BOARD MEETING OF THE
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Room 437
Waller Creek Office Building
507 Sabine
Austin, Texas

11:00 a.m.
Friday,
January 26, 2001

BOARD MEMBERS:

MICHAEL JONES, Chairman
ROBERT DAROSS
C. KENT CONINE
MARSHA WILLIAMS
LYDIA SAENZ
DONALD R. BETHEL
ROBERT BREWER
MARGIE BINGHAM
DR. FLORITA GRIFFIN

ALSO PRESENT:

DAISY STINER, Executive Director
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MR. JONES: I would like to call the Board meeting for the Texas Department of Housing and Community Affairs of January 26, 2001 to order. And as we begin our meeting, I would like to recognize a few honored guests that we have with us. We have Danette Rich here from the Governor's office.

Danette, good to see you.

We have Paul Hudson here from the Governor's office.

Paul?

(Pause.)

MR. JONES: It's good to see Paul, wherever he may be.

DR. GRIFFIN: There he is at the back.

MR. JONES: Here he is.

Hey, Paul, how are you?

We have Michael Grimes here from Senator Harris' office.

Michael?

And Johnnie Morales from the speaker's office.

And I know I saw Donna Chatham. She was here.

Hi, Donna.

Donna's here from the chairman's office.

So we're so glad to have you all with us.
The first order of business would be the roll call. James Daross?

MR. DAROSS: Present.

MR. JONES: Donald Bethel?

MR. BETHEL: Here.

MR. JONES: Margie Bingham?

MS. BINGHAM: Here.

MR. JONES: Robert Brewer?

MR. BREWER: Here.

MR. JONES: C. Kent Conine?

MR. CONINE: Here.

MR. JONES: Dr. Florita Bell Griffin?

(No response.)

MR. JONES: Absent.

Lydia Saenz?

MS. SAENZ: Present.

MR. JONES: And Marsha Williams?

MS. WILLIAMS: Here.

MR. JONES: And Michael Jones is here. So I determine that we do have a quorum.

The next order of business will be public comment. And I have certain witness affirmation forms. And at this time, I would like to give everyone the option -- who has signed up for public comment -- of either speaking immediately or speaking at the time of
some item on the agenda. So if you could tell me which
you will prefer to do, we will accommodate you in that
respect.

The first one is Mr. Bobby Bowling.

MR. BOWLING: I'd prefer to speak when you
address the QAP.

MR. JONES: The QAP? All right. Thank you, sir.

Mr. Rowan Smith?

MR. SMITH: The same thing: On the QAP.

MR. JONES: Mr. Don Markson?

MR. MARKSON: The QAP, also, please.

MR. JONES: Mr. Johnson?

MR. JOHNSON: The QAP.

MR. JONES: Mr. Leonard?

MR. LEONARD: Yes, sir. I'd like to speak now
if I could, sir.

MR. JONES: You certainly may.

MR. LEONARD: Good morning, Mr. Chairman and
fellow board members. My name is Mark Leonard, and I'm
here representing the Texas Youth Build Youth Works
Coalition.

As you well know, the Texas Youth Works program
is a program that began under your administration
approximately four years ago. And I'd like to just thank
you for the support that you've given the program all
along; I believe it has been a very successful program.
In its first cycle of fundings, 60 homes have been
produced, and 464 young people -- these are high school
drop-outs -- have been served by the program.

I'm here today to just kind of update you on
discussions that we've been having with staff, Ms. Stiner,
Ms. Cedillo and Ms. Morris. And we have been trying to
identify additional funds to keep the program going.

In the five-year consolidated plan, although it
was recognized as a successful program, no additional
monies were put into it. And over the last several
months, we have managed, working with staff, to identify
approximately $1 million in funds that can be added to the
program.

And I'm here just to congratulate the staff on
the fine job they've done with working with the Coalition.
The Coalition looks forward to continuing intensive
negotiations with staff, and the reason for that is that
the commitment from the State of Texas for the Texas Youth
Works program is an absolute necessity to have in hand
when the individual programs apply directly to HUD for the
Youth Build monies.

The Youth Build monies are used to pay the
stipends to the young people who are completing their high
school education and getting on-site job training. The Texas Youth Works program has provided interim construction financing for materials, labor and some of the other costs -- site acquisition costs. The two have to go hand in hand.

During the two years -- the two funding cycles in the Texas Youth Works program, the eight organizations around the State of Texas that were funded by the Texas Youth Works program received a little over $3.8 million in the HUD funds. An additional leverage of about another $1.2 million among the groups brought the leverage ratio up to close to three to one.

So we believe the program has been very successful in leveraging both private foundation dollars as well as other federal monies. We look forward to the continued funding of this program.

I can't help but think that in the battle cry, or whatever it might be, that I believe we can all get behind, and that is to leave no child behind -- that this particular population, these youth at risk, ages 16 to 24 -- that this program may be better than any other program that the Department is involved in is the last attempt to work with these young people, get them to complete their secondary education, earn scholarship money to go on and continue their college education and, in the
meantime, have job skills that will make them very marketable out in the employment fields.

So I wanted to just commit the continued participation of the ten non-profit organizations around the state that are members of the Coalition, eight of them that have been funded by the Department, and look forward to continue to work with them.

Our goal is to have a commitment from the Department under the Youth Works program by June 1; that's the date annually that applications directly to HUD for the Youth Build monies have to be submitted. And you're not competitive unless you go in with a commitment of interim construction funds.

So I realize that time is short and everybody has got many things on their tables, but the Coalition will work in whatever way is necessary to get this job done. I thank you for your attention.

MR. CONINE: Mr. Chairman, can I ask a question?

MR. JONES: Mr. Conine?

MR. CONINE: How many -- you said you've been through two funding cycles now -- is that correct --

MR. LEONARD: Yes, sir.

MR. CONINE: -- with the Texas Youth Build.

MR. LEONARD: '98 and '99.
MR. CONINE: How many kids last year did you affect, influence, job train or whatever the case may be?

MR. LEONARD: Okay. A total of 464 young people between the ages of 16 and 24 participated in the program. Of that number, a very high rate, 351, completed their education and their training and went on to further employment or are still in the program still being trained.

MR. CONINE: You actually place them in the private sector?

MR. LEONARD: Yes, sir. There are job placement -- once the secondary education component is completed and they've completed their on-site job skills training, a very important part of the program is the job placement, the leadership training that goes along with that, and the individual counseling that's provided to the young people so that they can work out whatever other situations are going on in their lives.

And as I've mentioned, this is the one program that provides that particular age group, that at-risk age group, with the assistance that they need and that will keep them out of poverty and out of our judicial system. Approximately 80 percent of the young people served by the Texas Youth Works program have had some interaction with juvenile services or have been adjudicated. So --
MR. CONINE: Yes. I've got some thoughts for you, but we can talk about it after the meeting.

MR. LEONARD: Very good. Thank you, very much.

MR. JONES: Thank you, sir.

Ms. Maxwell?

MS. MAXWELL: I'd like to talk on the QAP.

MR. JONES: Ms. Andre?

MS. ANDRE: The QAP.

MR. JONES: Okay.

Joe McCartt?

MR. McCARTT: The QAP, please, sir.

MR. JONES: Ms. Langendorf?

MS. LANGENDORF: QAP.

MR. JONES: Mr. Clayton?

MR. CLAYTON: Mr. Chairman, members, I would speak in relation to an item on your agenda, the ex parte rule. This department, this agency, has a great task to do: Fulfilling the needs of low-cost housing for moderate- and low-income families. And as you well know, there has been a lot of question, doubt and criticism over the years as to some of the activities, and a lot of it, I think -- and most of it -- totally unjustifiable.

But to me, this might be one way of improving the -- at least the perception out there in the arena and keeping some of you board members off of the hot-seat,
because -- an ex parte rule is used in a lot of agencies.

And this is simply -- and this particular issue that we're talking about has been recommended to the Sunset Commission, and they're highly in favor of it. But it applies only during the cycle and applies to the tax credit program. And when that cycle is ended, the members who are applicants for tax credits could not contact board members and lobby them personally; they work only with the staff, and then staff makes their recommendations to you.

And that way, therefore, the Board is not -- does not have any inclination to have heard sources from high-pressured lobbying from these clients that are applying for tax applications -- credit applications. And it -- to me, it's just a sensible thing; it's a protection to you, and I think it might be a perception to -- cause a perception that would be very helpful out in the community.

And that's all I have, Mr. Chairman.

MR. JONES: Thank you, Mr. Clayton.

Any questions?

(Pause.)

MR. JONES: We would love to get off the hot-seat.

MR. CLAYTON: Thank you.

MR. JONES: Thank you, sir.
MR. JONES: Mr. Barry Palmer?

MR. PALMER: QAP.

MR. JONES: Mr. Ray Ocanas?

MR. OCANAS: QAP.

MR. JONES: And those are all the witness affirmation forms I have. Have I missed any?

(Pause.)

MR. JONES: And for those who have not spoken as yet: It seems like everybody wants to speak with regard to the QAP; so when we take up that item, we will open the meeting up for public comment once again if that's the pleasure of the Board.

MR. BETHEL: We could just pass on the QAP.

(Laughter.)

MR. JONES: I don't think that's an option.

I then would turn the Board's attention to Item Number 1, which is the presentation, discussion and possible approval of the minutes of the board meeting of December 8, 2000.

MR. BETHEL: I move approval.

MR. JONES: The Chair has had a motion that they be approved. Is there a second to that motion?

MS. WILLIAMS: Second.

MR. JONES: The motion has been seconded by Ms. Williams. Any discussion?
(Pause.)

MR. JONES: Any suggested amendments or revisions, supplementations or additions?

MS. WILLIAMS: Mr. Chair?

MR. JONES: Yes.

MS. WILLIAMS: On page 4, I think -- right before where it says, "Report Items," I think there's a misspelled word in the Board versus the executive director. I think versus should be V-E-R-S-U-S.

MR. JONES: Okay. Well, I'll accept that as an amendment.

Will you accept that as a friendly amendment, Mr. Bethel?

MR. BETHEL: Yes.

MR. JONES: Okay.

(Laughter.)

MR. JONES: So we have the motion on the floor, as amended. Are we ready to vote? I assume we are.

All in favor of the motion please say aye.

(A chorus of ayes.)

MR. JONES: All opposed say nay.

MR. BREWER: I have to abstain. I wasn't here at the meeting.

MR. JONES: Yes.

MS. SAENZ: I abstain, also.
MR. JONES: Okay.

The ayes have it.

We will then turn to Item Number -- I need those back.

MS. BINGHAM: They're going to record the names and give them back to you.

MR. JONES: Okay. Well, I think it's time now to --

MR. BREWER: Oh, to do it?

MR. JONES: -- call them.

MR. BREWER: We moved to that pretty quickly.

MR. JONES: Yes, we did.

We now will move to Item 2 on the agenda, which is the Presentation, Discussion, and possible Approval of Low Income Housing Tax Credit Items, and I will turn that over to Ms. Bingham.

But before I turn it over, would you like me to call for public comment?

MS. BINGHAM: Yes, sir.

MR. JONES: All right. On 2a. And the first one is Mr. Bobby Bowling.

MR. BOWLING: Thank you. Thank you, ladies and gentlemen, for your time this morning. I apologize. I hadn't had time to go through the most recent memo with some of the updates to the QAP with what I was prepared to
speak on, but I notice that some of the items are addressed.

But I'll go ahead and start with what I was going to speak to you on anyway. I realize that at the point of time we are in the game with approving the QAP, so my suggestions are not in order to delay or maybe to address some of this minutiae more on a staff discretionary basis or a board oversight basis.

Before I start, I'd like to mention that with these comments I'm about to present to you, I did address staff at the round table discussion that was held last September. I participated in the public hearing that came to El Paso in December, and I've also submitted my written comments before the deadline of -- I think it was December 23 or somewhere in there.

But the three items that I think are still lacking or need to be addressed at some point in the QAP are, first of all, Senate Bill 1112 comes into play for the first time this round, and I believe that the statute that was drafted by Senator Shapleigh from El Paso states very clearly that the service regions and the allocations based on service regions shall occur and that they are a direct express mandate for the low income housing tax credit funding.

I think that the current language or the
proposed language in Section 50.6 which states that this
formula will establish targeted tax credit amounts for
each of the state service regions I think needs to be
looked at real closely and make sure that it's not just a
target or a goal for the department, but that the statute
actually does mandate that the funds be allocated in this
manner.

The second item and the third item that I have
to address come from my experience in last tax credit's --
last year's allocation of the tax credits. Our proposal
last year scored 88 points in the nonprofit set aside, and
staff cited two reasons for denial for our project, while
awarding another project in El Paso with 79 points.

The two reasons were 90-plus letters of
opposition on file that the staff had received from our
community. And under the open records acts, I flew down
and took a look at the letters that you have on file. Out
of the 92 letters that are on file, one has an original
signature.

And I think just as an overall procedure for
staff to accept letters with photocopied signature in all
funding or in all consideration of requests for
applications for funding should be something that needs to
be taken care of or administered.

There was lots of discussion at the round table
meeting as to how to further address legitimate complaints or legitimate opposition within a community. Again, I would just ask at this point that instead of getting into minutiae in the QAP, I think 32 pages for a QAP is probably enough.

But if staff could just lend some oversight, maybe some common sense, maybe a courtesy call to the developer or to one of the public officials that's on file, that -- do you know there's some purported opposition to this project in your community, in which you may be on record of supporting or you're the builder-developer involved in the process.

And the last item that I'd like to address, and I think it's probably been addressed a little bit in the revisions to the QAP with the issue of concentration was the other second item that staff cited on our last year's proposal.

Staff cited a concentration issue existing, and the site that they've made reference to was a 40-home single-family residential project that was about a mile within our project. And our market studies showed tremendous need, tremendous demand in our submarket.

It showed an absorption rate of approximately 20 units per month. So without any real objective criterion regarding concentration, it just seems kind of...
arbitrary or unsubstantiated when you have a market study that shows tremendous need and demand, and yet a -- just the word, concentration issue exists, is enough to invalidate an application.

I think, like I said, with the revisions, I see something in here about a tax credit project not being within two miles of an application. I think that maybe addresses that. But, again, I'd just like to appeal to staff and to the Board for some discretionary caution with regard to that.

