybody else's toolbox, because, as they  
13 say, if you only you've got is a hammer, you start looking  
14 at every problem like a nail, and so eventually, in some  
15 circumstances you'll wind up standing there with a hammer  
16 trying to solve an electrical problem.

17 And one of the problems that we're trying to  
18 solve is the fact that the deteriorating interior of these  
19 cities has been going on for a lot longer than the time  
20 we've been trying to solve it with the Tax Credit Program.

21 So while we're sensitive to your issues, we understand  
22 that and are sympathetic to the need, there are certain  
23 constraints that guide the decisions that we make, and  
24 while we appreciate your comments, everybody has to  
25 recognize that we want to hear what you're doing, we're

1 going to have to adjust this and try to meet the problems  
2 that we have, but everybody here should know that nobody  
3 goes away with everything they wanted.

4 MR. CICHON: We understand that too. Just one  
5 just aside real quick. On RAD, the at-risk set-aside, we  
6 recognize that we may not be able to be able to be in it  
7 because it's going from Section 9 money to Section 8  
8 money. We recognize the efforts on staff -- Tim and  
9 Cameron, thank you very much for all your efforts on  
10 that -- but we will be looking for some form of  
11 legislative reprieve and we'd ask for support of staff on  
12 that as you move forward. Thank you very much.

13 MR. OXER: Thanks.

14 Cameron, do you want to take a shot at that one  
15 before we go on to the next piece?

16 MR. DORSEY: I think there's other comment on  
17 the first issue, but just the last piece of that, the  
18 recommendation specifically related to the RAD program and  
19 whether it is eligible or not eligible under the at-risk  
20 set-aside, basically, staff is recommending that we  
21 request an AG opinion on the subject. I don't think our  
22 intent was to include any language that specifically  
23 precludes or includes RAD so that we can wait for the  
24 disposition of the issue with the AG's office.

25 What that would mean is that folks could apply

1 and elect the at-risk set-aside if they have RAD funding.

2 I think that there is a certain risk there because I'm  
3 not sure that we would have an AG opinion before the cycle  
4 started, but they could also, for example, request kind of  
5 a waiver in the application in the event that the AG  
6 opinion would come back and say it's not eligible for the  
7 at-risk set-aside, that we could flip them over and allow  
8 them to participate within the subregional competition.  
9 It would require a waiver but that's a possibility that I  
10 just wanted to kind of have on the record for everyone to  
11 hear.

12 MR. OXER: Great. Okay.

13 MS. PALMER: Good morning. Claire Palmer.

14 I'm really here to talk about educational  
15 excellence but because I represent a lot of for-profit  
16 developers, I thought I'd real quick talk about the UGLUG  
17 funding that's been talked about by the housing  
18 authorities, and honestly, I think that at least my  
19 developer clients would be supportive of allowing the  
20 housing authority funding to count so long as they were  
21 partnered in some way with other developers so that it's  
22 not purely a public housing authority using their own  
23 funds to qualify for UGLUG funding and then building their  
24 own development.

25 MR. OXER: So that it truly constitutes a

1 public-private partnership. Some formality with a  
2 contractual arrangement and some elective choice by the  
3 local government.

4 MS. PALMER: Exactly.

5 But on the educational excellence, this year,  
6 because there's a new scoring system under STARS, the  
7 staff has set a cutoff score 77 on Index 1 which I've  
8 talked to Cameron about a lot and I understand why he did  
9 it. I have a lot of clients in Urban Region 3 -- which  
10 you all know is a fun region to be in -- I have actually  
11 run all the schools in DISD. DISD has an interesting  
12 system because there are so many magnet schools, and  
13 magnet schools don't count for educational excellence  
14 points.

15 So I've looked at all of our high schools, all  
16 of our middle schools, all of our elementary schools.  
17 Only one high school, Woodrow Wilson, scores a 77, and  
18 it's feeder middle school, there's only one, only scores a  
19 74. So essentially, that whole east Dallas area that's  
20 covered by Woodrow Wilson High School could not get three  
21 educational excellence points. If the score was moved  
22 down one point to 76, W.T. White High School, which is the  
23 north Dallas high school, would be able to score an  
24 educational excellence point, as would its feeder middle  
25 school would then result in an area from Forest Lane south

1 of LBJ to Preston to Frankfurt north of LBJ that would  
2 actually include an area that could score three  
3 educational excellence points. For the very first time  
4 ever, areas within the DISD would have a high educational  
5 excellence area.

6 Why is that important? There's a huge area  
7 north of LBJ Freeway up from the tollway to Preston and up  
8 that is in a new TIF created by the City of Dallas where  
9 there's going to be a great deal of housing, and so if we  
10 could get that point lowered one point, we would have a  
11 very good north Dallas area that would be able to score  
12 educational excellence points for the very first time.

13 MR. OXER: Good. Thanks, Claire.

14 Any questions?

15 (No response.)

16 MR. OXER: Do you need to take a shot at that  
17 one, or do you want to wait, Cameron?

18 MR. DORSEY: Either way.

19 MR. OXER: Okay. Bobby.

20 MR. BOWLING: For the record, I'm Bobby  
21 Bowling. I'm a builder-developer from El Paso. Good  
22 morning, Mr. Chair and the Board.

23 I'd like to speak on the item that the housing  
24 authorities came and addressed. Just so everybody is  
25 clear, this is item number 23 in your supplement, it's on

1 page 35 of 63. It is Section 11.9(d)(2)(B) is the  
2 citation in the QAP.

3 The last speaker from El Paso was kind of all  
4 over the place. I wanted to clarify one thing for the  
5 record. He's asking for no change in the QAP and so am I.

6 The rule is in place. You heard hours of testimony on  
7 this last year. There weren't two housing authorities  
8 here at this meeting last year, there were more like ten  
9 or twelve. Some of them were up here, including the El  
10 Paso Housing Authority brought an attorney named Frank  
11 Sansa who stood up here and told you that you do not have  
12 the legal authority to do this rulemaking and make these  
13 parameters on this section of the QAP.

14 Well, what's changed in the last year? Nothing  
15 has changed, except for this rule went into place, and in  
16 the interim TDHCA was brought to the attorney general's  
17 office by a state legislator and the attorney general was  
18 asked the question: Does TDHCA have the rulemaking  
19 authority to put these parameters on this section of 2306  
20 in the statute. And the attorney general of the State of  
21 Texas said yes, you do. So that's a matter of record, and  
22 the attorney general has affirmed what you did last year.  
23 Nothing has changed.

24 The reasons that I heard given were that the  
25 housing authorities have problems. Well, I'm a private



1 businessperson and I have problems too. I need a 9  
2 percent tax credit deal every year too. I employ hundreds  
3 of people; between our single family and the operation I  
4 have in El Paso, there's more than 1,500 people that work  
5 on my job sites. Now, I don't think that's a good reason  
6 for you to adopt public policy or craft public policy  
7 because I need it, but that's really all I heard from the  
8 PHAs is they've got problems and they need a 9 percent  
9 deal.

10 I think good public policy is public policy  
11 that levels the playing field, and that's all you did last  
12 year and that's what the rule does. The rule says the  
13 PHAs can go to the city council of the City of El Paso and  
14 ask for funding, just like I can. The rule prohibits them  
15 from giving themselves their own funds. Whether they're  
16 in a deal 100 percent or a public-private partnership,  
17 that's wrong, because I can't do that. I have a family  
18 charitable trust in El Paso, we've donated to lots of  
19 different causes, we donated a million dollars to the YMCA  
20 last year. I can't get points for that. I would if you  
21 would allow me, but then where do you draw the line  
22 because not every private developer has a family who has a  
23 trust with charity that they can give to their own funds.

24 What I think you're charged with is just  
25 exactly what I said, and I'll repeat it again: creating a

1 level playing field for all participants for everyone who  
2 applies. And I think that's what the rule does.

3 And with a little leeway, Mr. Chair, I'd like  
4 to just read one citation, one quote.

5 MR. OXER: Take a minute.

6 MR. BOWLING: On page 38 of 63 in this item, I  
7 think your staff says it best, and it's on the second to  
8 last paragraph, and this is really the crux of the item,  
9 and either Cameron or Jean wrote this. "The removal of  
10 the related party restriction would have the effect of  
11 providing a disproportionate advantage to certain types of  
12 applicants and would have larger sweeping effects than  
13 simply allowing PHAs to lend funds and thereby score  
14 points for transactions in which they have an ownership  
15 interest. Staff does not believe the scoring item was  
16 ever intended to give one class of applicant a particular  
17 advantage over another class of applicant and no change in  
18 this regard is recommended."

19 That's the crux of the issue: do you want to  
20 give PHAs unfair advantage over private developers. I'm  
21 not asking for an unfair advantage, I'm not saying give me  
22 special points because I'm a private developer, because I  
23 pay taxes, because I contribute in my community, because  
24 XYZ, ABC. I'm just saying let us all compete, keep the  
25 level playing field that you have in place now, and

1 there's really no reason that they brought forward to  
2 change your current policy.

3 MR. OXER: Thanks, Bobby.

4 MR. BOWLING: Thank you, Mr. Chair.

5 MR. OXER: Any questions?

6 MR. THOMAS: Would it be different, per our  
7 chair's last series of questions, if there was a  
8 requirement that allowed the public housing authority or  
9 required that they work with the public-private  
10 partnership in that regard? Would that make a difference  
11 to you?

12 MR. BOWLING: They brought that as well last  
13 year, Mr. Thomas, and I am strenuously opposed to that,  
14 because now you're creating a system whereby you're  
15 handing over a region. Like my region, Region 13, is now  
16 basically at the disposal of the housing authority, so  
17 they get to pick and choose the winners based on some  
18 other criteria. It's invalidating your QAP. I don't  
19 think the federal statute intended for you to do that, and  
20 that's what effectively this would do. Because I can't  
21 overcome those points. If they're going to get those  
22 points, I have to go to the housing authority and work  
23 through them, but why should I have to?

24 If you look at my compliance record -- and I've  
25 done this research -- my compliance scores are better than

1 the Housing Authority of the City of El Paso's in my  
2 region. So it's not like they're doing some better  
3 service in our region than the private sector is doing.  
4 So by enabling them to have these points under the caveat  
5 of, well, we'll only do it if we're doing a public-private  
6 partnership, it still kind of invalidates your QAP and the  
7 statutory authority that I think Section 42 gave you as  
8 the State of Texas. I think your QAP is fair, it's been  
9 developed over 25 years now, it's got lots of things, and  
10 we'd be starting all over at the local level with the  
11 housing authority, and I still don't see the reason why.

12 MR. OXER: Thanks, Bobby.

13 John, you were next in the list, so come on.  
14 Barry, you guys that want to speak, get up here on the  
15 front row, that way I'll know. Ms. Sloan, you'll be in  
16 there, you're next.