So it doesn't appear arbitrary. It keeps you out of the hot seat, Mr. Chair, and -- as you just said. But I think the more objective standards you can get into the process, I think the less arbitrary and subjective it appears to applicants, politicians, and citizens of the State.

I thank you for your time. And, in closing, I'd just like to mention that with regard to my application from last year, it's a good site. We plan on submitting it again, and, you know, I don't -- if there's somebody at staff I need to meet with to address these two items, which I think are -- can be clarified very easily, you know, like I said, I intend on submitting the same application again.

I'd like to work with the Department and get to
the bottom of some of my issues.

MR. JONES: Mr. Bethel?

MR. BETHEL: You said that there was 90 letters of opposition, and only one had an original signature. Were -- the others were copied?

MR. BOWLING: Yes, sir. The others were a form letter with photocopied signatures on the bottom. We've actually interviewed some of the people who left their address and name legible where we could go and approach them.

Not one person we've talked to has said that they had ever seen that letter. They remember signing a form or a petition with blanks, and it just kind of had a blanket statement at the top of it: "I oppose the project" -- blah, blah, blah, so --

MR. JONES: Mr. Conine?

MR. CONINE: Could we get a little clarity on Senate Bill 1112, because as Mr. Bowling has said -- We shall, I think, was the words he used and in our book on page 8 of 32, there's a definitive paragraph which seems like there's some other -- there's an "if" and an "other" and all that other kind of stuff, so I would like a little clarity.

MS. STINER: Senate Bill 1112 requires that we allocate tax credits on this regional [indiscernible]
basis. We've come up with a formula. I think the language of the QAP speaks to the bill that says that after a period of time, if you haven't gotten adequate applications from that region, then those funds can be used in other regions.

So that's the qualification that also is a part of that bill. For instance, we don't want the credits to remain in Region 10 or 9 -- I wanted to pick a region -- for an inordinate amount of time and lose the ability to use those credits, so that's the criteria that's explained in the QAP.

MS. BINGHAM: So in other words, if you don't have an application from Region 10, what are you supposed to do -- send that money back to Washington? That's basically what the staff is recommended is that you would do applications in all regions, provided that they submit applications from all regions and all other criteria is met. I think that's the only condition.

MR. CONINE: Other criteria being some scoring and so forth. Yes, I'd hate to see us get trapped into a --

MS. BINGHAM: I don't think scoring is a factor. If you don't have but one application from a region and it gets a low score, it will probably get funded. But if it doesn't underwrite or there are some
other issues, there's an overwhelming sense of opposition and it allows flexibility, we'll fund it at that.

The senator from that district may not want it.
The community may not want it, but it allows flexibility that if you don't get any applications in a region, you can't fund any applications in a region. You --

MR. JONES: Thanks. If the people don't quit talking about me being in the hot seat, I'm going to feel like this is the electric chair.

MS. BINGHAM: A rope is better.

MR. JONES: That makes me feel so much better.

(Laughter.)

MR. JONES: I thought there was something about injection.

Mr. Smith.

MR. SMITH: Board and Chairman, my name is Rowan Smith. I'm from Houston, Texas, and I participate regularly in the LIHTC program. I want to commend the staff and the Board for, I think, a very good QAP this year. I think it addressed a lot of the concerns that everybody had in a very fair way.

And I don't have any -- hardly any objections to anything, but I do have one issue that I'd like to bring up before the Board in the bonus points section. I haven't seen this amendment recently today to it, but in
the bonus points section, it says that the Department will qualify the sites as either being excellent or poor.

You can get two points if it's excellent, and you can lose four points if it's a poor site. I think that's a fair bonus point situation, but, however, as a developer, I think there needs to be clarification in there as to what constitutes an excellent site and what constitutes a poor site.

Because if we know going into the deal before we go to spend a whole heck of a lot of money -- 30- or $40,000 in application -- that our site's going to be rated poor, then we won't go for that particular site.

I think that this is just -- there's been so many other areas in the QAP this year where they've made a lot of definitions and clarifications on their point systems -- how they come up with them -- and I think this is just one area that needs to be clarified as well, and it will go a long way in giving the developers direction and speed up the process and cut down on a lot of costs and waste of time.

And, of course, it would keep us from submitting a lot of applications you're going to turn down anyway if it's a poor site, so it would save you time.

MS. BINGHAM: Rowan, I agree with you 100 percent on that. In many instances, the sites in low-
moderate neighborhoods have not -- somebody to drive out
and see a site in an extremely low-income area and decide,
that's not desirable. I know in some instances, it's
indicated that other folks might do that as well.

But in many of the areas that are targeted for
inner city revitalization, they have to get started
somewhere, and to just go out and arbitrarily decide that
this site is not -- beginning to ranking sites. You're
right. You don't have -- I'm wrestling with that myself.
You don't have a definitive answer.

You know, some people say, Well, it's near the
railroad. Well -- and HUD has got issues with the
railroad. Well, I live near the railroad, and in many
instances, it's the only place we could live was over by
the railroad. So beauty is in the eyes of the beholder.
In some folks' minds, living near the railroad is not so
bad.

So I think with the new rules from HUD -- I
mean, from the Internal Revenue Service -- about city
revitalization efforts giving preference to inner city
revitalization and allowing local officials to comment on
those things, I think that if the local government and its
citizens have decided that this area is targeted for
revitalization, including housing and economic
development, we probably don't need somebody just passing
by saying, Oh, but that's a run-down area; that's a poor area, so I have my own issues with that.

MR. SMITH: Well, also, in areas of the State where I focus a lot of development on, which is lowest median income areas of the State, projects just won't work unless they're either a QCT or a DDA.

And if it's in a QCT, you're pretty well -- you know, sometimes those sites aren't as excellent as you could find in a DDA or in a big city, where you don't have -- where the numbers work a little better, so you could --

MS. BINGHAM: I can -- I'm going to give you an example. In the City of Houston, for example, in the Akins [phonetic] homes area, you have a project that was developed by Isaac Matthews [phonetic] that some people thought that site was not the best site.

It happens to be in the area that had not had new construction of housing in about 30 to 40 years. Guess what? It's 100 percent occupied, not 99 percent occupied, and they've got a waiting list. So the fact that it probably wasn't ranked high in somebody's mind -- you know, it's an old area.

But people live there. It's a beautiful development, and it's probably -- the way it's going, it's attracting other activity in the area.
MR. SMITH: So, anyway, that's my comment to it, is that if you could come up with some kind of -- direct the staff to come up with some kind of definitions and clarifications as to what constitutes those things, it would help a lot. Thank you much.

MR. JONES: Thank you, sir.

Mr. Dan Markson?

MR. MARKSON: Thank you, Mr. Chairman, members of the Board. It's a pleasure to be here today. I'm going to speak to you on behalf of myself personally and also as the chair of the Housing Credit Group of the National Homebuilders Association.

I want to generally commend you on the QAP. There was a couple of areas that I would urge you to stand firm on that may come under discussion today. And one area in the QAP that I just want to point out may cause some unintended additional problems.

That area is the additional points for deeper targeting to go to 50 percent of the median, from 30 at 50 to 50 at 50. What's going to happen there is it's really only going to work in big cities and in the high median income areas, and in the rural and poorer cities like San Antonio, it's just going to create a bigger gap with the mortgage.

And although we would all philosophically love
to do that, there is an additional nonphilosophical problem that I'll raise with that. I don't think that there's enough soft money out there for the poorer cities to make that work right now. There's also an issue --

MS. BINGHAM: Dan, what section is that in?

What section is that?

MR. MARKSON: You know, I'm not exactly sure. I missed it, and somebody pointed it out to me this morning, so if I have a wrong draft, please correct me.

MS. BINGHAM: Okay. We'll find it. Thank you.

MR. MARKSON: Do I have a wrong draft?

MS. BOSTON: No, you're correct.

MR. MARKSON: Okay. I'm correct. Okay.

Because I didn't comment on that in writing because of that.

MS. BOSTON: It's 50.7(e).

MR. MARKSON: And I did some analysis some time ago on San Antonio, and I know it would be devastating for development there, and San Antonio's probably the wealthiest of the poor counties.

In addition, we're all, or most of us, trying to do mixed income. And although I think that if you, through the proper screening and the proper marketing, you can mix a wide range of incomes, and we're doing it -- the
lenders and investors do not necessarily agree with that.

And I think this will further make loans
difficult. It's going to -- they're going to look for
more assurances and more guarantees. And in some
instances, they're even just taking your market-rate units
and whacking them to the tax-credit rents. So the
question is what level will they bring them to?

There are three other areas I want to point
out. One is per unit-cost awards. Should that come up
today, it seems to us that there's little need in Texas
for a limitation on the per unit credit.

Texas is one of the most efficient producers,
if not the lowest in the country, and certainly among the
big states. And my fear is that with the new -- Nancy
Johnson's new provision on community revitalization, that
over time, we're going to be doing more urban in-fill
buildings, which is great, but they're going to be at a
much higher cost level.

So if you put this cap on, you're really going
to limit the ability to do different product types.

MS. BINGHAM: Is that in the rules or is that
in the administrative guidelines?

MR. MARKSON: That is the new change --

MS. BINGHAM: Okay.

MR. MARKSON: -- from Nancy Johnson.
MS. BINGHAM: I know her changes.

MR. MARKSON: I'm commenting on -- this is not in the QAP.

MS. BINGHAM: Oh, okay.

MR. MARKSON: I'm merely commenting on this because --

MS. BINGHAM: Okay. You had me confused.

MR. MARKSON: -- it's my understanding that that may be brought up for your consideration today --


MR. MARKSON: -- so I just want to -- because I can't speak necessarily in order.

MR. JONES: Ms. Bingham, I think he's addressing other public comment on that issue, is how I would interpret it.

MS. BINGHAM: I got it. I didn't see that.

MR. MARKSON: Yes. No, no. It's not in there, and I want to thank you for not having it in there, you know. And, in addition, there's all kinds of volatility. I'd love to sit down with all of you at some point and show you how much my development changed from the day I got the credits to the day I closed it, but, you know, if you put a cap on, you may not have the ability to work with those changes.

And that's not after you get the allocation;
that's before you get the allocation and while you're structuring the deal that I'm referring to.

In addition, I understand that there may be some discussion on per developer limits. And in order to have one successful deal go forward today, you really have to be working on a lot of developments, and that's good for the State.

That's good for you that we're investing money in a lot of different things. In some instances, it takes us two or three years to put a development together, but if you put on caps that I know some people are talking about on each developer, you're going to crush the private enterprise incentive to try to put more good developments together. And, again, that's also not in your QAP.

And, finally, I understand that there's going to be a potential push like there is every year to increase the set-aside to nontaxpaying entities. And I have a memo on file with Ms. Stiner that you can read, but I would just point out that in the recent federal legislation that went through, the criteria for consideration of tax status was removed.

And that was intentionally removed to make production more efficient. I'm not going to reiterate all the stuff that you've heard before about the cost differentials between for-profit builders and non -- and
taxpaying builders and nontaxpaying entities, but there's a significant cost differential.

In some cases, GAO went to -- as high as 18,000, and there's different ways you can account for that, but there is still a different cost there. And I'm sure that some other folks will want to talk about that later.

So, again, I would just urge you to stick with the 10 percent set-aside, and I also want to commend you on the change in allowing for-profit social service providers to now participate, because we want to provide the services, but we want to provide it at the lowest cost and have the best provider out there, regardless of --

MS. BINGHAM: That was also in a Nancy Johnson bill that's been signed. Right?

MR. MARKSON: Yes, that was the Department's response to that, and I want to commend you on that.

Thank you very much.

MR. JONES: Mr. Johnson?

MR. JOHNSON: Sox Johnson with the Rural Rental Housing Association. Good morning to you all. I have a little handout here. I don't expect anybody to read all of this, but I wanted to address basically two items that we've commented.

And I've worked with the staff, and I
I appreciate Director Stiner's and Cherno's and the staff working with us on some of these issues to get better clarification.

One thing we find each year as we come back with this evolving QAP -- we think we corrected something one year, and then the next year, we've realized we didn't. And I wanted to limit my remarks in the interest of time to two items here.

However, if I didn't agree with all that Dan Markson said, I did agree with a lot of what he said. I want to toss that in. On --

MR. BETHEL: Did you and Dan grow up in the same neighborhood?

MR. JOHNSON: Yes, but he hasn't learned how to talk yet --

(Laughter.)

MR. JOHNSON: -- so we're still working on that. One of these issues -- and you'll see I've done some excerpts here just for your benefit, but I think I can get to the bottom line of some of them. Just to clarify, I even had a discussion with Cherno this morning and David Burrell to further be sure I was understanding, so some of this is in the form of clarification.

We were concerned last year when the practice changed regarding size of projects. There were a number
of projects. In the past, we'd always tied rural
definition for eligibility to compete in the rural set-
aside. That's, in my mind, where it always was from the
inception.

But last year, it got interpreted a little bit
different. The 76 units, which is something we've
supported all the time to spread the money further in
rural areas, as a maximum size, and we felt that that
should be limited only to projects competing in the rural
set-aside.

In the revisions this year, it has been
addressed under definition of rural to say instead of just
with Texas rural development making it eligible, that it
had to be making application in a rural set-aside. That's
on page 5 of your total QAP. So they address that.

The main point I want to get to is to me -- and
I'm hoping that's the way this is being interpreted -- 76-
unit maximum size applies only to projects competing in
the rural set-aside. Otherwise, the 250-unit applies.

For clarification, what happened last year,
there were some projects that were located in a rural
area, defined by Farmer's Home, but had applied for more
than 76 units, like the project in Kyle, and there's
several others -- and they were thrown out because they
were in an area.
They were competing in a general set-aside of the nonprofit, and, to me, that was never the intention, and I'm hoping that that will be the clarification in the way we interpret what is said here, that 76 units applies only to the rural set-aside.

And, also, even with Texas RD application, under their 538 guaranteed loan program that we hope to get some funding sources from to work here in Texas at some point, that program may be some places that -- to use that 538 that you could justify by your market studies and so forth to go more than 76 units.

So if they did, what we were saying they should do is compete in the nonprofit or general set-aside, if they want to go over that, even though the project is located in a rural area, if it can otherwise support it. So that's basically our point on the size of project, and hopefully, my interpretation is right.