17 MR. HENNEBERGER: John Henneberger, Texas Low  
18 Income Housing Information Service.

19 I'd like to speak briefly about two matters.  
20 One is the elderly exclusion in selected areas. We  
21 strongly support staff's recommendation on that for the  
22 reasons that the staff has stated in the comments. The  
23 Department must balance the housing needs out there, and  
24 when the effect of the tax credits is to  
25 disproportionately underserve families with children, it

1 becomes both a legal and a policy problem. So we support  
2 the position in the QAP that your staff has.

3           The second issue I'd like to discuss has to do  
4 with the issue about how you take letters expressing  
5 support or opposition to developments, and here I disagree  
6 a bit with the staff's interpretation. In our comments we  
7 suggested two things. One is that every type of support,  
8 be it from a qualified neighborhood organization, a  
9 community organization, or a state legislator, should be  
10 held to the same standard, that in each case they should  
11 state their objection to the development. Under the  
12 rules, as I read them, only community organizations, not  
13 qualified neighborhood organizations and not members of  
14 the legislature, are required to state the basis of an  
15 objection, the others can simply object. And that is to  
16 grant unreasonable power to those entities to make a  
17 decision on an arbitrary or perhaps a discriminatory  
18 basis, and this Department has to consider the basis of  
19 the objection before it can move forward.

20           And the second issue has to do with the staff's  
21 review and the Department's review of those objections.  
22 Again, only certain categories of these objections does  
23 the staff review to determine if they are a lawful  
24 objection or not, and I would suggest that people need to  
25 say what their problem is, what their objection is, and

1 then that objection needs to be able to be shown to be a  
2 lawful basis for objecting to the development, or it  
3 should not be scored and considered, simply that.

4 So those are my two areas of concern.

5 MR. OXER: Good. Thank you, John.

6 This is just a comment, you're welcome to stay  
7 or sit, but I think it's important that we know, when  
8 somebody does have an objection to a project, the  
9 foundation for that objection.

10 Cameron, are you keeping track on all of these  
11 and we'll get them generally when we settle up on this.  
12 Okay?

13 MR. DORSEY: Yes.

14 MR. OXER: Okay. Ms. Sloan, did you have a  
15 comment?

16 MS. SLOAN: Maddie Sloan, Texas Appleseed.

17 I just wanted to expand a little bit on John's  
18 comment on our support for 11.3(e) on prohibiting the  
19 further development of elderly restricted units in certain  
20 jurisdictions.

21 MR. OXER: I've got a quick suggestion. You're  
22 getting what you want. You sure you want to say anything?

23 MS. SLOAN: Again, we think it's a big fair  
24 housing issue. We actually, you will not be surprised,  
25 would go further. We would leave the exemption levels at

1 250 rather than raise them to 500. We would also suggest  
2 that there be some consideration of unit composition when  
3 looking at developments that aren't necessarily elderly  
4 restricted in title. If developers are trying to get  
5 around this rule by doing exclusively one-bedroom  
6 developments targeted at the elderly, again, that's a  
7 problem of discrimination against families with children,  
8 and I think it would also be a problem in terms of persons  
9 with disabilities who need an extra bedroom for a care  
10 giver.

11 But again, we strongly support this.

12 MR. OXER: Good. We appreciate your comments.

13 Okay. Barry, I think you're next.

14 MR. PALMER: Barry Palmer with Coats Rose, and  
15 I just wanted to pick up again on the UGLUG issue with the  
16 housing authorities.

17 We've worked with a lot of the major housing  
18 authorities over the years in the program and we've always  
19 had the UGLUG points and it was just last year that we put  
20 in this restriction on the related party restriction where  
21 housing authorities could not get the points for putting  
22 in money into a deal that they had a partnership in. In  
23 all of the years that we had the points without the  
24 related party restriction, it's not like the housing  
25 authorities took over the program and invalidated the QAP.

1           There were housing authorities who would get an  
2 occasional deal. The major housing authorities, Dallas,  
3 El Paso, Houston, San Antonio did participate in the 9  
4 percent program and have build some very nice properties,  
5 and I guess the advantage of that is the resources that  
6 the housing authorities have in terms of rent subsidy  
7 allows them to serve a much lower income level tenant than  
8 the private developer projects. So there is some  
9 advantage in having the housing authorities participate in  
10 the program.

11           When you changed the rule last year to prevent  
12 housing authorities from getting these points if they put  
13 money into their own deal, it resulted in not a single  
14 major housing authority even applying last year, so there  
15 were no allocations last year to any of the major housing  
16 authorities because of this change in the rule. And I  
17 suspect that if you have the rule the same way it is now,  
18 that probably none of the major housing authorities will  
19 apply again because they can't be competitive. So you're  
20 not leveling the playing field, this change in the rule  
21 hasn't leveled the playing field, it's kind of kicked the  
22 housing authorities off the playing field.

23           So I would suggest that you allow housing  
24 authorities to get the points on a project that they're  
25 involved in, and I like the idea that's been mentioned



1 about public-private partnerships having developers  
2 involved, so it's not just housing authorities in their  
3 own deal, but let's keep housing authorities in the  
4 program because they bring a lot to the program that  
5 private developers can't bring through the rent subsidies  
6 and other resources that they have.

7 MR. OXER: Thanks, Barry. Any questions?

8 (No response.)

9 MR. OXER: How many more? We have one more  
10 comment on this item?

11 MR. LANG: It's a different item that was  
12 addressed earlier.

13 MR. OXER: Okay. If you want to just say  
14 you're in favor of it and that's good, or against it.

15 MR. LANG: Okay. Let's hear that one right  
16 quick. Peggy, you've got one to read into the record, and  
17 then we're going to take a short break after that.

18 MR. LANG: Thank you. My name is Tim Lang, I'm  
19 with Tejas Housing Group. And first of all, I'd like to  
20 applaud staff on this version of the QAP. I think the  
21 major issues that we were looking at have been addressed  
22 effectively and enable us to move forward a lot more  
23 comfortably than we had with the previous version.

24 My comment is in regard to 11.9(c)(5),  
25 educational excellence, and it's not necessarily about the

1 scoring portion of the item, it has to do with the  
2 situation where paired schools come into play, and in that  
3 instance where it takes more than one campus to  
4 constitute what a traditional elementary school would come  
5 out to be.

6 Under the current system, the lower of the two  
7 rated schools is the one that carries forward. This is  
8 how it's been in the past, however, in the past we didn't  
9 have an effective means to come to an average to where we  
10 had a very good aggregate score which we could compare to  
11 traditional single campus elementary schools. With the  
12 current system, under Index 1 in the rating system, we can  
13 come to an effective average to where we're comparing  
14 apples to apples in this situation.

15 So in other words, if we had a situation where  
16 there were two paired schools creating an elementary  
17 school for a certain attendance zone, if one school scored  
18 in the 80s and the second school scored just under the 77  
19 percentile mark, that school would not qualify. If we  
20 averaged those based on the 80s scores for the grades that  
21 it accumulated and then the 70s, we could quite honestly  
22 come out to an average that was in the high 70s and would  
23 qualify.

24 What this does is make paired schools work  
25 twice as hard to get to that level and it's not, I don't

1 think, creating a fair playing field between those that  
2 are paired and those that have a single campus. I think  
3 that this year we have the opportunity to create an  
4 average, one that's accurate, and it would enable us to  
5 compare single campus schools to the paired schools for  
6 all of the grades that are encompassed. I think that they  
7 should all be looked at together as a single educational  
8 experience for each child that's going to be in that  
9 attendance zone.

10 MR. OXER: Good. Any questions from the Board?

11 I have a question. How many instances of paired schools  
12 are there?

13 MR. LANG: I think it's primarily going to be  
14 found in rural areas. I couldn't give you an accurate  
15 guess. I would say maybe 10 percent, 10 to 12 percent.  
16 It would be, I think, a couple of seconds to figure out  
17 what the average would be and really come to a meaningful  
18 comparison between paired schools and single campus  
19 schools.

20 MR. OXER: All right. Thank you.

21 Peggy.

22 MS. HENDERSON: Peggy Henderson, TDHCA,  
23 registering public opinion for Gerald Cichon from Housing  
24 Authority of the City of El Paso on agenda item 3(c),  
25 against staff recommendation.

1 MR. OXER: Is that you, Gerry?

2 MR. CICHON: That's me.

3 MR. OXER: Okay. Just making sure. Run up a  
4 flag there.

5 All right. We've been in our chairs here for  
6 an hour and a half, so we're going to take a quick break  
7 while Cameron does his work. It's 10:40 right now, let's  
8 be back here at 10:50.

9 (Whereupon, at 10:40 a.m., a brief recess was  
10 taken.)

11 MR. OXER: All right, let's get back in the  
12 game. Is there more comment on this item? There's two  
13 more, apparently. Donna, if you're going to speak, come  
14 up to the front here.

15 MR. SERRA: Jim Serra, Serra and Company.

16 I wanted to comment on the 6710, the historic  
17 tax credit issue, and I want to say I appreciate staff  
18 actually putting something in. I wanted to elaborate a  
19 little bit one more time, and I think you may be getting  
20 some more information from some other interested parties  
21 shortly. In any event, I wrote up a little thing I want  
22 to read.

23 As you know, we've been lobbying you guys to  
24 change the QAP to incent the use of the new Texas historic  
25 tax credit and federal historic tax credit as an

1 additional leveraging source to produce affordable housing  
2 and renovate deteriorating central business districts. We  
3 believe the incenting of this behavior and additional  
4 scoring will enable multiple community development  
5 objectives to be made instead of just one. And the  
6 subsidy, as I've explained before, is going to be about 40  
7 percent, 35 to 40 percent of additional leveraging by the  
8 Texas low income housing tax credit.

9           Therefore, I've been through this before, you  
10 know, asking for appropriate level of points. The staff  
11 issued a draft Monday which is going in front of the Board  
12 today, and I guess my understanding, I haven't been around  
13 in five years, it's pretty quickly going to go from you  
14 guys to the big guy. And I think the draft, while it does  
15 recognize the significance with the recommendation of  
16 additional two points, doesn't go far enough to make the  
17 projects viable, i.e., there are too many other categories  
18 that are against this type of development. I don't think  
19 they're intentional, but there's just there all the same,  
20 and I believe we need to do a little more.

21           And to put it in context, there's ten or  
22 twelve -- an eleven-point category for \$15,000 of local  
23 subsidy that most people qualify for, and what I'm talking  
24 about is going to produce a 30- to 40,000 unit minimum  
25 subsidy per unit, and that pretty much dwarfs the local

1 participation. And I think the difference is, this is  
2 equity, the local subsidy category, as I think most of us  
3 know, is kind of an in and out loan. It's really  
4 representing your equity, at least when I was here before.