And, if not, somebody will correct me here, and we can all leave here understanding what we put down here. Because it didn't make it real clear about those that were competing in the general and the nonprofit, that they could go up to 250, if they could, even though they may be located in a rural area.

The other issue that I had relates to the processing, and there is a memorandum of understanding, as
I've indicated here, that's been in existence with Texas RD, and there's also one with HUD, and there we attempted -- and I was real pleased when you put it in the scope a few years ago, and I think it's great that it's there, so that we didn't have to totally clutter up the QAP with some little things that need to be worked out to cut and reduce duplication and all those things between some of the agencies, and that's what's contained in the QAP, between them.

Due to a law change this year, there was a change in the market studies.

MS. BINGHAM: How did you let that happen?

MR. JOHNSON: I didn't know it was going to happen, but it's led to some confusion that some of our people right now are needing to understand because the way they've done it with the Texas RD before is Texas RD basically when they approved and worked, and under the memorandum of understanding they -- TDHCA would simply accept Texas RD's market study and feasibility information, and they would share.

One thing that did not happen that I think should have been happening to TDHCA or if an application was in Texas Rd should have been providing for your application with tax credits a copy of the market study.

One of our concerns now is that you may wind up
having to get two different market studies prepared. I've
talked to staff. I've talked to some analysts, and
certainly I would hope that the memorandum of
understanding could be -- remain in force, that you go in
and get some more specific language and work out something
so that a person wouldn't have to get a market study
prepared under one format and guidelines for Farmer's
Home, or --

MS. BINGHAM: Maybe we can clarify that. If
Cherno can answer that -- does he know --

Cherno, can you comment on that now?

MR. JOHNSON: And I think he agrees with me,
and I'll raise one more point, and then I'll be through on
it. Before, there haven't been required a market
feasibility study --

MS. BINGHAM: I know it. But it's in the law,
so could you hold up and let him answer one question, and
then we can, and then we'll get to the next one.

MR. JOHNSON: Okay. All right.

MS. BINGHAM: It's got in the law some kind of
way. That's why I wanted to know how you allowed that to
happen. Your lobby wasn't up --

MR. NJIE: For the record, I'm Cherno Njie,
manager of the tax credit program. That is one of the
amendments that became effective January 1. There is no
exception to providing the market study, whether the
property is a Farmer's Home project, an existing rehab, or
new construction.

MS. BINGHAM: What about -- too, though, if the
developer had one under Farmer's Home, and then they come
apply for tax credit for the same development, are we
allowed under the new law to accept the other one?

MR. NJIE: I don't think that will be
necessary. The standards that we have and the standards
we obtain with Farmer's Home are similar, so they would
need to add a supplement to address the issues.

MS. BINGHAM: Thank you. That helps. You
don't have to do two.

MR. JOHNSON: If that's the intent, that's
great if we're going in that direction. I didn't know --
because I've had difference of prices. It could increase
the price 500 to $1,000 to do one that would meet with the
guidelines here, so one market study ought to satisfy
everybody, and they should be addressed, and that's what I
was suggesting.

MR. CONINE: That isn't what he said, though.
That isn't what he said. He said we're going to require a
supplement. That's what I heard him say.

MR. NJIE: Yes, we have --

MR. CONINE: And they don't do those free, I
don't think.

MR. NJIE: That's what I'm saying. We addressed primarily the same things, but we require in our guidelines certain elements to be addressed that are not in Farmer's Home's guidelines. That would not, in my opinion, necessitate a complete and new application.

It will have a section which addresses TDHCA-specific standards in the current market study that Farmer's Home does.

MR. CONINE: Could we not, in our memorandum of understanding with the Farmer's Home, let them know that so that they could do that with the first appraisal, if a developer has an intent of bringing it on over here?

MR. NJIE: Well, that's the way we're going to handle it.

MR. CONINE: Isn't that the way to handle that?

MR. NJIE: Yes, sir.

MR. CONINE: Okay.

MR. JONES: And more specific revision of the memorandum of understanding to address how it was done, and which set -- what guidelines you're going to use. I think that would be the perfect way to handle that.

MR. BETHEL: Would you address his first concern?

MR. NJIE: His concern about the 76 units --
that is our interpretation, that if you're applying in the rural set-aside, the project will be limited to 76 units. A project may be located in the rural area and exceed that limit, provided it is in the general set-aside.

MR. BETHEL: Okay. That's what we want. We agree with that.

MR. JOHNSON: One other deal on market studies relating -- and we may want to stay here, because this is what we're still not clear on.

MS. BINGHAM: I think we want to hear from somebody else about now.

MR. JONES: On the market studies, when rehabilitation is involved, Farmer's Home has not -- or rural development has not required a full third-party market study. You know, you may have a 20-unit deal out there and going to do some minor revisions.

They haven't required it as long as they made the determination it's occupied; there may be people on the waiting list. All elements would appear there's a market.

There hasn't been a market study prepared on those before. And in my discussion with Cherno, I think he felt that now, you're going to have a market study on anything --

MS. BINGHAM: That's the law now, so that's why
you should have gotten that dealt with.

MR. JONES: So I wanted to clarify that.

MR. NJIE: Yes, again, the statute doesn't make any exceptions regarding that, and it explicitly states you have to have a market study to determine the need for low-income housing. We can work with a Texas RD to define what sort of issues will be addressed if a project is an existing project. There is no getting around submitting a market study.

MS. BINGHAM: No, it's in the law now.

MR. BREWER: Cherno, one more thing now. We've heard what Mr. Conine has said. Now, you say that's the way it is, but is that in writing in the QAP -- because I think his problem is, you know, should it be there, because if he's confused --

MS. BINGHAM: There's an existing agreement that would have to be modified. You see, we have an existing agreement with them that's going to have to be modified to be consistent with this law. It will have to be. We have an agreement now that covers the current law -- I mean, the current -- that covers the old law. Now we're going to have to amend it to make it clear.

MR. NJIE: That is correct. Under the MOU right now, Farmer's is exempt from providing that market
study, so we will have to amend that MOU.

   MR. BREWER: Okay.

   MS. BINGHAM: Yes, we've been working with

them.

   MR. CONINE: In the private sector lot, we have
to do a market study and an appraisal, both, that would
meet the requirements of the banking industry and the OCC
and other regulatory groups, and you might want to do the
same appraisal of the market study that would meet Fannie
Mae's requirements.

   You know both of those ahead of time. You tell
the appraiser to do it -- design it to both. He quotes
you one price, and it's covered. So I would think we'd be
able to do the same thing.

   MR. JOHNSON: Thank you.

   MR. JONES: You'd better go before you wear out
your welcome, Mr. Johnson. Ms. Bingham said you may have
done that.

   Ms. Susan Maxwell.

   MS. MAXWELL: I am Susan Maxwell. I'm a public
policy specialist with the Texas Council for Developmental
Disabilities, and we've chatted before. Our concern about
the QAP this time is that it lost the points for
developers to provide buildings at the 504 standard of the
Rehab Act of 1973, and it's gone to a lesser standard.
And we're concerned. We like part of the way it's written now, in that it would provide the developers to do a rehab for somebody that needs to have the units accommodated to their needs. But it won't provide those extra 5 percent of the units to be large enough for a wheelchair to access bathrooms and kitchens. And so that's one part that we're real concerned about.

The other thing is we like the townhouse rule. We think that's really cool. And as a side issue, we'd just like to support -- we would support the TDHCA's database to include accessible units in it somehow and tracked throughout the State so that when we have people that are looking for these units, we can put them in touch with the developments that have the units in them.

Are there any questions?

MS. BINGHAM: Well, I noticed that as you mentioned, the improvements I saw in that was, first of all, that the handicapped accessibility is no longer a point item as a part of the threshold, and that you can -- that the developer has the flexibility of waiting until a person appears to -- in order to modify that unit for his particular disability.

MS. MAXWELL: That's fine. We support that. It's just that it doesn't make 5 percent of the units with the large enough hallways or bathroom and kitchen space to
get around for people that are mobility-impaired.

MS. BINGHAM: Cherno, could you comment on that?

And could we have a developer comment on that as well?

MR. NJIE: I believe it does. The requirement is that up to 5 percent of the units -- first of all, all parties are required to meet fair housing if they are covered buildings. And the provision we have in the QAP will require that those units be fair-housing accessible.

The modifications will happen when the tenant leases up the project, so I think they will be built to the fair-housing standard.

MS. MAXWELL: That's fair housing. 504 goes beyond fair housing.

MS. BINGHAM: Well, my understanding is that 504 would require them to do a certain number of units up front. And what this does is when the tenant shows up, you modify it for their benefit.

MR. NJIE: Fair housing has standards for wheelchair-bound tenants, so those are the standards that will be utilized to modify the units.

MS. BINGHAM: Could you --

MS. MAXWELL: I guess I understand it differently.
MS. BINGHAM: Could a developer that's going to be required to do this let us know if they think it is -- the rule is broad enough for them to make -- do the wheelchair accessibility?

MR. NJIE: There are specific technical requirements under the Fair Housing Act under ANSI standards for making the units accessible, fully accessible --

MS. BINGHAM: And that includes wheelchair-accessible, so it's in here.

MR. NJIE: I can get a copy --

MS. STINER: Maybe you could spend some time with Ms. Maxwell, Cherno. Maybe one of your staffers could spend some time with Ms. Maxwell just to take over the --

MS. MAXWELL: And teach me --

MR. NJIE: I can get a fair housing manual, which shows all the specifications.

MS. BINGHAM: We think we got it covered.

That's his bottom line.

MR. BETHEL: Mr. Chair?

MR. JONES: Yes.

MR. BETHEL: It would be helpful for me if the ones that's speaking on the QAP -- if they could cite what section they're speaking about. By the time I find it,
they're through talking. I know I'm pretty slow down here --

MR. JONES: Yes, with regard to Mr. Bethel, this is a remedial board meeting.

MS. BINGHAM: Mr. Bethel, it's at the bottom of page 12. It's at the bottom of page 12.

MR. BETHEL: Well, there's a reverberation of about three minutes.

MR. JONES: I understand.

Ms. Sarah Andre? And, Ms. Andre, if you could cite us to the section --

MS. ANDRE: Yes.

MR. JONES: -- and when you do that, kind of look down at that number.

(Laughter.)

MS. ANDRE: It's Section 50.7(d)(1)(C). Here's a copy of my comments in written form. I am here to comment -- that's the same section that Ms. Maxwell --

MR. JONES: Most of us can read it --

MS. ANDRE: -- was commenting on, and I don't want to be repetitive, but I do want to state that using Section 504 standards would go beyond the Fair Housing standards, and Fair Housing is wonderful, but it does not provide as many units that are actually usable by persons who have a mobility impairment.
And using Section 504 standards would increase the number of units. So I would really like to encourage the Board to consider using Section 504. I like what's been done already, especially the townhouses. That is great.

But I really do think that you need to consider using Section 504. And with regard to a developer's point of view, I think that having a developer come back in and make modifications is an excellent idea. That would be really good for a lot of people.

But if it's done beforehand, that saves time and money for everyone. And just because a unit is Section 504, is to those standards, doesn't mean that a person without a disability can't use it. It just means that it's there and ready to be used.

And if it doesn't have that standard, a person who has a disability can't use it. So that's why I would like you to consider that. Do y'all have any other questions? Okay. Thanks.

MR. JONES: I appreciate it.

Mr. Joe McCartt?

MR. McCARTT: Could you come back to me in a little bit?

MR. JONES: Okay. Do you want to speak on the QAP?
MR. McCARTT: Yes, the --

MR. JONES: Okay.

Ms. Jean Langendorf.

MS. LANGENDORF: Good morning. I'm Jean Langendorf with the Home Of Your Own program and United Cerebral Palsy.

Good morning, Mr. Bethel.

MR. BETHEL: Good morning.

MS. LANGENDORF: You know exactly why I'm here. We are -- I am also talking about Section 50.7(d)(1)(C), and I have written testimony from myself as well as from the disability policy consortium, Jonas Schwartz, who was unable to be here this morning, as he is meeting with some legislators.

Our concern -- we are supportive of the changes that have been made. We are asking, as Ms. Andre and Ms. Maxwell have said, for the Board to consider going further, to adopt the Section 504 standards as a threshold criteria, because this would, in fact, give us units that would be readily available and do have more features than those that come with Fair Housing.

We can get into detail, and I have worked quite a bit with your staff on trying to have them understand the difference between a 504 unit and a Fair Housing unit. I'm sure any developer can tell you the difference
between a 504 unit and a Fair Housing unit, and it is cost, and I'm sure that's why there are objections.

For us and in light of recent federal decisions -- Supreme Court decisions with the Onstadt [phonetic] decision, more and more people are going to be looking for community placement.

There's going to be an effort required by that Supreme Court decision that people are going to be needed to be moved out of nursing homes, and these are individuals that are going to have significant mobility impairment.

So our concern is we're talking about developments on down the road that there are, in fact, going to be some units available. And my -- I guess one of my big concerns about the way it's proposed right now is that it is a matter of upon presenting yourself, that if you have a disability, you're going to ask for some modifications that need to be considered reasonable.

Our concern would be what somebody might consider reasonable, and what somebody else might not consider reasonable, and a lot of that's going to be determined by cost. And if you don't have any units that offer this kind of greater accessibility, it is going to be a costly item.

My other concern is if we leave it to those
that present themselves at the time, I guess our concern is the outreach. There is no provision in here that you do any outreach for people with disabilities, so our concern, again, would be that the people that we're trying to get served and that will be moving into the community from nursing homes are going to need actual units to be available.

So that's the issues we have. We definitely support the townhouse aspect of it, because we do see that as a very big obstacle in any kind of a development. We do support staff on that. We do have to say this is a -- it is a step, but we would like the Board to consider going a step further.

That would really, truly -- as we're talking, these are not units that are going to be on the ground next week. We are talking down the road, and we are being faced with a Supreme Court decision that I know some members of TDHCA are aware of, that are going to have a great impact.

And the State as a whole is going to be addressing that during this legislative session. I appreciate it. I'll answer any questions.

MS. BINGHAM: I have a question. Are you aware or have any of your clients applied for occupancy at any of the tax credit units that are online today and waiting
for tenants and have been turned down or anything? Do you have any of those statistics?

MS. LANGENDORF: That they've been turned down?

MS. BINGHAM: Yes, that they've been turned down.