5 That money doesn't really stay in the deal, and I don't  
6 really know how else to say it other than that, whereas,  
7 mine is going to come in and stay in, and not just mine  
8 but anybody that does historic tax credits.

9 So we've got a two-point category versus an  
10 eleven-point category where we provide four times as much  
11 subsidy that doesn't leave the deal, and I think that's  
12 important. I don't think it was designed that way but I  
13 think that's the net effect of what happens.

14 So staff wrote in their commentary: We agree  
15 it's appropriate to incentivize, et cetera, however, it  
16 wouldn't be consistent with the statute to introduce a  
17 scoring item that's worth a greater number of points than  
18 those included. And I don't think that's right, I think  
19 that's incorrect. I think I see at least five or six  
20 categories where the points go up, the points go down, and  
21 that's uncommon, that's commonplace, priorities shift from  
22 year to year, situations change, and I don't think there's  
23 been a bigger shift in the state policy than the passage  
24 of House Bill 500, this historic tax credit.

25 If I could finish, sir. And I think my

1 understanding was there's an up to an eight-point change  
2 can occur without the judge issue, and I'm not sure if  
3 that's accurate, but that's what I've heard. And so I  
4 think what I'm asking for is -- and one more level of  
5 explanation. This category has an affordability period  
6 and historic tax credit equity, and the proposal is you  
7 can either get two points for affordability or four points  
8 if you bring all this equity. And Cameron correctly put  
9 in if you use less than 7,000 per unit in tax credit which  
10 is significant.

11 Those two don't really go together, to me. I  
12 don't think the intent or mission of TDHCA is to reduce  
13 the affordability period because I'm going to elect  
14 historic tax credits and take four points but then I don't  
15 have to extend my affordability period. I think that's  
16 just a function of they're in the same category and not  
17 really what you want. I think what you want is if I'm  
18 going to do historic credits and use 7,000 per unit, you  
19 also want me to extend my affordability period because  
20 that's your mission. And those are kind of -- I don't  
21 know if mutually exclusive is the right word but I would  
22 never extend my affordability period if I didn't have to.

23 So everybody is going to check two points for low income  
24 affordability, I'm going to check four points for  
25 historic, and I'm going to have 15- or 30-year

1 affordability period instead of the longer one.

2 So I think a simple change is to make that an  
3 and category, not an or category. I think you can easily  
4 do that and you get both things you want. Of course, I  
5 want more, but if you do that, I think you would recognize  
6 the significance of the credit. Anyway, I'll stop that.  
7 Thank you.

8 MR. OXER: Thanks, Jim. Appreciate your  
9 comments.

10 Any questions from the Board?

11 (No response.)

12 MR. OXER: Cameron, you're keeping track?  
13 Okay.

14 MS. MANLEY: Meg Manley from McCormack, Baron,  
15 Salazar.

16 I just wanted to make a quick comment on the  
17 public housing funding issue. For at least two decades  
18 now, we've been doing a tremendous amount of our work  
19 through partnerships with housing authorities around the  
20 country. Many of these housing authorities are at a  
21 tremendous disadvantage, there's so much stock that needs  
22 to be repaired, replaced, or in some cases, leveled and  
23 rebuilt.

24 Texas has a unique conflict here. Certainly in  
25 many instances we have acted just as a designated



1 developer where we are the owner and the GP, we own the  
2 improvements, we lease the land. Texas, in order for the  
3 public housing units to qualify for their tax exemption,  
4 the housing authorities have to be in the ownership  
5 structure, so it presents a unique conflict for housing  
6 authorities in this category because the public housing  
7 units are net zero units, they generate zero income, so if  
8 you've got some public housing units in your development,  
9 you're going to want the tax abatement on those units.

10 So there is a conflict I wanted to point out  
11 that it's not so simple for housing authorities in this  
12 state to be able to just simply designate a developer,  
13 enter into a master development agreement, and not be part  
14 of the ownership structure.

15 We have made this our stock and trade over the  
16 last four years as redeveloping really severely distressed  
17 public housing communities, and so we would ask that you  
18 consider that this does count and it would count as a  
19 local contribution because we are in a unique situation  
20 here where quite often the housing authority must be part  
21 of the ownership structure.

22 MR. OXER: Good. Thank you.

23 Donna.

24 MS. RICKENBACKER: Good morning. Donna  
25 Rickenbacker with Marque Real Estate Consultants.

1           My comments this morning are in connection with  
2 11.9(c)(6) which is underserved area points. These are  
3 two points that are provided to developments that are  
4 proposing developments located in areas that are  
5 underserved, and it is limited to those types of  
6 applications that are serving general population and  
7 supportive housing.

8           One of the ways to qualify, if you're in an  
9 urban area, is if the place has never received tax credit  
10 allocation. We ask that the Department take a look at  
11 adding a qualifier to that: serving the same tenant  
12 population. And I'm hopeful that the Board will take a  
13 look at this and see that this change is truly a change  
14 that will affect the purpose and intent of the scoring  
15 category to provide points to areas that are underserved.

16           Their reasoned response, staff believes that  
17 such a change is not consistent with the statutory  
18 requirement as explicitly stated. We've already deviated  
19 from the explicit language of the statute. We've gone  
20 from census tract level determination to a place, which is  
21 a much larger footprint, and limiting the points to only  
22 general population and supportive housing developments. I  
23 assume these deviations were done to advance the  
24 objectives of the remedial plan to deconcentrate  
25 affordable housing and to provide the greatest incentives

1 to those developments that accept tenants of all ages.

2 Our change is meant to do that just that. The  
3 change is meant to further the remedial plan objective.  
4 Please keep in mind that these points are only available  
5 to supportive housing and general population developments,  
6 so if you're in an area that's only serving age-restricted  
7 seniors, you're in an underserved area, and I think that  
8 they should be able to then have the associated points.

9 This is a statutory provision, and I know that  
10 there's some ties being made to the remedial plan and  
11 whether or not this really complies with the remedial plan  
12 and not wanting to go to the judge to expand, I guess,  
13 what we're going to the judge to take a look at and  
14 hopefully incorporate in the 2014 QAP. I look at this is  
15 and it really is truly statutory. If there is any tie to  
16 the remedial plan, I hope that you all will look at this  
17 as a way to advance the objectives of the remedial plan,  
18 so I look to you to see what we can do to adjust this  
19 scoring category.

20 MR. OXER: Good. Thanks. Any questions from  
21 the Board?

22 (No response.)

23 MR. OXER: Okay, sir.

24 MR. LINDHOLM: Good morning, Chairman, members.  
25 My name is Craig Lindholm. I'm with the City of

1 Texarkana, Texas. I actually have two comments. I have a  
2 letter here that has been submitted from Representative  
3 George Lavender, House District 1, and also Representative  
4 Byron Cook, House District 8, that I'd like to read into  
5 the record. And then I will limit my comments very  
6 briefly after I read the letter into the record and I will  
7 submit the letter for your perusal.

8 "TDHCA Board Members. A coalition including  
9 five to eight cities, bipartisan legislatures, the Texas  
10 Downtown Association, and multiple local and historic  
11 associations have come together to promote long-term  
12 sustainable affordable housing and development in downtown  
13 areas and central business districts across Texas. This  
14 coalition recognizes the significant opportunities that  
15 exist by combining and leveraging tax credits which were  
16 afforded in House Bill 500, along with the low income  
17 housing tax credits through TDHCA.

18 "We would, therefore, request that the Board  
19 build on the staff's recommendation to provide more equity  
20 in the process for historic and revitalization  
21 developments by making the following two additional  
22 changes:

23 "Number one, make affordability and historic  
24 equity categories an and item instead of an or item.  
25 Therefore, if you do historic renovation in accordance

1 with this subcategory and agree to extend the  
2 affordability period, you would receive both scoring  
3 items. It would seem like anything else would be counter  
4 to the mission of long-term sustainable affordable housing  
5 for Texas citizens.

6 "Number two, recognize the legislative intent  
7 and the importance of the use of federal and state  
8 historic tax credits by maximizing the point category as  
9 allowed by statute. We request that the number be in the  
10 range of six to eight, not two. The additional points  
11 will directly counteract the opportunity index which few  
12 or no downtowns, especially in our smaller cities in  
13 Texas, can qualify for. We don't believe it was the  
14 court's or legislative intent of the TDHCA oversight  
15 situation to effectively eliminate downtown development  
16 from consideration. We ask to right this error by  
17 supporting smart finance and smart growth by increasing  
18 the points available in this subsection.

19 "Very truly and sincerely yours, George  
20 Lavender and Byron Cook."

21 I serve as the executive director of community  
22 redevelopment for the City of Texarkana, Texas. I support  
23 what has been represented in this letter. I also support  
24 the comments that were made by Mr. Serra, but I would add  
25 one other comment to this for consideration. While I

1 really believe in using low income housing tax credits as  
2 a catalyst for redevelopment downtown, the important thing  
3 here is that it's about affordable housing, and we have  
4 the existing infrastructure in our downtowns and small  
5 cities, we have many buildings that could be renovated,  
6 especially with the historic tax credits from the feds as  
7 well as the state. It seems counterintuitive to our  
8 purpose of expanding affordable housing in Texas by not  
9 combining those two.

10 If we use historic tax credits bringing more  
11 equity into these deals, we use less low income housing  
12 tax credits and that can be stretched longer. And it's my  
13 belief that that is really what the mission of TDHCA is  
14 about: to make more affordable housing available to all  
15 Texans, whether you live in metropolitan areas or in the  
16 more rural cities.

17 So with that, I'll close, and I thank you very  
18 much, Board members.

19 MR. OXER: Thank you. Any questions?

20 (No response.)

21 MR. OXER: Good. Thanks.

22 Are there any other questions on this item, any  
23 comment on this item?

24 (No response.)

25 MR. OXER: Okay. You've got summaries of each

1 of these. We're actually going to table this item until  
2 after our executive session so we can get some input from  
3 counsel on this. And I think I have to have a motion to  
4 table.

5 MR. GANN: I'll make that motion.

6 MR. OXER: Motion by Mr. Gann to table this  
7 item until after our executive session.

8 MR. McWATTERS: Second.

9 MR. OXER: And a second by Professor McWatters.  
10 No vote necessary.

11 Let's see, we'll move on to item 3(d) is up  
12 next. I'm going to exercise the discretion of the chair  
13 and change our order here just for a second, Cameron. I  
14 know there are some folks here that are trying to get  
15 going, and we might as well get all the really natty,  
16 gnarly ones out of the way, just throw them out there and  
17 stir the pot, so I'd like to go to Multifamily Finance,  
18 item 4(b), Cedar Terrace.

19 MR. DORSEY: All right. Item 4(b) is  
20 consideration of the possible approval for the issuance of  
21 a determination notice for the Cedar Terrace Apartments  
22 development to be located in Galveston.