MS. LANGENDORF: Now, we have a hard time finding out where they are.

MS. BINGHAM: Okay.

MS. LANGENDORF: And we do support the idea of a data base very much, so --

MS. BINGHAM: I thought we had requested that the data base --

MS. LANGENDORF: -- is where the units are.

MS. BINGHAM: -- be -- yes --

MS. LANGENDORF: Yes, there is -- yes.

MS. BINGHAM: Okay. The -- I'm not a developer, but cost is a big issue and -- with me, and I guess in anybody's life. The point is that, you know, we can talk about the developer this and the money this and the money that, but the idea is that in order to attract people to come in and participate in the program, there is a profit motive.

And if you put -- and I'm aware of developments that are totally occupied in a lot of these markets -- tax credit -- except for those that have been equipped for

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handicapped accessibility.

Now, if you are out there with your name on a $6 million loan, you can't close into perm until you reach a certain percent occupancy, and you are almost there except for the units that you are holding, that we have required that you hold for occupancy for persons -- that are already built out, that's cash flow that they're losing.

MS. LANGENDORF: Are we requiring them to hold it under this QAP?

MS. BINGHAM: We did in prior years, and what it has done -- it has prevented the developer from closing on his permanent loan. And all this talk about developers -- they don't get it.

MS. LANGENDORF: Well, we've never supported the idea of holding any unit open. We do support marketing those units.

MS. BINGHAM: That's what we did.

MS. LANGENDORF: We have not been --

MS. BINGHAM: We required that they hold. We thought we -- I thought we did that to satisfy your concerns. We required that they not only build the units -- build them out at the time, but that they market them and that they hold them.

And what has happened is that in some markets,
they are not absorbed. Now, how can we tell somebody
they've got to sign that note that you continue to do this
or that you build something out that you don't know that
you're going to be able to -- your market study doesn't
even support.

We underwrite it. We underwrite it based on
proposals and market studies, and now we're saying, Oops.
You've got to put X number of units out there for this,
that. That's not supported by the documents, and they're
left holding the units.

So in working with the groups, we thought and I
think we've made improvements, you said, last year. Don't
give them points for it; make it a part of threshold.
That has been done in this QAP, in the recommendations of
this QAP.

We said that we will hold it open for -- we
will require them to build out the unit when the family
comes to the unit and build it out for that individual's
needs and desires, not for somebody with a different kind
of disability.

I think we have gone a long way. But to
penalize -- and, you know, we talk about the HUD standards
with 504. Well, I'm here to tell you that the tax credit
program is the most successful production program in
America. The other programs are not the most successful
production programs in America. This program is.

And Texas has a good record. So I'm saying we want to support the accessibility issue, but we want to do it in a reasonable, cost-effective manner. That's been my position. And, you know, I hate to see the developers not stand up and speak for this issue, because I know people will accuse them of being greedy and X, X, X, but it's just a real-life issue.

What we said a few years ago is what we would do is have those developers and those units out there, and in many instances where people have not reached 90 percent occupancy and be able to close on their permanent loans, get off the hook financially, is those units that are handicapped-accessible that they built out are still sitting there.

What motivation would they have not to market them and put people in them if they're losing money? I don't think there's an ulterior motive. I just think we're making progress annually. But I appreciate your concern.

MS. LANGENDORF: I agree holding them was never a good --

MR. CONINE: Isn't it two years, Cherno?

Didn't we put two years in the QAP?

MR. NJIE: We modified that. Effectively now,
it is the lease-up period.

MR. CONINE: During the lease-up period.

MR. NJIE: That's correct.

MR. CONINE: We hold them during the lease-up period, and then when we're done, we're done with the market unit.

MR. NJIE: That is right.

MS. BINGHAM: But you've still got the 5 percent.

MS. LANGENDORF: Well, there are no units now.

MR. CONINE: What?

MS. LANGENDORF: There will be no units now.

MS. BINGHAM: Well, you have the 5 percent, don't you?

MS. LANGENDORF: No. There's no units now -- correct -- in the proposed QAP, there are no --

MR. CONINE: No 504 units, but there's ANSI units.

MS. LANGENDORF: -- no modified units. There's no modified units.

MR. CONINE: Right.

MS. BINGHAM: They're ANSI standards units.

MR. NJIE: Well, why do you say that? I guess I'm confused. Up to 5 percent of the units would have been modified based on the ANSI standards, at the
developer's expense.

MS. LANGENDORF: Upon request.

MR. NJIE: That's correct.

MS. LANGENDORF: But there's no units. There's no physical unit unless somebody appears. Okay. And so for that -- at the beginning of that development, for that development, there will not be units. That's all I'm --

MR. NJIE: There will be units when there is effective demand for the units. And you have effective demand when somebody who is both income qualified and is disabled come into an apartment and say, I want to rent this unit.

MS. BINGHAM: They're required to build it out at that time and make it ready for that client.

MS. LANGENDORF: No.

MR. CONINE: Yes, I want to speak to your comment about not knowing where they are. I think if we as a department can't provide you information of where every tax-credit deal has been done over the last 14 years in this State -- you can get that information and pass it onto your members and continually seek those opportunities where they can move into those particular places.

I think we would like your help in that area so that we can meet some of the demand thresholds that have been talked about here earlier. We've got several people
in this department who can tell you where they are.

MS. LANGENDORF: They can't tell you because the QAP has changed every year. It's not like you can say, Okay. There's a tax credit project over here, and it's going to have -- of the 200 units, it's going to have ten units to serve people with disabilities.

Because every QAP has changed any kind of requirements, and they were points. Do you know what I'm saying? I mean, it's not as if --

MR. CONINE: All it takes is a phone call to the management company, and you'll find out real quick.

MS. LANGENDORF: Yes.

MR. NJIE: The entire list of inventory for tax credit project is on our website.

MS. LANGENDORF: How many --

MS. STINER: I think she was saying to identify those units that have been targeted for the disabled, and all of them have LURAs. We'll work with you in identifying and creating a data base between the two of our organizations.

MS. LANGENDORF: Okay.

MS. STINER: Maybe that can be in the MOU we're talking about. Okay.

MS. LANGENDORF: That would be wonderful.

Thank you. There are still no units, though.
MR. JONES: Thank you.

MS. LANGENDORF: You're welcome.

MR. JONES: Could the record also reflect that Dr. Griffin has joined us. I also would like to note at this time I saw Representative Ehrhardt come in. It's good to see you.

MS. EHRHARDT: Thank you.

MR. JONES: Mr. Barry Palmer.

MR. PALMER: Hello. My name is Barry Palmer. I'm an attorney from Houston, and I practice extensively in the tax credit program and have for a number of years. I don't have a specific section of the QAP that I want to reference. I would just like to make a general comment that I think that the staff has done an excellent job this year with the QAP and the changes that they have made. I know that they have spent a tremendous amount of time receiving extensive comments and have analyzed that very carefully.

I think that it's a very difficult balancing act that this Board and the Department has to do in the tax credit program. It's a very competitive program, and there are competing interests that are very different from the for-profit community, the nonprofit community, developers of senior facilities and family facilities, housing authorities trying to do projects that serve a
very low income, so that there are different
constituencies that have different interests.

    I think that this QAP on balance is fair to
everyone, and I would urge the Department to adopt it as
it currently exists. I think it also balances the need
for objective standards versus the need, in some cases,
for some subjectivity.

    While we all like objective standards, there's
a limit to what you can do in this program with objective
standards. I remember back in '94 when we went almost
entirely by points, we ended up with the six highest-
scoring deals in the State all being in Bryan-College
Station.

    So you have to have some degree of subjectivity
in the process in looking at things --

    MS. BINGHAM: We've got them all in Houston
this year.

    MR. PALMER: That's right. And one area where
I think that it's important to have some subjectivity in
the staff is in analyzing cost per unit and tax credits
per unit. I know there's been some discussion on having a
set, firm limit of credits per unit or costs per unit.

    I know that on the projects that I work on,
there is vast differences between the costs per unit and
the credits per unit, based on a number of factors. It is
much more expensive to develop in the inner city when you're trying to do a revitalization in downtown Houston or in the center of Dallas.

Land is much more expensive than what you can get suburban land in small communities for. Costs are higher for construction. In a lot of those cases, you have Davis Bacon wages that kick in because there's some federal dollars in the project.

So it's very difficult to set a number throughout the State of credits per unit or even cost per unit. The Department has, right now, some guidelines on cost per unit, but staff can review the factors and make some exceptions for those because of various factors.

I would encourage you to allow the staff to still have some subjectivity in that area. Thank you.

MR. JONES: Thank you, sir.

Mr. Ocanas?

MR. OCANAS: Good afternoon. Thank you for letting me appear before you. I will be brief with my comments since I'm last. I hope that you means you saved the best for last.

I want to congratulate, first of all, the board of directors for the job they've done. You've been -- the agency and you've been under a lot of scrutiny, and I just want you to know that the good things you've done over the
past several years do not go unnoticed.  

So I usually appear before you to criticize the agency and to offer productive criticism and point out problems. I don't say that I've stopped doing that, but I definitely want to make sure that today you know that we appreciate the work that you do.

I want to make sure that you understand, though, that the public definitely understands that you, the Board, set policy for housing in Texas and that setting that policy begins in this room, and I want to make sure that we -- that you agree that you are the ones that set policy for this agency.

I think my concern has been that it appears every once in a while in the QAP responses that staff is setting policy on behalf of the Board, or even responding for the Board.

So with that said, I will go really quickly to point out the issues that we recommended in our public comment responses, or public comment submission to the Board, and I just want to preface all of that by saying that the Sunset decisions that have now been made and will be put into the legislative bill for the agency already included some of the things that we recommended in our public comments, and I'm actually surprised that the staff did not include those things in the QAP revisions or
accepted the public comment on them, based on the
decisions already made by Sunset.

So I want to point out and match up the
decisions Sunset made, which it seems like you all are
moving forward with a lot of those, and I have a quote in
my comments about Ms. Stiner saying that 85 -- or a number
of the Sunset recommendations in the state auditor's
office findings have already been addressed, so I'm a
little confused as to why these things were not included
in the QAP.

So I'll go straight to it.

MR. BETHEL: I've got a question.

MR. OCANAS: Sure.

MR. BETHEL: You said legislation has already
been introduced for the Sunset recommendations?

MR. OCANAS: I don't think it's been
introduced --

MR. BETHEL: Has the Sunset recommended --
there is a bill that's going to be introduced with that
specific language?

MR. OCANAS: Right. That's my understanding of
how the Sunset process works. I don't --

MR. BETHEL: But you do know that the bill
that's introduced is not -- that what -- the Sunset
recommendation is not going to be the final bill --
MR. OCANAS: Sure.

MR. BETHEL: -- probably, is it?

MR. OCANAS: And we'll duke it out during the legislative process with everybody, I'm sure. Yes, I understand. I do understand, though, that when the Sunset decisions were made that this body and the staff accepted the validity of those findings, and said that you would be working towards addressing the findings in there that show the problems, and would then be working on the improvements, based on the recommendations.

I'm -- that's still your position -- right? -- the Board's position, that you agree --

MR. BETHEL: Well, I don't know that I agree with everything they said.

MR. OCANAS: Okay. You don't have to agree with everything I say either, so I understand.

MR. BETHEL: Okay.

MR. OCANAS: Nevertheless, let me go straight to my recommendations. First is total and complete public access to all applications for tax credits. This is on page 3 of my comments. I mention applications for credits should be made available for public scrutiny within 30 days after the deadline.

I would actually be open to modifying that, and I bring you some examples of -- specifically from the
Illinois QAP and the Florida tax credit program and their rules with the QAP. Both of them state up front that the information being submitted by any developer, that it be understood that anybody presenting an application has to know that the information submitted is going to be made public, so that you go ahead and avoid any problems with the release of public information.

According to the staff response, 52.104 of the government code that talks about public information release and any exceptions of that, that that was the issue -- the reason staff wouldn't agree with making the applications public.

Both Illinois and Florida currently make the applications public, so I don't know that as a matter of public policy, it's bad policy. If we need to make sure that we comply with the Public Information Act, then the Illinois QAP, I think, is the best.

It says that if you have any exceptions in what you're submitting, stuff that needs to be excepted from public disclosure, that you just state it up front, and that the agency will then review it and review your alleged request for not disclosing it, and then make a determination.

And I'm sure we could do that with our attorney general's office, if that's necessary. So the attachment
that I have from Florida actually even shows the schedule. The way they do it is not even the way I recommend it. They actually review all of the applications for a certain period of time.

   During the preliminary scoring, they issue the preliminary scores. Then for three weeks, the applications are made public to everybody. Everybody can come in and look at, you know, who is the full development team, to make sure the rules you said about the maximum allocated to one developer are actually met, to make sure that there are no misunderstandings about who is represented on a development team, that if there are any issues with this disability compliance or past history of bad compliance, that any of that is revealed immediately once you see who's participating on the development.

   After the initial public review, then the staff and the Board take the applications up again, deal with any appeals, any comments received from the public, and then go through the further process of making the final recommendations and awards.

   The second comment I have -- and I -- that one was not, Mr. Bethel, anything that was in the QAP originally, so I didn't cite a section for that reason. Number two that I have is increasing the nonprofit set-aside to 20 percent, and that is in 50.6(b) of the QAP.
And I have example language from the Illinois QAP as one of my attachments, and also Sunset decision 4.1 is something that I think -- to take into consideration that asks or requires the Department to increase their participation in public housing authorities and nonprofits.

Number three is the issue of --

MR. JONES: Before you leave that --

MR. OCANAS: I'm sorry?

MR. JONES: -- could you address the issue that's already been brought up today in public comment? We've already heard we shouldn't do this -- you've probably heard that. Right?

MR. OCANAS: Sure.

MR. JONES: And the argument is made repeatedly that the reason we shouldn't do this is because of efficiency --

MR. OCANAS: Right.

MR. JONES: -- that the nonprofits inherently are not as efficient as for-profits, and so that this -- it would be a mistake to raise this threshold. Would you address that argument?

MR. OCANAS: Sure. I would take issue with that, and I have before, before this body and before Sunset. There's a general accounting office report that
did a study, I believe, about three or four years ago of tax credit developments and assessed the differences and why there might be higher costs between for-profit developments and nonprofit developments.