23 As you all recall from the two previous  
24 meetings, there are two waivers associated with this  
25 particular issue. One relates to the parking being more

1 than six inches below the flood plain or flood level. The  
2 other is due to the location of some of the buildings  
3 within the engineered fall distance of high voltage, high  
4 tension power lines.

5 In addition, at the last meeting the Board  
6 placed two conditions -- well, they were multifaceted  
7 conditions but two kind of key conditions, one related to  
8 some additional information from an engineer or an  
9 engineering report from the power company related to the  
10 high voltage power lines, the possibility of moving those  
11 power lines and any barriers to doing so, and with regard  
12 to the safety, if they remain in their current location.

13 The other condition related to specifically  
14 some of the fair housing issues that have been discussed  
15 in both of the prior meetings, as well, and the Board  
16 effectively requested that the applicant pursue getting a  
17 letter from HUD which addresses kind of four specific  
18 factors that are reflected in your Board materials that  
19 basically help support the necessity of the development  
20 being located on this site, the necessity of 4 percent tax  
21 credits to facilitate the deal, as well as its compliance  
22 with the Fair Housing Act, including any disparate impact  
23 issues.

24 So the applicant has, in the intervening  
25 period, gotten some information for you all in the hope of



1 satisfying those conditions. That information is included  
2 in your Board materials.

3 The other thing I want to mention real quick is  
4 at the last meeting the Board chair designated a committee  
5 that could consider the documentation and whether or not  
6 the documentation met the requirements, and the committee  
7 was a three-member committee of Board members. Due to the  
8 timing of when the documentation was ultimately received,  
9 particularly the HUD letter, it was basically kind of  
10 eight days before this meeting, so it didn't make a lot of  
11 sense to hold two completely separate meetings, one of the  
12 committee and then one of the Board, it made absolute  
13 sense just to bring it back as a whole issue here, and so  
14 that's what we have done.

15 I guess at this point I'll allow you all to ask  
16 questions. Tim, do you have anything additional?

17 MR. IRVINE: Yes. I'd just like to clarify one  
18 thing. It was my impression more that the request that  
19 certain issues be addressed by HUD weren't necessarily  
20 conditions or requirements, they were simply the Board had  
21 identified these issues and concerns and thought that this  
22 might be something that that would be responsive to those  
23 concerns.

24 I would also point out that the fair housing  
25 concerns sort of stand as one set of issues, but the whole

1 issue about the waivers is an independent issue. It does  
2 all roll up to whether the deal is going to get done or  
3 not, but it is important that the waivers be individually  
4 addressed.

5 MR. OXER: Okay. I will exercise a summary on  
6 this, because since it was indicated last meeting that HUD  
7 had indicated that this was a site they wanted to have  
8 redeveloped, that it satisfied the fair housing and they  
9 had been given some of that communication to the developer  
10 and legal counsel, so we were asking for direct  
11 communication with us to that effect, which we have  
12 essentially received.

13 The question of the two waivers, we can  
14 address. I think one of the things that needs to be  
15 recognized is we've done this, we've been consistent, I'd  
16 like to be consistent with what we've done in the past.  
17 The waivers on the level of the parking area, I think it  
18 was brought out last time that the entire island is  
19 essentially under the flood zone and you put a Cat 5  
20 hurricane down there with a really low central pressure on  
21 it, there's no telling where that's going to be because it  
22 could be twelve or fifteen feet, not six inches. So I  
23 think the discussion was let's keep the parking area there  
24 and then have the living quarters essentially the second  
25 floor or second level and beyond that.

1           And to mitigate that in terms of the lack of  
2 knowledge on behalf of the residents, there would be some  
3 communications with them and a guarantee that they read it  
4 by having a signature on their leasing documents that they  
5 read that and recognize that the parking was in a flood  
6 zone and during times like a hurricane that they need to  
7 exercise some discretion and precaution in going into the  
8 garage to access their vehicles.

9           The fall zone for the transmission lines, which  
10 is waiver two, I think, we've addressed that and I'm  
11 satisfied with the communication from CenterPoint about  
12 the impact of those. I add that only as commentary from  
13 my perspective and the expertise that I recognize and  
14 represent to the Board, to the other members.

15           So with that, do we have a motion to consider?

16           MR. THOMAS: So moved.

17           MR. OXER: Okay. We have to take these one at  
18 a time in terms of the waivers. Is that correct?

19           MR. IRVINE: So doing it sequentially, how  
20 about parking waiver, fall zone waiver, and proceeding  
21 with acceptance of the letter. Because the staff  
22 recommendation was neutral, the motion would need to be  
23 specifically for granting the waiver or against, and if  
24 it's for, it needs to state on the record what the  
25 necessary rationale is.

1 MR. OXER: I will put that in a slightly  
2 different sequence, because without one, the other two are  
3 irrelevant, without the letter from HUD.

4 MS. DEANE: There's different standards to be  
5 applied on the waiver, so we need to address those  
6 individually.

7 MR. OXER: Individually. Okay.

8 MS. DEANE: And meet the standard.

9 MR. IRVINE: For the Board's memory, the  
10 standard to be met granting a waiver is that it is  
11 necessary to grant the waiver to ensure that a policy or  
12 purpose expressed in Chapter 2306 is carried out.

13 MR. OXER: I think we should take the letter  
14 first. Essentially, the letter explicitly stated  
15 everything that I was looking for, since I was the one  
16 that raised the questions and asked for the letter. The  
17 only one being that that was the only place on the island  
18 where this development could be, I'm sure that could never  
19 be the case, it would be unreasonable to think that that  
20 was the case, but it was where the reconstruction of the  
21 previously existing housing was available. It would be,  
22 if I recall correctly -- and I want to make sure this is  
23 right -- it would be a mixed income unit, there would be  
24 some low income units, but this is to be considered part  
25 of a larger plan for restoration of the entire portfolio

1 of housing that would be available on the island. Is that  
2 correct?

3 So there's that part and it satisfies that it  
4 does further fair housing which was the communication that  
5 I was really looking for to make sure that they felt that  
6 by doing this that we met our obligation and  
7 responsibility to further fair housing.

8 So with that, I want to start with the  
9 acceptance of the letter. Is that required? It's a  
10 neutral recommendation from staff, so how should we  
11 approach this?

12 MR. GANN: You need a motion to accept the  
13 letter.

14 MR. OXER: So given the letter, in light of  
15 that letter, the only motion we have to make or the only  
16 consideration we have to make is to offer the waivers. Is  
17 that correct, Counselor?

18 MS. DEANE: Right. From what I understand, the  
19 process that you're taking is you're going to start with  
20 the HUD letter and you would take a motion and a second,  
21 and then you would take public comment, and I think  
22 probably on this item, as well, you may want to go through  
23 the executive session before you take final action on it,  
24 but to at least get movement in order to receive public  
25 comment on this, and then you would move to the next

1 waiver and take a motion and a second.

2 MR. OXER: But in recognition that the letter  
3 is what we were looking for, to have the letter as part of  
4 the consideration for the two waivers, so the only thing  
5 we're actually doing is considering the waivers. Isn't  
6 that correct?

7 MR. GANN: Consider the letter.

8 MR. OXER: That's what I'm saying. The letter  
9 is part of the defense for the waivers.

10 MR. IRVINE: You're being asked to do three  
11 things, as I understand it: to grant both of the waivers  
12 and to approve a tax credit determination notice.

13 MR. OXER: Okay.

14 MS. DEANE: Right, and the letter would be part  
15 of the determination.

16 MR. OXER: All right. So the letter  
17 constitutes the determination notice.

18 MS. BINGHAM ESCAREÑO: Mr. Chair, question.

19 MR. OXER: Yes, Ms. Bingham.

20 MS. BINGHAM ESCAREÑO: So would you take the  
21 motions on the waivers individually or together?

22 MR. OXER: The motions on the waivers will be  
23 individual because they're different standards to be  
24 applied to each one of them. We'll take the consideration  
25 for the letter. Say that again, Tim. The determination

1 of the tax credit appropriateness for this deal.

2 MS. DEANE: Well, I think you would have to  
3 dispose of the waivers first because without the waivers  
4 it is ineligible, so unless you have the waivers, you  
5 couldn't vote on the determination as a whole because it's  
6 ineligible at this point.

7 MR. IRVINE: And as we indicated earlier, you  
8 could have a motion, have a second, have public comment,  
9 and then table it, and I think that the way the letter  
10 plays into it is certainly that it would potentially be a  
11 factor that could be used in describing your rationale one  
12 way or the other on the waivers.

13 MR. OXER: All right. Let's take consideration  
14 of the waiver for the flood plain component. Motion to  
15 consider for that single waiver.

16 MS. BINGHAM ESCAREÑO: I'll give it a try. Mr.  
17 Chair, I move approval of the request for waiver regarding  
18 the parking area being below the identified flood level,  
19 as it is necessary to grant the waiver so that we can meet  
20 provisions of 2306 which would be that it appears that any  
21 structure in the Galveston area would probably require a  
22 similar waiver.

23 MR. OXER: Motion by Ms. Bingham for the  
24 waiver.

25 MR. McWATTERS: Second.

1 MR. OXER: Second by Professor McWatters. Is  
2 there any public comment?

3 (No response.)

4 MR. OXER: Right answer. Motion to table?

5 MR. GANN: I make a motion to table.

6 MR. OXER: Okay. Motion to table by Mr. Gann.  
7 There is a required second.

8 MR. THOMAS: Second.

9 MR. OXER: Second by Mr. Thomas. Okay. We'll  
10 table that one until we consider executive session.

11 With regard to the transmission line?

12 MR. GANN: Mr. Chairman, would you state your  
13 position on that one more time?

14 MR. OXER: I'm in favor of the waiver.

15 MR. GANN: I'm talking about the letter on the  
16 fall lines.

17 MR. OXER: On the fall lines. The information  
18 submitted by the architect and by CenterPoint satisfies my  
19 concerns and technical issues associated with the fall  
20 distance for the transmission line poles.

21 MR. THOMAS: Mr. Chair, I move, in light of the  
22 clarification provided by the architect and CenterPoint  
23 Energy, that we grant the waiver necessary related to the  
24 fall line.

25 MR. OXER: And to add to that, just to expand



1 that, would you finish out his sentence, Leslie?

2 MS. BINGHAM ESCAREÑO: I would add an amendment  
3 that it is necessary to grant that specific waiver to meet  
4 specific provisions of 2306.

5 MR. OXER: We have a motion to consider by Mr.  
6 Thomas.

7 MR. THOMAS: Friendly amendment accepted.

8 MR. OXER: Okay. That was only to expand on  
9 it, to describe it.

10 MS. BINGHAM ESCAREÑO: Second.

11 MR. OXER: Second by Ms. Bingham. Is there any  
12 other additional comment on this one?

13 (No response.)