And the GAO found that there weren't any significant differences if you accounted for the reality in the tax credit projects. And that's -- the details are what actually make a difference. It was found that for-profit developments typically have smaller unit sizes, while nonprofit developments have larger unit sizes to accommodate larger families -- that's one issue that makes the cost go up, and anybody can attest to that.

One of the other findings was that the location of nonprofit tax credit projects usually was in poor neighborhoods, that you just heard from several people that are asking you not set a cap, saying the same thing, that costs are usually higher in poorer urban neighborhoods, the same -- and usually you're going to find that nonprofits are the ones attacking the most challenged neighborhoods.

And I believe -- and I don't remember what the third finding was, but I believe those are the three most -- two most important ones, that, yes, a nonprofit possibly can have more expensive projects. This was a national study, though.
I would be happy to have someone help me engage in a study of Texas nonprofit versus for-profit projects and really assess if there's a huge difference in Texas or not. Costs are lower in Texas to begin with; anybody will attest to that.

I don't -- I think the GAO itself in its closing comments said that the findings basically didn't find significant differences in their costs. And I'd be happy -- I've provided you with that GAO before; I'll be happy to provide it again.

MR. JONES: Thank you, sir.

MR. CONINE: Let me kind of follow up on that. Why do you think the non-profit deserve a more increased status when the market study says what size the units will be and what the demand is?

The tax status of a developer is not going to make a unit bigger or make it smaller.

MR. OCANAS: I understand.

MR. CONINE: Why do you advocate -- you're getting better treatment than somebody else?

MR. OCANAS: That's all right -- for two reasons. I don't know that we're getting better treatment by this department.

MR. CONINE: Well, from ten to twenty would be better.
MR. OCANAS: I would say no better than the rural set-aside would be, you know, getting better treatment than everybody else or disability --

MS. BINGHAM: That's location.

MR. CONINE: Yes, that's geography, I think.

MR. OCANAS: Sure. I think that there's two reasons. One is including the Sunset decisions, that the State now has a duty to deal with the preservation issue. And it has been found nationally that the entities that are best to serve to keep a property either permanently affordable or the longest affordable are going to be the nonprofits.

So if you want to build the capacity of those groups -- you're doing about six deals a year with nonprofits right now. This would maybe make it 12 to 15, with the new increase that you just got.

So why not try to make sure that you're training more new nonprofits, especially in the rural areas, which is an issue I know the rural legislators are talking to us about, that you help that capacity.

And you do it by experience, just like you're talking about you want to have -- make sure you give developers an opportunity to develop experience; the same goes for nonprofits. You've had a very limited experience up until now because you've been limited to about six
projects a year. And worse than that --

MS. BINGHAM: Who's been limited?

MR. OCANAS: Well, the program itself has funded traditionally only five or six nonprofit projects every year, and that's been looked at as a cap. And I wasn't the only one that commented --

MS. BINGHAM: No, we have a cap of 10 percent for the non --

MR. OCANAS: For a cap, exactly.

MS. BINGHAM: That is the minimum amount that we can do by law.

MR. OCANAS: Right.

MS. BINGHAM: We have always known -- nothing has stopped the nonprofits from competing in the general set-aside, or from doing projects in the rural set-aside.

MR. OCANAS: I understand.

MR. CONINE: And haven't they won some awards in both those areas?

MS. BINGHAM: Yes, they have gotten more projects.

MR. CONINE: Yes.

MS. BINGHAM: They've gotten projects -- 10 percent out of the nonprofit set-aside, and they've got developments out of the general set-aside. What's the problem with competing?
MR. OCANAS: I still think that you're failing in trying to address the capacity needs, especially in rural and border Texas. You haven't been funding projects in border Texas, as has been shown by need. And one of the types of developers that can address that need is the nonprofit community.

You know, if you make it 15 percent, that will be great. But I do think that you need to take a good look at what capacity you need to build in this State to deal with the issue of preservation. You're losing thousands and thousands of units.

The developers -- the for-profit community has commented to you that they would rather not see a preservation set-aside at all. They commented to that effect during the Sunset hearings, and I'm sure that they would have commented during the public comment period, but you know that you've got a preservation need now.

MS. BINGHAM: We've got a preservation set-aside --

MR. OCANAS: Sure.

MS. BINGHAM: -- in this QAP.

MR. OCANAS: And in spite of comment to the contrary, so why not the same thing?

MS. BINGHAM: So if you have a nonprofit that brings a preservation project, and I'm assuming we could
fund it regardless of who brings it, whether the nonprofit or for-profit.

MR. OCANAS: Exactly.

MS. BINGHAM: I think the Nancy Johnson bill did a good job of leveling the playing field. Why are we going back?

MR. OCANAS: I think you -- in Texas, you haven't leveled the playing field quite yet. The -- nationally the findings are that in terms of low-income housing developments, nonprofits produce about 15 percent of the stock; 85 percent has to be done by the private sector.

I totally agree that we need them as partners, but if you level the playing field in Texas by making sure that you address the capacity needs of nonprofits, you'll be doing the State a good public service, and that, I think, is good public policy.

The third issue is the issue of preservation, and we've already addressed that. I'm glad that there is something in the QAP about it. Another issue from Sunset was to limit the maximum amount a developer can get over three years to be 2.4 million.

My recommendation is the same as last year, to lower the maximum in one year to 1.2 million per year, and you can do with it whatever you think is best, whether
it's adopting the Sunset recommendations that you thought
were good, or, you know, trying to reduce the maximum
amount a developer can receive in one year.

And, again, that's just to make sure that you
have good, equitable distribution of credits throughout
the State.

I don't know that you're getting -- right now,
you don't have any one development getting more than $1.2
million of credits every year anyway, so this would just
say that the maximum in one year a developer could get is
one deal, so you definitely would be addressing needs in
other areas that aren't currently getting addressed by
increasing the number of people applying and getting
funded.

Section 50.256 -- that's the definition of a
nonprofit project. I wholeheartedly disagree with the
staff recommendations to change the definition of a
nonprofit, and I hope that that change is addressed.

I have included tax credit rules from Florida
that still say that the nonprofit have to have 51 percent
participation in the deal in order to be considered a
nonprofit project. That was removed by staff this year in
the QAP.

Finally, I support again -- a comment was made
previously about documenting and awarding points in some
way for public support for a project, and I know that
it's -- the staff response to me has been, How do you
document negative support?

Well, we saw it by the people in Wimberley.
They will show up; they will knock on your doors, and they
will get things done through Sunset, which is what they
did.

But definitely, the best way to gauge positive
support is by letters of support. So I bring you the --
an attachment from the Illinois QAP which shows how points
are given in that state for letters supporting development
under the tax credit program.

That's it. I tried to keep it short and sweet, and if you have any questions, I'd be happy to answer them.

MR. JONES: Thank you, sir.
MR. OCANAS: Thank you.
MS. BINGHAM: Mr. Chairman, could we have a
five-minute break?
MR. JONES: We sure could. We'll be adjourned
for five minutes.
(Whereupon, a short recess was taken.)
MR. JONES: Back on the record.
Mr. Joe McCartt.
MR. MCCARTT: Not necessary any more.
MR. JONES: Okay. He does not wish to speak.

Mr. Dick Kilday.

MR. KILDAY: Thank you, Mr. Jones. Mr. Chair, and members of the Board, Ms. Stiner, I'm Dick Kilday from Houston, Texas, Kilday Realty Corp., and I'd just like to say that, you know, you guys have a tough job every year. I think you've done a great job addressing the QAP this year, and you've made a lot of changes in response to suggestions from Sunset and from public comment.

And I think you're to be commended. It's a tough year. A lot is going on, obviously. And I would just like to make four or five quick references. I don't have paragraphs. I guess I'm speaking to paragraph 50, or Section 50.

I think the nonprofit set-aside at 10 percent is kind of part of the fabric of the code, and certainly achieves the objectives of the Department and the program, and I think that that ought to stay as is.

Certainly it's not limited. It has upside potential, and that happens, I think. As far as tax credits -- a cap on tax credits per unit or per foot or something like that and also cost per -- a cost cap -- I don't believe either of those should be imposed.

Certainly we know what reasonableness is, and we are -- we live in a subjective world, and our projects
are subjective in many cases, although we try to quantify them by numbers. And I agree with Barry Palmer.

I think that that's an excellent point, that we just have to look at the situation and the project and certainly the Department has demonstrated that it can, you know, make a decision as to reasonableness.

I believe the set-asides are where they ought to be. I think you've hit the mark there. The 15 percent rural set-aside is very good. Some of those projects have a tough time scoring and competing, and we need to get units in the rural areas, and that's what we're doing.

The 10 percent -- the new 10 percent elderly set-aside -- I know that elderly projects -- doing one and have done one, and I may have another application -- it's hard to score on those, and so that's -- I think that's a good move.

And I think it's excellent that we don't have a cap and that we can move the credits around as they need to be used, if they aren't used in a particular area like a rural area.

I'd like to say that as far as a maximum on tax credits to any one developer or number of projects or whatever, I think that's -- I won't say absurd, but that's certainly unnecessary because, I mean, you might be doing an extra-large project or you might be doing something...
that's needed very desperately in an area, or both.

And I just think that the people that are producing -- you know, free enterprise should never be snuffed out. I think that's part of what we're hearing today is that, Hey, let's get this thing on a -- and let's all average it up here, and I believe that fairness ought to be certainly present in every case.

But I believe free enterprise is probably the reason we're all here, so that should be protected at all costs. And, again, I just want to commend you on your work, and I'll look forward to another good year. Thank you very much. I'd be glad to answer any questions.

MR. JONES: Thank you, sir.

And that concludes all the witness affirmation forms I have. I assume there's nobody out there that would like to speak to the Board.

And with that, I'll close public comment then, and return us back to Agenda Item 2a, Ms. Bingham. Excuse me. I was just going to -- we're through with public comment, and we go back to Item 2a, Ms. Bingham.

MS. BINGHAM: Okay.

MR. JONES: Excuse me. I'm sorry.

MS. BINGHAM: That's okay. Thank you. Well, this is the time of the year, I assume, that -- there have been some comments about rule-making and at what point...

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what is done.

This is certainly that time of the year when
the Board is to take what staff has recommended and revise
it, modify it, tear it up, throw it out the window, bring
it back, do whatever the Board feels it needs to do in its
policy-making vision.

This is certainly the time to do that. So at
this time, I would think it's time to bring up Cherno and
let him walk through -- he and David have an opportunity
to walk through the staff recommendations and the Board
look at what changes and modifications they want to see
made.

MR. NJIE: Thank you, Ms. Bingham, board
members. My name is Cherno Njie, manager of the tax
credit program. What we have before you is staff
recommendation, and we conducted a lot of public hearings
across the State and getting public comments about the
proposed QAP.

Even prior to staff proposals back in November,
we convened a couple of workshops to brainstorm with
developers, advocates and stakeholders in the program to
clarify some of the issues that we're working through to
get feedback before we make any proposals to the Board.

After the November board meeting and approval
of the QAP, we have public hearings in Tyler, Plainview,
Mercedes, San Antonio, El Paso, Dallas, and Austin. Written comments were also received by staff from interested parties.

So the QAP that we're presenting here has gone through a lot of thought, a lot of revisions. And I don't know how you all want to present this. I can walk through each and every item or address any of the questions that you all may have.

What is your preference?

MS. BINGHAM: Why don't we start with going through the new Nancy Johnson bill and some of the high points of what has been changed at the national level? And that bill was signed into law recently.

MR. NJIE: There is a memo included in your packet which deals with modifications to the proposed QAP as a result of changes in federal law. The statute was amended effective January 1, 2001, and the changes are listed as follows: There is an increase in the housing cap, meaning the $1.50 per capita is now effective this year.

(Applause.)

MS. BINGHAM: Thank all our supporters. How much does that represent in real dollars?

MR. NJIE: That should give us about $30 million this year.
MS. BINGHAM: We were at 24 million and that's 30, now, times ten -- okay. So we're looking at --

MR. NJIE: That's correct.

MS. BINGHAM: -- so we're looking at 300 million.

MR. NJIE: And that does not require any specific changes to the QAP, only in the calculation of the credit. Changes also affected the reversal of the housing stacking rules, basically addressing how you utilize the credit, what parts you utilize first, and the order in which that happens.

There were amendments which have some bearing on the QAP, specifically the selection criteria. The amendments give priority or requires that we give preference to projects in existing -- existing properties that are part of a neighborhood revitalization plan, so in my memo, I have outlined that we have proposed a modification of the QAP in response to that change in the law.

The change also affected an Exhibit Number 210 in the QAP, and this relates to supportive services. The change basically removed the preference for nonprofits to provide these supportive services. Likewise, the Department is proposing that those services can be provided by any entity, both nonprofit and for-profit. The
amendment also requires that we give preference to tenant populations with children. That was already part of the QAP, so we just revised the language a little bit, providing opportunities for projects to provide three-bedroom and four-bedroom units.

The amendment also affected incentivized projects with eventual tenant ownership. This has always been part of our QAP, so no change is being proposed as a result of that.

One additional amendment is to -- for projects that are in qualified census tracts and that also contribute to community revitalization. If you will recall, the QCTs used to be given five points in the 2000 QAP.

In our earlier proposal, we wanted to remove those points because we felt there was already a great deal of product in qualified census tracts. In light of the new changes, we are restoring two points back to the QCTs.

The next requirement is for a market study. As was discussed earlier, Farmer's Home projects were exempt from providing this study, and we've now made it mandatory for all projects to provide market study.

The amendment also touches on compliance monitoring. This is already part of the QAP, so no change
is proposed. Documentation of discretion was also part of the amendment. The Department already documented that we will expand on the documentation that we have currently in the Board books and to applicants and the general public.

Another amendment was the extension of the time to meet the temp centers. This is the end-of-year requirement for project owners. The amendment basically allows them up to six months to meet that requirement.

We're not proposing any changes as a result of that, simply because we wanted to wrap things up before the end of the year, before having to deal with new applications in a subsequent year.

There is also an amendment regarding eligible basis. Eligible basis is the cost that basically determines your credit basis. The amendment includes community service facilities as eligible for tax credits, and we're going to amend underwriting guidelines accordingly.

The amendment also affected changes in the definition of qualified census tracts, and we're proposing an amendment in light of that.