14 MR. OXER: Right answer. Motion to table?

15 MR. GANN: So moved.

16 MR. OXER: Motion to table by Mr. Gann.

17 MR. McWATTERS: Second.

18 MR. OXER: Second by Professor McWatters.

19 All right. Then we'll move to that one and we  
20 will take up the consideration of the tax credit proposal  
21 after executive session once those are considered. Is  
22 that the way it should work?

23 MS. DEANE: To take up the actual item of  
24 voting to approve the matter, you couldn't really do it at  
25 this point because the waivers haven't been actually voted

1 on, and so it's still ineligible at this point.

2 MR. OXER: Correct. Right now it's still  
3 ineligible.

4 All right. What we should probably do is go  
5 into executive session early to get some of these things  
6 taken care of and see if we can get it knocked out and  
7 come back.

8 As you probably all know, counsel provides  
9 script to make sure I get this right. The Governing Board  
10 of the Texas Department of Housing and Community Affairs  
11 will go into closed session at this time, pursuant to the  
12 Texas Open Meetings Act, to discuss pending litigation  
13 with its attorney, to receive legal advice from its  
14 attorney, to discuss certain personnel matters, to discuss  
15 certain legal and state matters under Section 551.072 of  
16 the Act, and discuss issues related to fraud, waste or  
17 abuse under Section 2306.039.

18 MS. DEANE: Also state the section items here  
19 on these first two.

20 MR. OXER: That's why she's got a cattle prod.  
21 Let's start this over. The Governing Board of the Texas  
22 Department of Housing and Community Affairs will go into  
23 closed session at this time, pursuant to the Texas Open  
24 Meetings Act, to discuss -- actually, we're going to  
25 receive legal advice from our attorney under Section

1 551.071 of the Act. The closed session will be in the  
2 anteroom behind us. The date is November 7, the time is  
3 11:27.

4 MS. DEANE: And to discuss pending litigation  
5 which is also 551.071.

6 MR. OXER: And to discuss pending litigation  
7 which is also 551.071 of the Act.

8 The time is 11:28. We expect to be back pretty  
9 quick, so stand your ground.

10 (Whereupon, at 11:28 a.m., the meeting was  
11 recessed, to reconvene this same day, Thursday, November  
12 7, 2013, following conclusion of the executive session.)

13 MR. OXER: The Board is now reconvened in open  
14 session, and it's 12:55. In executive session we received  
15 legal advice from our counsel and no decisions were made  
16 and no deliberations were in more detail than receiving  
17 advice from our counsel.

18 We have two items that have been tabled, the  
19 waivers on Cedar Terrace. I think we should take those up  
20 in order. It's item 4(b), the waiver regarding the flood  
21 plain, there was a motion by Ms. Bingham and a second by  
22 Professor McWatters. Do we need a motion to reconsider?

23 MS. BINGHAM ESCAREÑO: So moved.

24 MR. OXER: Motion by Ms. Bingham to reconsider,  
25 and a second by?

1 MR. McWATTERS: Second.

2 MR. OXER: Mr. McWatters. So it's not returned  
3 to the consideration. Is there any other discussion, any  
4 more comment? No public comment.

5 MS. DEANE: J. Paul, if you don't mind, I  
6 thought I would just read in the standard for the waiver  
7 under the rule into the record just so it's really clear,  
8 because there's actually two prongs.

9 A requested waiver must establish how the  
10 waiver is necessary to address circumstances beyond the  
11 applicant's control, and how, if the waiver is not  
12 granted, the Department will not fulfill some specific  
13 requirement of law, purpose or policy set forth in Texas  
14 Government Code, Chapter 2306. So those are the two  
15 prongs.

16 MR. OXER: Right. And I think it's fair to say  
17 that this one, our purpose in granting this waiver would  
18 be to meet the expectations and responsibilities for the  
19 conciliation agreement that we have. I think that  
20 constitutes an obligation under 2306.

21 MS. DEANE: Well, clearly at the time the  
22 conciliation agreement was entered into, it was determined  
23 that it was consistent and allowed under Chapter 2306, so  
24 it's certainly in accord with Chapter 2306. Yes.

25 MR. OXER: All right. Given that that's the

1 case, there was an original motion by Ms. Bingham and  
2 second by Professor McWatters. Is there any other public  
3 comment? There is none.

4 Any other questions from the Board?

5 (No response.)

6 MR. OXER: All in favor of granting the waiver  
7 consistent with the discussion and description that's been  
8 made. All in favor?

9 (A chorus of ayes.)

10 MR. OXER: And opposed.

11 (No response.)

12 MR. OXER: There are none. The first waiver is  
13 granted.

14 All right. Same criteria apply in terms of the  
15 requirement to meet the obligations of 2306 for the waiver  
16 with regards to the transmission line. The original  
17 motion was made by Mr. Thomas, second by Ms. Bingham.  
18 It's been tabled. We need a motion to reconsider.

19 MS. BINGHAM ESCAREÑO: So moved.

20 MR. OXER: Motion by Ms. Bingham to reconsider.

21 MR. THOMAS: Second.

22 MR. OXER: And a second by Mr. Thomas. I think  
23 it's fair that we've got the criteria established already,  
24 Barbara? Under the criteria, those apply to both the  
25 waivers.

1 MS. DEANE: The same criteria would apply, and  
2 so the extent to which you have found that the power poles  
3 and the location of the power poles are an item that is  
4 outside of the control of the applicant, and that failing  
5 to grant the waiver would cause you to fail to fulfill  
6 some requirement or policy of 2306, then yes, that would  
7 be the same thing applied to the power pole issue.

8 MR. THOMAS: I have just a couple of points.

9 MR. OXER: Please, Mr. Thomas, you have a  
10 comment.

11 MR. THOMAS: I found the letter from the  
12 architect and from the power company, CenterPoint Energy  
13 compelling. I found specifically that coupled with the  
14 testimony that we received, that because of the nature of  
15 these specific power lines and what they were built  
16 withstand and the likelihood that there be an issue  
17 associated with a storm is low. I was also very moved and  
18 impressed that I had not considered a greater issue of a  
19 vehicular crash, and I was impressed that consideration  
20 would be taken to build I believe it was crash walls would  
21 be designed in compliance with TxDOT standards for a  
22 safety barrier.

23 So I believe that because these power lines are  
24 not just normal lines, that they're large transmission  
25 lines, they are not able to be moved by the applicant, and

1 because there are steps that can be taken to increase  
2 safety, that it's, first, outside the applicant's control  
3 related to the location of those power lines, and I also  
4 believe that the safety precautions would allow us to meet  
5 the needs of making sure that a safe environment existed  
6 for members that would live in these housing units.

7 MR. OXER: Is there any other comment from the  
8 Board?

9 (No response.)

10 MR. OXER: Very well. And I assume there is no  
11 more public comment. Just checking. The original motion  
12 by Mr. Thomas and second by Ms. Bingham. All in favor?

13 (A chorus of ayes.)

14 MR. OXER: Opposed?

15 (No response.)

16 MR. OXER: There are none; it is unanimous.

17 Now we have to consider the actual -- we broke  
18 this into three parts so the third one would be the  
19 consideration of the 4 percent for Cedar Terrace. Mr.  
20 Thomas, would you like to take another shot at one?

21 MR. THOMAS: I would prefer if Ms. Bingham  
22 would.

23 MS. BINGHAM ESCAREÑO: It will be my pleasure.

24 (General talking and laughter.)

25 MR. DORSEY: May I weigh in for just a moment.

1 I want to make sure that this is impeccable. There's an  
2 item that's reflected as the third -- it's in the recitals  
3 related to the approval, and it deals with pre-clearance.

4 The issue of being located in an area where more  
5 generally than just the location of the parking below the  
6 flood plain but it's an area where there's significant or  
7 recurring flooding necessitates a pre-clearance under  
8 Chapter 10, Section 10.101(a)(4)(A) of the Uniform  
9 Multifamily Rules, and I think the burden is actually  
10 lower for this than the previous waiver, so it probably  
11 carries forward, but if we could just build into any  
12 motion that pre-clearance is also granted.

13 MS. BINGHAM ESCAREÑO: Mr. Chairman, would you  
14 entertain a motion to approve the pre-clearance? I'll  
15 make one if you'll entertain it.

16 MR. OXER: Yes, we will.

17 MS. BINGHAM ESCAREÑO: I move to approve the  
18 pre-clearance, pursuant to 10.101(a)(4)(A) of the Uniform  
19 Multifamily Rules, regarding the site being located in an  
20 area that has a history of significant or recurrent  
21 flooding.

22 MR. THOMAS: Second.

23 MR. OXER: Motion by Ms. Bingham, second by Mr.  
24 Thomas, for offering a pre-clearance. Is that sufficient  
25 for the needs on the record of the transcript here,



1 Cameron?

2 MR. DORSEY: I believe so.

3 MR. OXER: Is there public comment? There is  
4 none, apparently.

5 All in favor?

6 (A chorus of ayes.)

7 MR. OXER: Opposed?

8 (No response.)

9 MR. OXER: There are none.

10 Now to the item considering the tax credits for  
11 the deal.

12 MS. BINGHAM ESCAREÑO: I'd like to make a  
13 motion.

14 MR. OXER: Okay, Ms. Bingham.

15 MS. BINGHAM ESCAREÑO: I have a couple of  
16 comments but I'll make the motion.

17 MR. OXER: Let's hear the comments first.

18 MS. BINGHAM ESCAREÑO: Okay. Well, my first  
19 comment is to Toni, I guess, that we sent you on a wild  
20 goose chase in the middle of a government shutdown to talk  
21 to HUD, get them to put something in writing, commend you  
22 for that.

23 MR. OXER: Squawking and feathers everywhere,  
24 there were dead geese all over the place.

25 (General laughter.)

1 MS. BINGHAM ESCAREÑO: Super impressed with  
2 that, just the fact that you were able to get it. The  
3 letter itself answered a lot of questions for me, and I  
4 think as we left the meeting the last time, there were  
5 some questions that we needed answers for. I think having  
6 the three signatures, the three authorities sign off on  
7 the letter and being willing to provide that was  
8 exemplary. And I think the letter is on the record for  
9 everybody to look at. The group does say that it furthers  
10 fair housing, which was a huge concern for us, and that it  
11 does deconcentrate, which is another important thing. So  
12 I think not only were you able to just quantitatively get  
13 the letter, but I think my opinion is that the letter  
14 qualitatively answers a lot of the questions that we had.

15 So with that, I would recommend that we approve  
16 the determination notice for Cedar Terrace Apartments.

17 MR. OXER: Motion by Ms. Bingham to approve  
18 determination.

19 MR. THOMAS: Second.

20 MR. OXER: Second by Mr. Thomas.

21 MR. DORSEY: May I say one additional thing to  
22 just clarify absolutely? The amount of the determination  
23 would be the amount reflected in the underwriting report  
24 that's recommended of \$528,246 in annual tax credits.

25 MR. OXER: I don't think it requires amendment

1 but we'll add that as a clarification.

2 MS. BINGHAM ESCAREÑO: As staff recommendation  
3 and the underwriting report, that's fine.

4 MR. OXER: Is there any question from the  
5 Board?

6 (No response.)

7 MR. OXER: All right. There was a motion from  
8 Ms. Bingham, second by Mr. Thomas to approve staff  
9 recommendation for determination on Cedar Terrace. There  
10 being no further comment, is there further comment from  
11 the Board?

12 (No response.)

13 MR. OXER: All in favor?

14 (A chorus of ayes.)

15 MR. OXER: And opposed?

16 (No response.)

17 MR. OXER: There are none. Congrats, ladies.

18 Cameron, let's get back to we were working on

19 3(c), as I recall.

20 MR. DORSEY: We were.

21 MR. OXER: We were, which is the QAP. Is Peggy  
22 here? Annette, do you have this comment? We have one  
23 more public that was requested to be read into the record.  
24 Annette, would you read that for us?

25 MS. CORNIER: Annette Cornier, TDHCA staff.

1 Ms. Lucille Diaz would like to register her  
2 opinion on item 3(c) against staff recommendation. She is  
3 representing Franklin Development, and the other statement  
4 says that: Franklin Development agrees to a private-  
5 public partnership but is against staff recommendation.

6 MR. OXER: Good. Thanks.

7 Okay. Let's hear a summary of where we're at  
8 here, Cameron.

9 MR. DORSEY: Sure. I think we've heard all of  
10 the public comment. The remaining public comment is  
11 addressed through the reasoned response. I think it may  
12 be appropriate, unless you feel otherwise, to go ahead and  
13 I'll walk through kind of a brief staff response to each  
14 of the issues. If there's an instance in which you guys  
15 want further explanation or have some questions, just let  
16 me know.

17 So I've got a list here and they may not be in  
18 the same order as reflected. I think I've already spoken  
19 to this point, but I believe that staff would feel  
20 comfortable amending our recommendation to include some  
21 language regarding the City of Houston's Permanent  
22 Supportive Housing Program and its ability to qualify in  
23 at-risk. I think the language that I would specifically  
24 offer up is that an application has already applied for  
25 the City of Houston Permanent Supportive Housing Program,

1 at the time they apply to TDHCA, so by February 2014, that  
2 the development must be located in an area qualifying for  
3 points on the opportunity index and that it not have more  
4 than 18 percent of the total units preserved for persons  
5 with disabilities for consistency with our integrated  
6 housing rule.

7 And this would impact two specific provisions.

8 One is Section 11.9(c)(2)(A), and this option would  
9 provide the ability for an applicant to get thirteen  
10 points for doing this. And under Section 11.9(c)(3), this  
11 option would provide access to eleven points.

12 On the other issues, that's the only one that  
13 I think we can build into our recommendation. I'll give  
14 you some feedback on the other ones as well, though. So  
15 with the PHA request that we remove the related party  
16 language in the development funding from a local political  
17 subdivision, I think specifically what I want to address,  
18 I think you all kind of understand the overarching  
19 approach that we've taken here, but Mr. Palmer brought  
20 forth a few other pieces of information that I wanted to  
21 address.

22 The first is that this was an addition last  
23 year, and that is absolutely true, it was an addition last  
24 year, but we've got to view that in the context of a  
25 pretty much ground up rewrite of this portion of the QAP

1 that included a host of other changes that refined this  
2 particular point item and made it, frankly, more difficult  
3 for everyone to achieve. And when we narrowed the field  
4 of what entities qualify any particular application for  
5 local political subdivision points, I think we had to take  
6 some additional measures, and that included the kind of  
7 looking at the possible effect of allowing related party  
8 lending.

9 In previous years, it was effectively mitigated  
10 because the number of local political subdivisions that  
11 were eligible were so great and there were so many actions  
12 folks could pursue that it wasn't a measurable issue, and  
13 so we didn't feel that any type of restriction in that  
14 regard was necessary. So that's one issue.

15 The other issue was that no PHA deals applied  
16 last year, and I think this is probably indicative of kind  
17 of an overarching issue, and that is that our QAP -- or I  
18 would hypothesize that our QAP incentivizes going into  
19 high opportunity areas, and that's a very strong  
20 incentive, and those areas typically aren't the  
21 preferential areas that a PHA does deals, and the reason  
22 is not because necessarily they don't want to do deals in  
23 high opportunity areas but the deals within their existing  
24 portfolio are oftentimes not located in those areas.

25 And I would encourage them under our at-risk

1 provision in particular, they're able to move units to  
2 high opportunity areas now and still qualify as at-risk.  
3 In addition, this last legislative session the at-risk  
4 set-aside was statutorily changed to allow public housing  
5 transactions to qualify. I think we heard about RAD but  
6 that's a very specific kind of subset. Basically,  
7 redevelopment of public housing deals can now qualify  
8 under at-risk, it's a specific new addition, and so I  
9 think that's an appropriate set-aside to accomplish  
10 redevelopment in the manner that public housing  
11 authorities typically approach redevelopment. That's just  
12 in addition to our reasoned response.

13 We also had some comments on educational  
14 excellence, and one was to reduce the requirement to have  
15 77 or greater on Index 1 related to student achievement of  
16 the school ratings. And we were very deliberate about how  
17 we approached this, and I've gotten a number of emails  
18 over the past few weeks about hey, can you take that 77  
19 and lower it to 76, and across the board my response is  
20 can you give me kind of an overarching policy rationale to  
21 make that change because it starts to feel like sometimes  
22 it's like they've got a site in an area and it has a  
23 school that's a 76 and they want that one to clarify.

24 Claire's issue was a little bit broader than  
25 that. She's looking at the City of Dallas as a whole,

1       however, we're looking at this from a statewide  
2       perspective and we need to have a very affirmative reason  
3       to say this is why we chose this number, this is why we  
4       drafted the rule this way because this we have to request  
5       approval from the court, and the 77 is the statewide  
6       average. So it's a tangible number that we can explain,  
7       look, we chose a number to encourage effectively location  
8       in the attendance zone of schools with an above average  
9       rating statewide, and so that was the rationale for the  
10      77, it's easily explained, it's tangible. If I go to  
11      another number, it becomes more difficult, it's like why,  
12      and I'm like, well, you know, it's one below the average.  
13      I don't know. So that's the difficulty I have with that  
14      type of change. I don't oppose it necessarily, it just  
15      how do I explain that.

16                 MR. OXER: That was just simply your rationale  
17      of where that number came from.

18                 MR. DORSEY: Seventy-seven came because we  
19      discussed the issue with the TEA, they provided us with  
20      the statewide average for this particular index, it's an  
21      index specifically related to student achievement which is  
22      what we were looking to incentivize, and as a result, it  
23      was a rational decision to choose that 77.

24                 In addition, I suppose while we're on the  
25      subject, it also allows us to maintain an approximate



1 about 50 percent of the schools in the state hit on the  
2 Met Standard at 77 on the index, and in the 2011 ratings  
3 that were used explaining the remedial plan and was used  
4 in last year's QAP, the 2013 QAP, we had approximately 20  
5 percent of the schools qualifying there as well. So we're  
6 moving from about 50 percent of the schools in the state  
7 hit on all cylinders to about 50 percent of the schools in  
8 the state hit on all cylinders, so we're not moving  
9 tighter, we're not loosening up the restriction in a  
10 manner that might cause concern for the court.

11           There were some comments about requiring those  
12 local entities, whether they be neighborhood  
13 organizations, community organizations, state  
14 representatives, what-have-you, that we should consider  
15 building into all of those a standard whereby they have to  
16 basically put their rationale on the record. I wanted to  
17 note that we do have a kind of standard in the  
18 neighborhood organization point item that involves the use  
19 of a fact-finder in cases where an applicant believes that  
20 there are some issues with the comment that the local  
21 government has already found that this is an appropriate  
22 use for the site and where their rationale is inconsistent  
23 with those local government findings. So that's a  
24 mechanism built in there.

25           I think the request is really to build it in

1 also to the state representative letters. I just put that  
2 forth. I don't have an opinion either way, it's just a  
3 policy decision, I think, as well as whether or not  
4 Barbara feels like the statute supports, but I don't have  
5 a specific opinion in that regard.

6 The elderly de minimis, so the elderly  
7 restriction in 11.3(e), we used a methodology, or we  
8 refined our methodology a little bit to include a de  
9 minimis of 500 units. We used to have a de minimis in our  
10 original draft of 250 units, I believe, and we moved up to  
11 500 for a couple of reasons. One was, you know, I think  
12 Granger MacDonald made some comments about how he's got  
13 two deals in this county and they're both elderly, and  
14 those two deals alone are what's causing the elderly  
15 restriction.

16 And so we kind of looked at it again and it's  
17 like, you know, two deals in a county, what are the kind  
18 of average size of deals and we didn't want to exclude  
19 counties that just over time don't get that many  
20 developments. I mean, 500 units is not a whole lot when  
21 you're looking at years and years of administration of the  
22 program, so we moved from that 250 to 500 for that reason.

23 The counties that are now eligible for an urban  
24 elderly development but weren't in the previous language  
25 with the 250 de minimis are the ones that are struck in

1 your Board proposed rule. That's, again, just kind of an  
2 overarching policy decision. We felt like it was  
3 appropriate. First off, a number of these counties are  
4 primarily rural to begin with, and rural isn't restricted,  
5 and so that was one thing right off the bat. So anyhow,  
6 that's really a policy reason but that's the reason we  
7 made the move is just 500 units didn't seem like a kind of  
8 critical mass.

9           We had some comments on the educational  
10 excellence also with regard to the idea of paired schools  
11 and taking an average of the ratings rather than taking  
12 the lowest of the two ratings. And this is, again, more a  
13 policy issue than anything else, but it's one where we  
14 would have to request the court's approval, but in  
15 addition to that, I think if you just take a straight  
16 average, I don't think you're really accounting for what's  
17 going on behind those ratings.

18           Take, for example, a school where a rating of  
19 60 was derived from a student body of 500 test-takers and  
20 that has to get paired with a school that has 100 rating  
21 but it was a student body of 100 test-takers. Well, a  
22 strict just average and not use of some kind of weighted  
23 methodology would potentially allow that type of situation  
24 to count when the majority of the students in these paired  
25 schools really aren't performing. And so that creates a

1 question as well as an issue with kind of crafting that  
2 affirmative this is why this makes sense because I already  
3 know all the drawbacks of it so you kind of have to  
4 acknowledge those as well.