The final amendment was for Native American housing. Again, no change is effected in the QAP. We will make the amendments in our underwriting guidelines.

So that covers the new proposals as a result of --
MS. BINGHAM: Okay. So that covers the new bill, so why don't we go to what seems to be the more controversial items and try to address those. We may as well take them head on.

The provision that would have to do with handicapped access -- why don't you explain what is being proposed and describe your view of the -- of some of the pros and cons on that.

MR. NJIE: Well, the issue of accessibility --

MS. BINGHAM: Why don't you take us to the exact -- the board members to the exact page and the latest changes first.

MR. NJIE: Page 12, I believe, of the QAP.

MS. BINGHAM: Page 12 -- that's the January?


MS. BINGHAM: Why don't you explain the difference between this year's, last year's, the comments that you've received, and the pros and cons.

MR. NJIE: Last year, this was one of the selection criteria, and points were awarded for providing units of, I believe, up to 10 percent to persons with disability. You were required to -- during your lease-up period, to hold those units vacant while you market to certain persons.
We received a lot of comments that we shouldn't be giving points for projects that are required to comply with federal law anyway. And the points were being given because of the marketing involved, not for the -- not for complying with federal law.

But we've amended that to include it as a threshold requirement. This is one of the issues that I think there were sharply divergent views between people who were advocating a 504 standard and those who were advocating a Fair Housing ANSI standard.

The language we've proposed is a compromise. We've worked with the advocacy groups. We've worked with the Texas Association of -- Texas Affiliation of Affordable Housing Providers. We got their input before we implemented this, so we believe it is a good balance which requires the owners to comply with Fair Housing and also to pay for the 5 percent of the units to be modified at their expense when there is effective demand for the unit.

It also includes townhomes. Townhomes are exempt under the Fair Housing Act. What -- we are requiring the townhomes be redesigned to include at least one bathroom and one bedroom on the ground floor and also comply with the Fair Housing standards.

So this is a Fair Housing manual, and it goes
in some detail in terms of giving you guidelines for designing your units so that they're modifiable and that can be adapted for persons in a wheelchair.

MS. SAENZ: Can I ask a question, please?

MR. JONES: Sure.

MS. SAENZ: The young lady that just spoke a little while ago -- she says that no units will be built like that, only when someone comes and asks for a unit to be built with someone with disabilities.

MR. NJIE: The units will be designed to include the dockings [phonetic] and all the architectural requirements for modification when there is somebody to lease the unit. That is correct.

They're not going to be built waiting. They're going to be built when there is demand for the unit.

MS. SAENZ: All right. Let's say that all the units are leased up, and then someone comes with a disability that wants to lease.

MR. NJIE: Under the Fair Housing Act, those units can still be modified at the tenant's expense.

MS. SAENZ: And so they get rid of whoever is there?

MR. NJIE: No. If there is a vacant unit, and a tenant applies to the property --

MS. SAENZ: No. But my question is if there's
no vacant units --

    MS. BOSTON: Well, even with the previous
suggestion, those units would not be held vacant. Even if
you have them built specifically and they were already
modified, they still wouldn't be held vacant.

    MS. SAENZ: Well, I thought that's what they
said that they kept them --

    MR. CONINE: Just during the initial lease-up,
and then you can rent them to anybody.

    MS. SAENZ: Oh.

    MR. CONINE: After the project is finished
and --

    MS. SAENZ: All right.

    MS. BINGHAM: So for anybody that wants to make
changes to that, I guess we can make them any time. But
let's go to another hot-button item. I guess it's not
that hot since it's been changed into law.

    We had already changed it in our bond program,
is that the Nancy Johnson bill that was signed into law in
January removed the requirement that supportive services
had to be provided by a nonprofit organization. Now those
services can be provided by both -- by either a nonprofit
or a for-profit entity.

    Cherno, you may want to spell out for the board
members exactly what page and number that is in case there

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are revisions. Why don't we talk about that?

   DR. GRIFFIN: Madam Chairman, I've got a
   question about that. Can I ask it while he's looking at
   that?
   
   Mr. Chairman, can I ask a question while he's
   looking?
   
   MR. JONES: Just a second. I'll answer that
   question in just a minute. I need to seek legal advice.
   
   MR. NJIE: That is on page 21.
   
   VOICE: Twenty-one?
   
   MR. NJIE: Yes.
   
   MR. CONINE: Of the QAP now?
   
   MR. NJIE: Yes.
   
   MR. CONINE: You're on the QAP?
   
   MR. JONES: I'm sorry, Dr. Griffin. You cannot
   participate in this discussion based upon advice of the
   attorney general's office.
   
   DR. GRIFFIN: But I just have a question.
   
   MR. JONES: Again, Dr. Griffin, based upon
   advice of the attorney general's office, you cannot
   participate in this discussion.
   
   DR. GRIFFIN: Fine, Mr. Chairman.
   
   MR. JONES: Thank you.
   
   MS. BINGHAM: Okay. You're on page 21, you
   say?
MR. NJIE: Page 21, and it's Exhibit 210. This report of service provision has been expanded basically to open it up to whatever entity, regardless of tax status.

MR. CONINE: Does this also include a governmental entity, like if a city has a supportive service program?

MR. NJIE: Sure.

MR. CONINE: And I think there was some questions at least that I've heard of that it went before when it said non -- when it said tax-exempt or nonprofit --

MR. NJIE: Or a public entity.

MR. CONINE: Public entity, nonprofit, or anybody.

MR. NJIE: Sure.

MR. CONINE: Okay.

MS. BINGHAM: Mr. Njie, let's go back. Are you sure that's on page --

VOICE: That's on page 20.

MS. BINGHAM: Okay. I'm looking at the first right of refusal. What exhibit is it?


MS. BOSTON: At the bottom it should read 2001
MR. BETHEL: And Exhibit 210 starts on page 20?

MR. NJIE: On 21.

VOICE: It's this one here.

MS. BINGHAM: Why don't you read it?

MR. NJIE: Yes, it reads, "Project provides supportive services to tenants: Evidence that the project owner has an executed agreement with a for-profit or a tax-exempt entity for the provision of special supportive services to the tenants."

It deletes any requirement that the project owner be a 501(c)(3) designated entity. And the project or service provider must be an existing organization registered to conduct business in the State of Texas.

MR. CONINE: Can I ask another question? Are faith-based institutions registered to operate in the State of Texas?

MR. NJIE: Faith-based are included in this. We can make that amendment.

MR. CONINE: I think we need to make sure that -- I don't know whether they have to file a permit or register --

MS. BINGHAM: What was the question, Mr. Conine?

MR. CONINE: Are faith-based institutions --
church projects or various religious activities that could provide social services -- do they have to register in the State of Texas, or would that be a kick-out?

MS. BINGHAM: No, they would have to register. They have to register if they are qualified -- if they are going to be qualified nonprofit organizations, they have to register with the Internal Revenue Service.

MR. CONINE: But that's not the State of Texas?

MS. BINGHAM: No, that's with the Internal Revenue, but they have to provide the Department with the IRS determination.

VOICE: For faith-based?

MS. BINGHAM: Yes, any nonprofit.

MR. CONINE: Can we wipe out that, "registered in the State" or modify it?

MS. BINGHAM: Faith-basis nonprofit or any other nonprofit.

MR. NJIE: Okay. We can -- you're concerned about the language relating to "registered in the State of Texas?"

MR. CONINE: I mean, I want to make sure that it's not just your friend, Joe, that's got a new deal going. I think the point you're trying to make is we want it to be an ongoing entity of size and substance. But I also want to make sure that they're included in this
particular definition.

MR. NJIE: So you want the revision to reflect
the faith-based organization and to delete any
registration requirements?

MR. CONINE: No.

VOICE: No.

MR. CONINE: I guess my question is -- and I'm
asking for somebody else's opinion other than mine -- are
faith-based institutions registered in the State of Texas?

Would they meet this criteria?

MS. BINGHAM: No, faith-based institutions are
not registered -- faith-based nonprofit organizations do
have to register with the Internal Revenue Service just
like any other nonprofit entity.

The only difference is they say they are
affiliated with XY church; that's the only difference.
But they have to register when they apply for projects
under the nonprofit status just like any other nonprofit;
they show the Department their Internal Revenue --

MR. CONINE: Then they add the Internal Revenue
to this --

MS. BINGHAM: Right.

MR. CONINE: -- as an additional --

MR. NJIE: I think we can --

MR. CONINE: -- coverage --
MR. NJIE: -- satisfy that by saying the service provider must be an existing organization, period.

MR. BETHEL: Instead of registered -- you're saying that it's got to be registered in the State of Texas.

MR. NJIE: That's what I'm saying.

MR. BETHEL: So then the faith-based institutions would not qualify.

MR. NJIE: So --

MS. STINER: Existing organization has a different connotation, doesn't it, than just --

MS. BINGHAM: Existing organizations, whether they be faith-based or nonprofit, have all got an Internal Revenue status, and they're not registered in the State of Texas; they're registered under the Internal Revenue Code.

MR. CONINE: That's correct.

MS. BINGHAM: So you can't make them -- say, You've got to be registered somewhere they don't register.

MR. CONINE: Let's just add the IRS to their --

MR. NJIE: Or registered with the Internal Revenue Service.

MR. DAROSS: I've got a question about the language also. It's a different direction. And I'm not a corporate attorney. But I don't -- a corporation, whether it's for-profit or nonprofit, as I understand it, doesn't
register anywhere.

You file articles of incorporation. And if you're a foreign corporation, you get qualified to do business in the State of Texas, but I have no idea what the word, registered, means. The nonprofits don't have to register with anybody.

MR. NJIE: Nonprofits have an IRS designation.

MR. DAROSS: That means that they are recognized as an exempt organization. They're not registered.

MS. BINGHAM: Right. I think the difference is registered versus recognized.

MR. NJIE: Okay. We can amend that language to reflect that the organization should be either registered or recognized by the Internal Revenue Service or other governmental entity.

MR. CONINE: I like that a little better.

MR. JONES: Yes, to make the record clear, as we work through these amendments, how are we going to handle this? Are we going to have a blanket motion to approve --

MS. BINGHAM: I guess we can make a motion as we go.

MR. JONES: Okay. Or are we just going to make a motion as we go? Okay. So the motions as we go will be
motions to amend the staff's proposals as we discuss. And then at the end, we'll make a motion to approve the staff recommendations as amended by prior motions.

Is that how we're proceeding? Okay. So we really have a motion on this issue?

MS. BINGHAM: For recognize versus registered.

MR. DAROSS: Yes, what's the intent of that sentence?

MR. NJIE: The intent is to make sure that this is an existing organization, is not to-be-formed organization. It has some certification, some standing currently.

MR. BETHEL: So what was your proposed --

MR. NJIE: What did I say again?

MR. DAROSS: And you're not talking about just limiting this sentence to nonprofits?

MR. NJIE: No.

MR. CONINE: I think maybe the word you crossed out may be even more apropos --qualified?

MR. DAROSS: I think you crossed out the wrong word.

MR. CONINE: Yes, you leave "qualified" in there if a faith-based or any other group is qualified. Part of that qualification would be meeting the IRS regs and whatever else at the national level, wouldn't it?
Would it not?

MS. BINGHAM: Let the attorneys comment on it.

MS. BOSTON: A service provider must be an existing organization qualified by the IRS or another governmental entity.

MR. DAROSS: That would work. Because if it's a for-profit corporation, then it qualifies to do business by filing articles of incorporation or by filing the articles to transact business in the State of Texas.

MR. NJIE: Sure. That works.

MS. MARKS: I agree with the changes.

MR. CONINE: I make a motion to amend this language to exactly what she just said.

MR. JONES: A motion has been made. Is there a second?

MS. BINGHAM: I second.

MR. JONES: The motion has been seconded. All in favor of the motion, please say aye.

CHORUS: Aye.

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: The ayes have it.

DR. GRIFFIN: I abstain, and I'm glad you got to that point.

MS. BINGHAM: Okay. That was -- so we've dealt
with the -- are we going to take motions in case any board members have anything to add or change with the handicapped issue?

(No response.)

MS. BINGHAM: I'd just like to comment also on the issues that Mr. Sox Johnson raised. Mr. Brewer, Cherno needs clarification of the existing -- of the fact that we do have an existing signed document with the Rental Rural Housing Association and how we're proposing to amend that to incorporate the new law change.

MR. NJIE: The existing MOU basically outlines how we are going to work with Texas Rural Development in exchanging information and in preventing duplication of effort.

We have essentially relied on them to certify that the project is feasible. That's why we don't require the market study. If they have agreed to fund the project, that's good enough for us.

So we will amend that language to require that any market study submitted will include portions of it addressing specifically tax credit issues.

There are variances in what they require and what we require. Our effort here is to minimize duplication, and I don't believe, based on my review of the market study requirement that they have, it's going to...
be minimal duplication in this effort.

So we'll go back. We have a standing MOU that can be amended, and we'll work with them to flesh out those issues.

MS. BINGHAM: There was another point raised about the two points -- the early -- the two points for area and site selection issues. Could you take us to that paragraph and page?

MR. NJIE: I think that that's the bonus points.

MS. BOSTON: Are y'all looking at your black-line copy?

MS. BINGHAM: Exhibit what? Exhibit -- what exhibit is it?

MR. NJIE: It's page 23.

VOICE: It's not an exhibit. It's the bonus points.

MS. BINGHAM: Okay. It's bonus points. I got it.

MR. NJIE: The site evaluation criterion here is designed to make sure that sites that are deemed to be full will not rise in the ranking, and -- while elevating those that are rated as excellent.

We recognize that there is an element of subjectivity involved in this. There is no doubt about
it.

What we propose to do is to make our site-evaluation criteria or checklist available as part of the application process so the developers will get a sense of what we are looking for.

And some -- in some cases, areas that are lower-income or have -- have a large number of vacant or dilapidated buildings have been in the past deemed to be undesirable simply because of that. We're sensitive to that issue.

We will take into account the contribution of the project as part of the revitalization effort in the community. Some projects in lower-income areas would add more to revitalize than a project in a suburban community. There is no easy way to do this, though.

MS. BINGHAM: Okay. Let me go back. If in the bonus point category, we give another two points to a project located in a QCT and contributes to a concerted community revitalization plan. To qualify for these points, the project owner in addition to submitting Exhibit 102 must also submit a letter from a city or county official which verifies that the development is located within a qualified census tract.