5           So that's what I would say about that. You  
6 could come up with something that's kind of in between  
7 like, you know, a weighted average based on the number of  
8 grades each one serves or something, but when you look  
9 behind the data, really what you're dealing with is  
10 individual students and student bodies and how big the  
11 universe of test-takers is.

12           With respect to the historic credits and the  
13 comments about more points or the "and," I would say this,  
14 we didn't develop the two-point differential in a vacuum,  
15 we developed the two-point differential based on a whole  
16 assessment of the scoring system and looking at the effect  
17 that any given change may have in the ultimate outcomes.  
18 And so if I were to make it "and," I would simply also so  
19 and reduce the historic credits two points because I think  
20 the two-point differential there between a historic deal  
21 and a non-historic deal is really what we were looking at,  
22 maintaining a viable path for a historic deal.

23           Certainly that's not the only thing they can  
24 do, they have to attempt to achieve points under other  
25 items as well, and those might be difficult to achieve,

1 but there are packages that can be put together to create  
2 a viable historic rehab application. And it may not work  
3 for every historic building, there are certainly going to  
4 be some instances where that doesn't work, but if we took  
5 the lowest common denominator approach, then that would be  
6 the path of least resistance and then I would see, Lord  
7 knows, how many historic rehab deals. So it's kind of  
8 that measured having to look at the entire picture.

9 On underserved area points, Ms. Rickenbacker  
10 commented about the possibility of where it's the option  
11 related to point incentive for the point incentive for a  
12 development located in a city with no existing tax credit  
13 deals, or if not located in a city, in a county with no  
14 existing tax credit deals, and moderating that or changing  
15 it a little bit by saying that serves the same population  
16 type, whether it be elderly or general. So that's a  
17 change that she referenced statute, and our reasoned  
18 response certainly references statute. I think under this  
19 portion of statute, this is 2306.6725, it's also under  
20 part (b) of 2306.6725, and there's a little bit of  
21 flexibility there, most certainly, and we might be able to  
22 get there on that account.

23 And maybe I was getting tired by this time of  
24 the reasoned response, but there are some other issues  
25 that I'll kind of go ahead and put on the record now. And

1 those are that we wanted to be very deliberate about what  
2 changes we were requesting the court's approval for, given  
3 all the various timing issues of when we might hear back  
4 from the Court, and again, I tried to make sure that we  
5 limited -- because this is the first year that we're going  
6 to do this and we kind of want to figure out how it works.

7           Maybe next year we might get comfortable making  
8 more changes based on kind of how we see the court  
9 weighing in this time around, but for this time we tried  
10 to limit it to those where we had a very strong  
11 affirmative reason to make this change, and in this  
12 instance, I can craft arguments that it both affirmatively  
13 furthers fair housing in some instances but in other  
14 instances it does the exact opposite.

15           MR. OXER: So the context then.

16           MR. DORSEY: Right. For example, you might  
17 encounter an area with an existing elderly deal that's  
18 high opportunity and it's in a city and that's the only  
19 one there, and so you would get points for doing a general  
20 population deal in that same city, and that makes some  
21 sense. But on the reverse end, if there's a general  
22 population deal already there, it may be the only one in  
23 the city and the only one in Lord knows how many miles,  
24 but the existence of that would prevent a general  
25 population deal but incentivize an elderly deal, so

1 there's counterpoint.

2 And we tried to limit those changes where e  
3 needed the court's approval, given that this is the first  
4 year where we're going through this process, we want to  
5 kind of get an understanding of how it's going to work,  
6 limit some of the uncertainty surrounding the upcoming tax  
7 credit cycle, and have very strong cases that we can make  
8 for the changes we do propose. So I that addresses, I  
9 think, the majority of the issues that were raised.

10 Are there any questions?

11 MR. OXER: Are there any questions from the  
12 Board? There's no other requests. We have the motion  
13 here.

14 MR. DORSEY: I did want to -- I'm sorry, I  
15 forgot. This one wasn't a public comment made today, and  
16 I'm actually kind of shocked, but it's something that I  
17 think we all need to be aware of and it might warrant kind  
18 of backing off a little bit in the QAP this time. We have  
19 a point incentive for serving persons with special needs  
20 and setting aside a certain number of the units or this  
21 year we built in this whole new option to create kind of a  
22 carrot in our 811 Program.

23 As you all may recall, we received \$12 million  
24 from HUD to administer project-based rental assistance  
25 under a program called the 811 Program, and that rental

1 assistance would, for example, provide a rent subsidy to,  
2 say, ten units in a hundred-unit deal and only persons  
3 with certain types of disabilities would be able to live  
4 in those units. That program doesn't have an apparent  
5 carrot in and of itself to kind of incentivize folks to  
6 apply, and so we think it's important to do our best to  
7 utilize those funds.

8 And so we were looking for a way to create a  
9 carrot and one of the great ways to create a carrot is to  
10 use the program that's oversubscribed four to one almost  
11 every year to create that carrot. And so we built in a  
12 point incentive for that 811 Program, and it requires that  
13 in certain areas of the state where this pilot program is  
14 going to be launched that if you wanted these points for  
15 serving persons with special needs, you had to agree to  
16 participate 811 Program.

17 And we've spent a lot of time talking to  
18 different development groups about it and what-have-you.  
19 The kind of bit overarching concern is we don't have a  
20 whole lot of guidance from HUD at this point in time on  
21 how all that's going to work together. We did, I believe  
22 yesterday, receive kind of our grant agreement that's  
23 going to lay out a lot of the program parameters but we  
24 have the ability to negotiate some of these parameters  
25 with HUD, et cetera, and certainly the development



1 community kind of hasn't wrapped their brain around it.

2           So we thought perhaps removing that from the  
3 QAP at this point so as not to have a bunch of uncertainty  
4 surrounding that and confusion, but that perhaps the Board  
5 could put on the record their intent to consider a point  
6 item in a future QAP for those that had applied for or  
7 participated in the 811 Program and that would obviously  
8 allow us to have rolled the 811 Program out, see who  
9 applies for it, and because you all put kind of on the  
10 record that, hey, we may give a point for participating in  
11 this program, that that would be the carrot for folks to  
12 apply. But folks could apply with kind of the known  
13 universe of issues with the program and everything and not  
14 be kind of blindly electing to participate in something  
15 they don't understand.

16           So I think probably unless you all feel  
17 strongly about having it in, I would feel comfortable  
18 amending staff's recommendation to remove that option and  
19 leave in the remainder of that point item for setting  
20 aside 5 percent of your units for persons with special  
21 needs, but make that available statewide, just as it was  
22 last year.

23           MR. OXER: Okay. Any questions? Mr. Thomas.

24           MR. THOMAS: Could we proceed with the two  
25 items hat Cameron has discussed with us that might be

1 appropriate for consideration separately from the rest?  
2 In other words, can we take this last position -- let me  
3 clarify. I'd like to make a motion, I'd like to take  
4 these separately and I'd like to address the last thing  
5 Cameron said.

6 MR. OXER: Can we do that? Because I think  
7 have to consider the QAP in total, do we not, or do we?  
8 Counselor?

9 MS. DEANE: Well, ultimately, of course, the  
10 decision has to be made on the total. If you wanted to  
11 take the two changes separately, then you could do that,  
12 of course, but then you'd have to, in the end, roll it all  
13 up in a vote approving the whole.

14 MR. THOMAS: Just looking for clarity because  
15 it looks like there's very specific language, Mr. Chair,  
16 and however you want to manage it, I'm happy to do it.

17 MR. OXER: The great button hunt again.

18 MR. IRVINE: I realize we just had a long break  
19 for executive session, but perhaps we could have another  
20 break and staff and counsel could confer and come back.

21 MR. OXER: Well, what I was going to do give  
22 everybody a break, we've been pushing you pretty hard, go  
23 take a break, get some lunch as best you can, staff can  
24 put together the specific language for those two  
25 components. Cameron, you and Barbara can put something

1 together. And we'll come back and the motion will be to  
2 consider the entire QAP, as modified, with these two  
3 components. And we're also expecting a guest here in a  
4 little while.

5 MS. DEANE: Before we break to do that, if the  
6 Board, though, has any guidance that you would like to  
7 give us in terms of language that you would like to see,  
8 that would certainly be helpful in drafting.

9 MR. OXER: Right. So if you have language,  
10 comment on that, Mr. Thomas, please.

11 MR. THOMAS: I have comment. Number one, I'd  
12 like to make a general comment about that since this the  
13 first QAP process I've been through, how amazingly  
14 impressed I am with our staff and their sensitivity to our  
15 many different and varied constituents. It is very, very  
16 clear to me that these types of issues are the exact types  
17 of issues in any body that can be exceedingly contentious  
18 and difficult, and I think by the level of respect that  
19 staff and our constituent communities have communicated  
20 with each other and worked together, while things may not  
21 be perfect, it is very obvious to me that there is a high  
22 level of respect with our staff and our staff for those  
23 that are going to be affected by these rules. So very  
24 first thing is to say thank you.

25 The second thing I'd like to say is I thought

1 that the two suggestions that were made first by the City  
2 of Houston relating to permanent supportive housing have  
3 great merit and I appreciate staff's willingness to even  
4 on the fly make sure that they are communicating and  
5 understanding that it is a in the best interest to work  
6 together to craft those solutions. And then the last  
7 piece I'd also like to support, and again it's very  
8 specific language related to -- and say it for me again  
9 because I got lost in all my lengthy words.

10 MR. DORSEY: The 811 Program and removal of  
11 that.

12 MR. THOMAS: Thank you. And the recommendation  
13 that we do consider removing that and then having the  
14 Board have the flexibility and availability in the next  
15 QAP cycle to have the option to award points for people or  
16 groups that try to participate in that.

17 MR. OXER: I think that's good commentary, and  
18 of course, you know my feeling, what the staff does, you  
19 guys do a great job and we get to take credit for it, so  
20 I'm all in favor of you doing as much of this as you can.

21 But thanks to all of you for all the things you've done  
22 on this.

23 So with that, is there any more commentary from  
24 the Board?

25 (No response.)

1 MR. OXER: All right. Here's what we'll do,  
2 we're going to take some language drafting break here for  
3 Cameron and Barbara and the others will be involved. I  
4 can hear your stomachs growling up here, so it's 1:34,  
5 we'll take a break, be back in our chairs at 2:15, that  
6 gives you 40 minutes to go out and have something to eat.  
7 See you in 40 minutes.

8 (Whereupon, at 1:34 p.m., the meeting was  
9 recessed, to reconvene this same day, Thursday, November  
10 7, 2013, at 2:15 p.m.)