That is in the bonus points, and that is consistent with the new bill. But, however, when you go
back to your previous exhibit, you have already given
points for being in a -- in that area and also
contributing towards the revitalization efforts.

So I wonder why we're double-dipping --

VOICE: On the project characteristics?

MS. BINGHAM: -- yes, on the project

characteristics. Over here -- let me go to that exhibit.

In Exhibit -- under Exhibit 201 --

MR. NJIE: Yes.

MS. BINGHAM: -- we already give them five
points for being in a qualified census tract and having a
letter from the city officials. But if we go back toward
the end and also give them two more points, what's the
point there?

MR. NJIE: Exhibit 201 merely gives you points
for locating in an enterprise zone.

MS. BINGHAM: Okay. That's the point I wanted
to make. If you are going to be located in a difficult
development area, that's one thing, because that's defined
by HUD. You're in a targeted county; that's defined by

HUD.

C, you're in a designated federal empowerment
zone that a city applies for from HUD, and such
development submits a letter from the county official --
city or county official -- that's C.
And then, D, you're in a city-sponsored tax-increment zone, public-improvement district. Those districts are designed for the expressed purpose of encouraging inner-city revitalization. So you get the points under that category.

So why do you need them over here in this two points added. I mean, you're just adding and adding and adding, so I would make a motion to delete the last two points because you --

MS. STINER: For the QCT?
MS. BINGHAM: No.
VOICE: Paragraph 1(c)?
MR. NJIE: Can I --
MS. BINGHAM: I understand that, but the QCT should have been added over here under the other points.
MR. JONES: If we could, could we get the motion on the floor before we discuss it?
We have a motion from Ms. Bingham.
MS. BINGHAM: I would have -- make a motion to move this extra two points for QCTs over under Exhibit 201, and you get five points for the whole thing, for being in a QCT, a difficult development area or enterprise zone, empowerment zone, LURAs -- all that's the same thing.
MR. JONES: We have a motion by Ms. Bingham.
Is there a second?

MR. BETHEL: I'll second.

MR. JONES: The motion's been seconded.

Discussion, please.

MR. CONINE: Where is the list you're reading from? I'm sorry.

MS. BINGHAM: Go to Exhibit 201. It's identified as Development Location. Evidence that the subject property is located within one of the geographical areas described in subparagraphs (a) through (d). Then when you go to (a) through (d), you've got a difficult development area. That's defined by HUD.

Targeted Texas county -- that's defined by HUD and the State of Texas; a designated federal empowerment zone is decided by HUD and the city or county in which it's located. City-sponsored tax-increment zone is defined by the city.

And QCT over there for those extra points is also defined by HUD, so all those ought to be moved under one category and give one five points or whatever points and be through with it.

MR. CONINE: What I wanted to speak to -- and I'm glad you raised the issue because I was at an affordable housing conference yesterday and the issue of this renaissance of inner-city housing is great, but
there's no affordability to it when you do it on a conventional basis.

And my thoughts were how can we incentivize the development community to come back in town to do an affordable product downtown or close to a downtown and reward them enough points for that? So I think I'm in favor of what you just said because it does that, to some degree.

It cuts down all the sprawl issues and some of the other --

MS. BINGHAM: Well, my point is this: I guess it's all over the page. If you -- I'm not opposed to -- it's also part of the new move in the -- I mean, in terms of the federal legislation. But even if you give it seven points, you've just got it all over the place.

If you moved it and you got five points -- make up my mind, whether we're going five points, six points, or seven points. But to have it all over the map is what I'm having problems with. If it's worth seven points, it's worth seven points.

MR. CONINE: It looks like, Cherno, paragraph (d) allows for the, you know, particular city to designate just about whatever area they want to designate if they want to target that particular product going into that city. Is that correct? Am I reading that correctly?
MR. NJIE: That's correct. The provision (c) and (d) are not qualified census tracts. Those are enterprise zones and empowerment zone: (c) is enterprise empowerment; (d) is city-sponsored improvement area, so they are not specifically qualified census tracts.

MS. BINGHAM: I understand. But I'm just saying if we just did a paragraph to say that all of those, (a), (b), (c), and (d) are qualified census tracts, qualified census tracts are going to get 130 percent credit. Right?

MR. NJIE: That's correct.

MS. BINGHAM: That's one incentive to being there. So if you just add all of those, whatever they are, city-sponsored, HUD-sponsored, State-sponsored -- if you add them all -- I don't care whether you give them five points, six points, or seven points, but they need to be on the Exhibit 1 -- under that Exhibit 201 that deals with location.

VOICE: May I comment?

MR. NJIE: So you would delete Item 2 on the bonus points and move it over to location?

MS. STINER: Let's move it, yes. That's subpart (e).

MS. BINGHAM: Yes, move it over. And it's the Board's discretion whether they want to give it seven
points or five points.

MR. CONINE: Did we just say eliminate paragraph (c) on page 23 and take those two points and move them over to here? Is that what you said?

MR. DAROSS: Paragraph (d).

MS. BINGHAM: Well, you got -- so it would be (e).

MS. STINER: Over here. Which one are you talking about? They're talking about taking (d) right here.

MS. BINGHAM: Oh, yes. I'm talking about (d), project located in a QCT and contributes to concerted community revitalization effort. That's --

MR. BETHEL: The motion was to eliminate that paragraph --

MS. BINGHAM: Yes, from that section --

MR. BETHEL: Yes.

MS. BINGHAM: -- and make it either --

MR. BETHEL: 201 without any points. I mean --

MS. BINGHAM: Yes.

MR. BETHEL: -- the same points.

MS. BINGHAM: Yes, without any points. And Mr. Conine suggested that we up the whole category for 201 to seven points. I don't -- I have no preference on that.

VOICE: Is that where you want it?
MR. CONINE: Okay. Yes, I think that's what I said. I'm pretty sure that's what I said.

MS. BINGHAM: Well, I'll make the motion that we move it --

MR. JONES: We already had one motion -- so let's just amend your -- do you understand what I'm saying? Let's amend your motion. Go ahead. State your amended motion, and then Bethel will second it.

MS. BINGHAM: Okay.

MS. STINER: State it.

MR. JONES: If you would, could you state your motion --

MS. BINGHAM: I will amend my motion to move the paragraph that deals with location under QCT over to (e) under development location and bring the points forward to make 201 a total of seven points.

MR. JONES: And the chair will recognize that Mr. Bethel has seconded it.

MR. BETHEL: I second it.

MR. JONES: Thank you. Further discussion of the motion?

(No response.)

MR. JONES: Hearing none, are we ready to vote? All in favor of the motion, please say aye.

CHORUS: Aye.
MR. JONES: All opposed, nay?

(No response.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: The ayes have it.

MR. CONINE: Can we go back to paragraph (c), because I'm still a little bit disturbed about that. It's a six-point swing, and can be very subjective and obviously kick out some folks.

MS. BINGHAM: Under which exhibit?

MR. CONINE: On page 23 of 33, right above your (d), the one you just moved --

MS. BINGHAM: Okay.

MR. CONINE: -- paragraph (c), right there. I guess I'd like just to get it on the floor and make a motion that we delete paragraph (c).

MS. SAENZ: I second that.

MR. JONES: We've got a motion to delete paragraph (c), and it has been seconded by Ms. Saenz. A discussion of the motion?

Mr. Bethel?

MR. BETHEL: Well, I don't know what criterion you're on. What are we going to use as excellent and as -- that's on sites -- on site visitation and the staff's going to make the determination of whether it's an
excellent site?

MR. NJIE: That is correct. The site-selection ranking takes into account the amenities in the area, employment base, other elements, accessibility, et cetera. In the past, we have not taken into account the project's contribution in revitalizing the community.

This is one element that we're going to include to assess how the project will help in revitalizing the community. So there is no definition right now as to what is an excellent site. It depends on the site-inspection team.

MS. BINGHAM: Well, if you -- we've done what we did just a few minutes ago and give preference to and followed the law in terms of the Johnson bill and given preference to revitalization areas, all this paragraph (c) is doing is conflicting with that. So it just needs to go.

MR. CONINE: Call for the question, Mr. Jones.

MR. JONES: All right. Further discussion?

VOICE: Mr. Chair, I have one question. Isn't the Department evaluating the sites now without preference? That would be my question.

MR. CONINE: The normal underwriting process will take care of that.

MS. BINGHAM: That's for the bank and
MR. JONES: Are we ready to vote?

VOICE: Yes.

MR. JONES: All in favor of the motion please say, aye.

CHORUS: Aye.

MR. JONES: All opposed, nay?

(No response.)

MR. JONES: All abstentions.

DR. GRIFFIN: I abstain.

MR. JONES: The ayes have it.

MS. BINGHAM: I'm sure other board members may have some other issues. Those are mine.

MR. JONES: Thank you, Ms. Bingham.

MS. BINGHAM: We can go to the rest of the board members' issues.

MR. CONINE: I've got a couple just -- that came through the public comment that come to my mind anyway, the one about the applications as we receive them and score them and have them open for viewing and so forth before decisions are being made. I'd like to explore that with Cherno, I guess, and ask for your comments relative to that.

MS. BINGHAM: Why don't you bring Betty Marks into that conversation as well.
MR. CONINE: That would be great.

MR. NJIE: The request for making the applications public -- we've received that in the past, and we have referred the matter to the AG's office for a ruling regarding what portions of the application can be released during the decision-making process.

And the ruling has been that we couldn't release the application because of information that is contained in the application. We could adversely affect one applicant over another and could affect the Department's ability to award credits on a competitive basis.

So even if the Department were to require that applications be released, I believe unless the applicant waives those rights, we would still have to notify each applicant and have them consider whether they would invoke any privileges regarding to trade secrets or anything that is contained in their application.

MR. JONES: Can I jump in on that? I want to make sure I understand something. The AG's ruling said that tax credit applications are exempted from disclosure under the Public Information Act, so that if somebody demands to see them right now, we don't have to supply it under the Public Information Act. Is that true, or does it go further than that?
MR. NJIE: Only during the review period. Once the applications are submitted, they are open to the public. During the competitive bidding process -- but after the bidding process --

MR. JONES: But now, again -- but my question is something different. I understand that, and I can understand why there would be reasoning to allow us to allow them not to become public during the competitive bidding process.

But now I'm going back to what is the attorney general opinion that we got say? Does it merely say that we don't have to, or does it say we would violate some law, any law, federal, state, local, you know, regulatory, you-name-it, if we did disclose it, or violate any rights to privacy or anything else in talking about what I address it to, but, you know, whatever?

VOICE: Federal --

MR. JONES: Okay. That's my question.

MS. MARKS: And that's exactly right. What you're doing is you're asking for an exception to the open records. The open records basically says that all of your information is a matter of public record.

MR. JONES: Again, clearly I understand the AG's opinion is that we don't have to disclose. I understand that. Does the AG's opinion go further and
tell us that if we did we would violate some statute or law or regulation or right of privacy or anything else. Does that make sense?

MS. MARKS: Yes. Okay. Maybe I should ask the AG, but I believe that what they're saying now is that where there are trade secrets and that the third parties who would be affected by the release of that information can come into the AG's office and request on their own -- in other words, if the Department asks for a waiver or asks for an exception, that there is certain information contained in the application that would affect third-party trade secrets, certainly that information, that they have the right to go to the AG's office and make their brief, basically why the information should not be released to competitors.

MR. JONES: Let's make sure I understand the answer to my question then. The answer to my question is the AG's office opinion that we're referring to goes further and says that we would perhaps, if we did allow such disclosure during this process, violate laws, statutes or rights of the individuals that are making the applications. Correct? It says that?

MS. MARKS: I'm not sure if that particular opinion says that. That's my understanding from the AG's office is that --
MR. JONES: They've given us that information at some point in time?

MS. MARKS: Yes.

MS. STINER: Betty.

Excuse me. Mr. Chair?

MR. JONES: Yes.

MS. STINER: We do have that opinion somewhere upstairs, don't we?

MS. MARKS: Yes.

MS. STINER: I mean, we have enough lawyers here to --

MR. JONES: Yes, but --

MS. STINER: -- interpret it.

MR. JONES: -- but again, the reference that you gave me, Ms. Stiner, about the opinion only discusses whether or not we have to give it out.

MS. STINER: Yes. I --

MR. JONES: If it -- if there -- if we have anything from the AG's office that goes further than that, I'd like to know that. And what I'm taking from Ms. Marks' comments is that we do and that they have gone further than that.

MS. STINER: And I'm -- all I'm asking -- all I'm saying is that I've read that opinion and I don't remember that it goes further than that. But of course,
she is a general counsel.

And I'm saying in order for all that to be cleared up, let's go get the opinion and make sure that that opinion, if it does go further in that, we can affirmatively say that.

I'm not asking for anyone to make an interpretation of it. But we do have the opinion here in writing. So it wouldn't be difficult to make sure so we can answer the chairman's question that they go a step further and say, you know, what may be a particular incident beyond that. That's all I'm suggesting.

MR. JONES: We have a representative from the Attorney General's Office, Brenda Loudermilk.

And would you like to address this point?

MS. LOUDERMILK: I would like to. I don't know the specific ruling, but I suspect it was under what was called a permissive exception for competitive bidding information.

And that is not required by law to remain confidential. That -- the agency may accept and may assert the exception if it asks for an opinion by the Attorney General.

However, over and above that, if the application that you're talking about has information in it that the applicant feels is a trade secret or financial
information that the release of which would substantially
cause them harm, then you have a duty to inform those
people of that and give them the opportunity -- and go
ahead and ask for an Attorney General's opinion, give that
information to the Attorney General.

They then have the burden to submit to the
Attorney General reasons and information that would allow
the Attorney General to decide whether or not, indeed, a
particular application is excepted from disclosure because
of a trade secret or financial information.

You can in the first instance make a decision
that there's no other state or federal law -- and I don't
have that information whether there is or is not -- but if
there is no other state or federal law that makes these
applications confidential or the information, you can
certainly put out in your process how you intend to treat
it and whether it would be otherwise open.

It would also probably be a good idea from a
practical standpoint as to require those applicants, if
they intend to assert a trade secret or financial
information, that at the time they submit that application
they clearly mark that information and give you the heads
up that there is such information, at least from their
viewpoint that it's in there.