11 MR. OXER: All right, let's get on it. We are  
12 considering item 3(c). Staff has taken the time out to  
13 draft some language to modify its current recommendation  
14 on the QAP. Do you want to go through those, Cameron?  
15 And I would suggest only those parts that would be changed  
16 you had a reasonably articulate response to all the  
17 comments that came up, and I personally am satisfied with  
18 that. Does any of the rest of the Board of questions or  
19 comments or thoughts?

20 (No response.)

21 MR. OXER: Tell us the changes you made.

22 MR. DORSEY: Real quick, I did want to clarify,  
23 Donna Rickenbacker came up to me and mentioned that I got  
24 one thing wrong in one of my examples. A qualified  
25 elderly development can't technically qualify for points

1 under the underserved area points item, and in one of my  
2 examples I gave an example of a qualified elderly  
3 development qualifying. I think in our staff discussion  
4 in the back room there we still didn't feel comfortable  
5 adding that to the recommendation still, though. It would  
6 still require the court's approval and all that kind of  
7 stuff.

8 So staff recommends approval as outlined in  
9 your Board materials with the following amended language.

10 Section 11.9(c)(2)(A) to read as follows: At  
11 least 20 percent of all low income units at 30 percent or  
12 less of AMGI for supportive housing developments  
13 qualifying under the non-profit set-aside, or for  
14 developments participating in the City of Houston's  
15 Supportive Housing Program, also known as PSH. A  
16 development participating in the PSH Program and electing  
17 points under this subparagraph must have applied for PSH  
18 funds by the full application delivery date, must have a  
19 commitment of PSH funds by commitment, must qualify for  
20 five or seven points on the opportunity index, and must  
21 not have more than 18 percent of the total units  
22 restricted for persons with special needs as defined in  
23 Section 11.9(c)(7)(C) related to tenant populations with  
24 special housing needs. Thereafter, everything remains the  
25 same in that item.

1           11.9(c)(3) be amended to read as follows:  
2     Tenant services. A supportive housing development  
3     qualifying under the non-profit set-aside or developments  
4     participating the city of Houston's Permanent Supportive  
5     Housing Program may qualify to receive up to eleven points  
6     and all other developments may receive up to ten points.  
7     A development participating in the PSH Program and  
8     electing eleven points under this paragraph must have  
9     applied for PSH funds by the full application delivery  
10    date, must have a commitment of PSH funds by commitment,  
11    must qualify for five or seven points on the opportunity  
12    index, and must not have more than 18 percent of the total  
13    units restricted for persons with special needs, as that  
14    term is defined in Section 11.9(c)(7)(C) related to tenant  
15    populations with special housing needs. With all other  
16    language in that portion of the rule remaining as is.

17           And that Section 11.9(c)(7) be deleted, the  
18    entire first portion of the rule be deleted with the  
19    following language being the only language remaining in  
20    Section 11.9(c)(7): Tenant populations with special  
21    housing needs. An application will receive two points for  
22    developments for which at least 5 percent of the units are  
23    set aside for persons with special needs. For the  
24    purposes of this scoring item, persons with special needs  
25    is defined as households where one individual has drug

1 and/or alcohol addictions, Colonia residents, persons with  
2 disabilities, Violence Against Women Act protections  
3 (domestic violence, dating violence, sexual assault and  
4 stalking), persons with HIV/AIDS, homeless persons,  
5 veterans, Wounded Warriors, as defined by the Caring for  
6 Wounded Warriors Act of 2008, and migrant farm workers.  
7 Throughout the compliance period, unless otherwise  
8 permitted by the Department, the development owner agrees  
9 to affirmatively market units to persons with special  
10 needs. In addition, the Department will require an  
11 initial minimum twelve-month period during which units  
12 must be either occupied by persons with special needs or  
13 held vacant. After the initial twelve-month period, the  
14 development owner will no longer be required to hold units  
15 vacant for persons with special needs but will be required  
16 to continue to affirmatively market units to persons with  
17 special needs. End.

18 MR. OXER: Okay. We have on the original  
19 motion, there was a motion by Ms. Bingham and a second by  
20 Mr. Thomas, as I recall, to accept staff recommendation on  
21 item 3(c). Would you like to entertain an opportunity to  
22 amend that motion, Ms. Bingham, to consider those changes?

23 MS. BINGHAM ESCAREÑO: Yes. I'll amend my own  
24 motion.

25 MR. OXER: Yes, move to amend.



1 MS. BINGHAM ESCAREÑO: I'll move to amend my  
2 original motion approve staff's recommendation to  
3 accommodate the language in staff's recommendation as just  
4 made by Cameron.

5 MR. OXER: Is there a second?

6 MR. THOMAS: Second.

7 MR. OXER: And second by Mr. Thomas which was  
8 the original second. So this is for the amended motion to  
9 bring it forward. All in favor?

10 (A chorus of ayes.)

11 MR. OXER: Opposed?

12 (No response.)

13 MR. OXER: There are none. So now we have item  
14 3(c) which is the QAP, as amended with changes identified  
15 in red by Cameron under staff draft in here recently.  
16 There's a motion to consider by Ms. Bingham, second by Mr.  
17 Thomas. There's no public comment. All in favor?

18 (A chorus of ayes.)

19 MR. OXER: Opposed?

20 (No response.)

21 MR. OXER: There are none. There's your QAP.

22 Item 3(d), Cameron.

23 MR. DORSEY: This particular item deals with  
24 repeals of certain subchapters of Chapter 10 and approving  
25 the adoption of new subchapters in Chapter 10, as

1 reflected in your Board materials. Those would include  
2 Subchapter A concerning General Information and  
3 Definitions, Subchapter B concerning Site and Development  
4 Requirements and Restrictions, Subchapter C concerning  
5 Application Submission Requirements and Eligibility  
6 Criteria, Board Decisions and Waiver of Rules, and  
7 Subchapter D concerning Fee Schedule, Appeals and other  
8 Provisions.

9           So I think this one is a little bit more  
10 straightforward. We received substantially less comment  
11 than we did to Chapter 11. These portions of Chapter 10  
12 lay out, like I said, the definitions that apply to the  
13 compliance rule and to underwriting, to all of the  
14 programs that the Multifamily Division administers. It  
15 also includes some of the basic application requirements,  
16 commonly known as eligibility or threshold requirements  
17 that an applicant must adhere to. So for example, it's  
18 what you have to submit to document the correct zoning,  
19 what you have to submit in terms of financing term sheets  
20 so that we can effectively underwrite the transaction, et  
21 cetera.

22           So staff recommends approval as outlined in the  
23 Board materials.

24           MR. OXER: Is there any questions from the  
25 Board? Any other detail?

1 (No response.)

2 MR. OXER: Okay. Motion to consider?

3 MR. THOMAS: Mr. Chair, I move to accept staff  
4 recommendations in toto on 3(d).

5 MR. OXER: Okay. Is there a second?

6 MR. GANN: Second.

7 MR. OXER: Second by Mr. Gann. Motion by Mr.  
8 Thomas, second by Mr. Gann to approve staff recommendation  
9 on item 3(d). Is there any public comment? There appears  
10 to be none. That said, all in favor of the motion?

11 (A chorus of ayes.)

12 MR. OXER: Opposed?

13 (No response.)

14 MR. OXER: There are none.

15 So 4(a).

16 MR. DORSEY: 4(a) has been pulled. They no  
17 longer need the waiver.

18 MR. OXER: Then 4(c).

19 MR. DORSEY: 4(c) is to carry out the  
20 recommendation that we had provided in our reasoned  
21 response to Chapter 11 to request an AG opinion related to  
22 whether or not the RAD Program could allow an application  
23 to qualify under the at-risk set-aside, and Meagan did a  
24 good job drafting that request -- which is great because I  
25 didn't have to draft it, and totally impromptu, as well.

1 So staff recommends as outlined in the Board materials, as  
2 well.

3 MR. OXER: Any questions from the Board? Any  
4 other details? This is procedural mostly, it seems.

5 MR. DORSEY: Yes. The Board item simply  
6 provides a short description of what we're looking to  
7 accomplish, and then the draft of the actual request lays  
8 out some of the basic elements of the program and  
9 specifically what we're seeking the AG to opine on, so  
10 it's pretty straightforward.

11 MR. OXER: Motion to consider?

12 MS. BINGHAM ESCAREÑO: So moved.

13 MR. OXER: Motion by Ms. Bingham to accept  
14 staff recommendation on item 4(c). Second?

15 MR. McWATTERS: Second.

16 MR. OXER: Second by Professor McWatters.

17 There's no public comment requests. All in favor of the  
18 motion?

19 (A chorus of ayes.)

20 MR. OXER: Opposed?

21 (No response.)

22 MR. OXER: There are none.

23 So it seems we are at the bottom of this. We  
24 have reached the part of the meeting where we invite  
25 public comment for items to be added to future agendas.

1 Does anybody care to speak?

2 (No response.)

3 MR. OXER: Any of the staff care to speak,  
4 including staff on the dais? Mr. Lyttle.

5 MR. LYTTLE: Representative Clardy's office  
6 just contacted me and unfortunately he's still running  
7 real late, and so I've notified them that the Board  
8 meeting would be over shortly, so just to give you an  
9 update on that issue.

10 MR. OXER: Great. His interest was in  
11 commenting on?

12 MR. LYTTLE: On the QAP. I believe it as  
13 actually on historic tax credit issues. I've advised his  
14 office of the Board's action on that today, the amended  
15 motions.

16 MR. OXER: Okay. Thanks, Michael.

17 All right. Is there any additional comment by  
18 members of the Board?

19 (No response.)

20 MR. OXER: I'd like to congratulate everybody  
21 in the effort that we put in, smoothness by which our  
22 deliberations process, I appreciate that and I think  
23 everybody in the community that we serve appreciates that.  
24 I get the last comment. It's evident that there's a lot  
25 of work put in on this on both sides, by staff, by the

1 people that are out there, and the people in this  
2 community and our state that need this help I'm sure that  
3 they appreciate the effort that you put in.

4 So with that, I'll entertain a motion to  
5 consider for an adjournment.

6 MS. BINGHAM ESCAREÑO: Move to adjourn.

7 MR. OXER: Ms. Bingham moves to adjourn.

8 MR. McWATTERS: Second.

9 MR. OXER: Second by Professor McWatters. No  
10 deliberation required. All in favor?

11 (A chorus of ayes.)

12 MR. OXER: Opposed?

13 (No response.)

14 MR. OXER: There are none. See you in  
15 December, folks.

16 MR. THOMAS: Wait, Mr. Chair. I'd like to  
17 reconsider that motion to adjourn.

18 (General laughter.)

19 MR. OXER: See you in December. Wear some  
20 holiday colors.

21 (Whereupon, at 2:31 p.m., the meeting was  
22 concluded.)

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MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: November 7, 2013

I do hereby certify that the foregoing pages, numbers 1 through 135, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 11/13/2013  
(Date)

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