MR. CONINE: And that, I think, is exactly what
the Illinois statute says furnished by Mr. Ocanas in his submission here. Have you had a chance to read this and --

I know you have.

But have you had a chance to look at this language and see if it might be appropriate?

MR. NJIE: Yes, I have read the language, yes.

MR. CONINE: And so if we disclose ahead of time on a QAP that it's going to be public information and put the burden on the applicant to say whether or not any of this stuff is -- should be confidential or whatever in the future, is there anything in the Attorney General's opinion that somebody's running down that that would -- is that going to violate any of that statute --

MR. NJIE: No.

MR. CONINE: -- any of that opinion?

MR. NJIE: What that would require us to do when the application is received if there is any assertion of privilege is to send the facts to the Attorney General and hold the application pending a ruling.

MS. BINGHAM: In other words, what Mr. O'Connor is requesting of us he should request of the Attorney General when we get the information -- when we get the applications, as opposed to just a wholesale disclosure of applications that we have on hand prior to making a
decision during the competitive process.

MR. NJIE: We can include language that the information is going to be available to the public. Like she said, if there is anything in here that you wish to assure privilege, make that known to us.

So when we receive the applications, we will do the regular procedure in seeking an opinion from the AG's office. Pending a decision, that application will be held, not available to the public.

MS. LOUDERMILK: May I interject in here?

MR. JONES: Yes.

MS. LOUDERMILK: You've got --

MR. JONES: Certainly.

MS. LOUDERMILK: -- two procedures going on, how you all administratively want to deal and make this information available versus some member from the public coming in and asking for a specific application.

If you set up a procedure and you announce in your bid process that you are going to have, as part of the bid process those applications are going to be open, in the first instance I guess a potential applicant is going to decide how badly they want to participate in your bid process. And how -- and they're going to be on notice then that you consider it to be open and you will open it.

I cannot advise you today because I haven't
given enough thought to it whether just by having that
procedure then and announcing it's going to be open and
anybody can come in and look at it at their will, whether
or not that invokes some extra duty on your part not to do
that outside of the Open Records Act.

    MR. CONINE: If we had fewer applications
because of that it would not be a bad thing in this
particular instance.

    (Laughter.)

    MS. LOUDERMILK: There's an overall general
kind of principle that you contract with a governmental
body, you know, at your peril. And if you're willing to
get the benefits then you have to do the responsibilities
of it, too.

    And otherwise, you should -- you might not
normally release something like this. But in order to get
the benefits you would, you know, comply with the
procedures that are there.

    MS. BINGHAM: Don't we also need to look at the
other -- the burden on the person that's receiving that
information? There are two issues I wanted to bring up.
The --

    Maybe we should check the other law that deals
with having information involving individuals, banking
relationships, credit files, credit history files and
other information that have been deemed private under other state statute. Separate that from the other information in the application.

MS. LOUDERMILK: You certainly can do that as a matter of procedure. But --

MS. BINGHAM: Well, what I'm saying is I have not -- I'm generally aware of the law because I have to apply it at the City of Houston. I may be able to tell that XYZ applicant applied for a 140-unit apartment project and it's going to be located on XX street.

But I'm not -- and I'm not -- my city attorney tells me under state law I'm not allowed though, to take his information from the file, even if it's requested under public information, and say that his credit score is available, his bank statements are available, his financial statements and all those issues -- other items that he has submitted to me are just laying open for the general public to be --

MS. LOUDERMILK: That has to be determined on a case-by-case --

MS. BINGHAM: That's --

MS. LOUDERMILK: -- basis --

MS. BINGHAM: That's my point. You can't cover --

MS. LOUDERMILK: -- before the Attorney
MS. BINGHAM: -- all this on the QAP. And then there are other issues. What do these groups who use this information -- they have to -- it should be -- the idea that -- the law that I've reviewed is that it should be available to somebody, even the legislative members. They have to sign something that says they will not take it some other place or let somebody else review it. So it's a very difficult issue.

And, you know, Mr. Chairman, I would suggest that it is so difficult that perhaps, you know, if we can deal with some of these other issues and take a 30-minute break to have the lawyers go look up all the information and give us a recommendation.

MR. CONINE: I'm on board with you on the financial information. I think that should not be disclosed to anybody. I don't think anybody in this room would agree to that.

But where the project is, what -- how many units it is and all the other project type data, I think is not a bad idea.

And I'd like for the attorneys when they do this 30-minute exploration to see what sort of exemption that we can make in some language in the QAP that would exempt all the financial information that we're concerned
about, but let the project information flow if the public wants it.

MR. JONES: If I could -- could I direct a question to Ms. Stiner.

You know, I had asked you and the staff on some of these issues that I thought would come up to say, Well, if the board decided it wanted to do something like this what would the language look like. Did you all come up with some proposed language on this?

MS. STINER: Voila. I don't know that we got a legal review of it. But staff did. And that's probably a basis for the legal people to start from.

MR. JONES: Right. It would be a place to start looking at it.

MS. STINER: Yes, sir. And this is what the staff came up with.

MR. JONES: And again, the language the staff came up with, they said that if, in fact, the board had some desire in establishing public access, the wording for Section 5 -- excuse me -- Section 50.4(c) is,

"Availability of applications for public viewing.

"One extra copy of every application must be submitted at the time of the application submission. Such documents will be made available for public viewing within 30 business days of the close of the application
acceptance period.

"Public viewing of files must take place between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

"Communication with staff or board members based on public viewing of files regarding the content of such files will not be permitted."

So why don't we give that language --

MS. STINER: You've got something different than I have?

MS. BOSTON: I was just -- in reference to the proposals that were just being discussed about the exception language, additional sentences could possibly be, "All applicants have an opportunity to submit a request to the Attorney General for an exception for portions of the application. Sections of the application for which an applicant elects to assert the privilege of exceptions should be clearly marked."

And that would possibly cover some --

MR. JONES: Well, why don't we follow Ms. Bingham's suggestion,

MR. CONINE: Yes.

MR. JONES: -- if it's okay with you, Mr. Conine --
MR. CONINE: Yes.

MR. JONES: -- to let the proposed language that's been worked on by staff be refined with the help of the attorneys. And they can come back to us as Ms. Bingham said, in 30 minutes and make a proposal that we can vote on one way or the other.

Thank you, ma'am.

MS. STINER: Yes, sir.

MR. JONES: All right. So we'll let the attorneys move forward with that. And I think Mr. Conine had a couple of other points he'd like to make.

MR. CONINE: I don't know. I've forgotten by now. Just go to somebody else.

MR. JONES: Okay.

MR. BREWER: Mr. Jones, I have one. I'd like --

MR. JONES: Yes, sir, Mr. Brewer.

MR. BREWER: I'd like to have the issue on the Section 8, which is part of the QAP.

If we could take a look at that, Cherno?

MR. NJIE: Yes.

MR. BETHEL: Should the attorneys go ahead and start work on that? Or do you want to --

MR. JONES: Yes. I was hoping they would, yes.

MS. STINER: Yes.
MR. BETHEL: Yes.

MR. JONES: I was going to turn them loose if they --

MR. NJIE: I will call Suzanne Phillips, who is the Director of Compliance, to address the Section 8 issue.

MR. BREWER: Mr. Chair, before we get into that, I would just like to remind the board that a few months back that we set a policy on Section 8. And then what the board asked the staff to do is to go back and to work out the administration of our policy.

And that -- what they have done is they have included portions in the QAP. But we wanted to go over those -- that with the board to see if the board is in agreement.

And so at this time, Suzanne, if you'd kind of walk us through that so that we cover all the points --

MS. PHILLIPS: Do you --

MR. BREWER: -- and what page it's on and everything.

MS. PHILLIPS: It starts on page -- it's at Section 50.8.

MR. JONES: If you would hold the microphone I think it would help us.

MS. STINER: Or talk louder.
MR. CONINE: Act like a rock singer.

MS. PHILLIPS: Thank you. It starts at Section 50.8. And on my document it's page 25.

The section that we modified and that covers the Task Force recommendation and the board policy actually begins on page 26. And under (e)(1).

We included in Section 1 the language that's underlined, "Owners and managers of all tax credit properties placed in service after August 10, '93 are prohibited from having policies, practices and procedures of screening criteria which exclude applicants solely because they have a Section 8 voucher certificate."

This language is slightly modified from that language that was adopted by the board policy. And part of those -- part of that was due to a request that we got from the Internal Revenue Service as part of his informal --

MS. STINER: Suzanne, just a minute. May I just interrupt to clarify one thing. The board adopted a policy and then asked us to go out and look at those specific management requirements. This is one of those specific management requirements versus the policy. Right?

MS. PHILLIPS: Well, no. That language that I read was actually part of the policy.
MS. STINER: Oh, okay.

MS. PHILLIPS: And the way --

MS. STINER: Sorry.

MS. PHILLIPS: And the way the policy -- the
bullet point -- the way it reads exactly is, "Managers and
owners of LIHTC properties are prohibited from having
policies, practices, procedures and/or screening criteria
which have the effect of excluding applicants because they
have a Section 8 voucher certificate."

And the modification of the language here was
basically the -- had the effect of -- it -- the policy
that was adopted goes on further to say that, "The
verification of such exclusionary practice on the part of
the owner or the manager by TDHCA will be considered a
violation and will result in the issuance of a notice of
violation and if appropriate, issuance of a Form 8823 to
the Internal Revenue Service.

"And any violation of the program requirements
relative to this policy will also impact the owner's
ability to participate in future TDHCA programs."

We went on to say in the policy that the
properties that have land use restricted agreements
executed after August 10, '93 are governed by Section 42
of the Internal Revenue Code, which clearly prohibits,

"Refusal to lease to a holder of a voucher
certificate because of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder. For these properties this policy is mandatory and compliance is expected.

"For those properties whose LURAs are dated prior to August 10, '93 the requirements are not as strong, but owners and managers of tax -- of LIHTC properties at this age are encouraged to obtain their own legal advice relative to compliance.

"Whatever the case TDHCA intends to strongly encourage compliance with this policy by all LIHTC properties."

What staff attempted to do was to take this policy statement and incorporate it into the QAP and the rules and then further take those management suggestions and incorporate those suggestions into the QAP, as well.

And as we were writing this we had numerous conversations with the Service because one of the things that we wanted to talk to them about was the enforcement and whether this language that we were using would be described as a reasonable interpretation, both for the projects going forward -- for the 2001 going forward and also for the 1993s through the 2000.
And the primary reason that we backed off on some of those is that the Service has asked us to defer some of the specific language so that they could work through a -- the process with the IRS, the -- HUD and the DOJ to determine what they believe reasonable standards and also to identify what they believe are illegal obstacles, i.e., the obstacles that appear to be discriminatory practices.

Because there's a little bit of -- there's two things happening here. We're trying to determine what's specific discrimination against a protected class and then what's a violation of the LURA.

Section 8 tenants are clearly eligible in the Tax Credit Program. But at what point that eligibility becomes protection is what we've been involved with the discussions with the Service and the -- and HUD about.

So what we tried to do is -- in this language was to, in fact, get the policy of the board into the rule and then work out the administrative issues with the Service and what they've told us to be some guidance -- written guidance that they would give us in the future.

So as we go into the actual document, what we've tried to do is to identify some specific enforcement criteria.

So what we've described in the QAP would be
that a violation of the policy, which would be denying occupancy to a Section 8 tenant, would result in an automatic finding of material non-compliance.

That means that if we would identify an owner that was specifically turning away Section 8 tenants and follows -- following the policy language -- interpreting that -- then that would automatically preclude them from participating in the Tax Credit Program until they corrected that violation.

And then the second level of enforcement would be -- as far as the management requirements, the marketing requirements -- would be a LURA violation. And the LURA violations are -- is not a automatic material non-compliance, but is a -- has a value of ten points.

Material violations, which would be the policy violation and which is actually an interpretation or the Department's interpretation of the existing regulation, would be a 30 point violation.

We also talked in the -- this section of the QAP about the processes that the Department would use to monitor.

And the way we've done it is to incorporate the marketing requirements into a management plan that each property owner would have to have.

And that management plan would include an
affirmative marketing plan and then the posting of the Fair Housing posters in all of their leasing offices and those other items that the Task Force suggested as the specific management requirements, the cooperation and communication with the PHA, the Fair Housing logo and posters.

And then the Department would also have a listing of all of the projects on the web site. And then those owners would be required to communicate directly with the PHA of their willingness to take Section 8 tenants under their property.

MS. STINER: Thank you.

MR. BREWER: The -- let's address the one issue on minimum income requirements. Because that was not put in there.

MS. PHILLIPS: This one was the -- probably the most controversial of all of the specifics that were put out for comment.

MS. BINGHAM: I think it was almost like home ownership.

MS. PHILLIPS: We had put out -- we had put in the original -- or in the proposed QAP that minimum income requirements for Section 8 voucher and certificate holders would not exceed 2.5 times the portion of rent that the tenant pays.
We had two favorable comments from the public and we had ten or 11 comments that were in opposition to that specific multiplier.

We took the public comments into account when we suggested the language that is in your black line copy, along with a request from the Service that they be allowed to define clearly what they interpret, along with HUD, as reasonable minimum income standards.

MS. STINER: Okay.

MR. BREWER: But, Mr. Chairman, the problem I'm having with those, I feel that there ought to be a percentage or something that -- so that the property owners know, you know, just like HUD does. HUD has a 40 percent, you know, figure that they use on what the people pay and everything.

And I'm just concerned if we don't say anything to this issue that I think we're being unfair to the property owner, as well as the individual. But I don't have that figure exactly.

What would you recommend, Suzanne, if we put in -- put the number in there?

MS. PHILLIPS: Well, we've talked -- at this point -- you know, I've been involved in the Tax Credit Program since its inception. There are industry standards that we see across the country that seem to be consistent
from state to state.

What we have in our compliance manual and what we train in Texas is that to the extent that a project owner establishes minimum income requirements that they must be consistent. And to the extent that it's a Section 8 tenant that they should take, not the entire amount of rent but only the portion of rent that the tenant is required to pay.

Generally what we've seen is that most owners use a three time standard. The reason the 2.5 was suggested is because the way the Section 8 program works it has a 40 percent component in it. And that 40 percent component directly relates to the 2.5 percent.

This past week I was at an NCSHA meeting with -- most all state allocating agencies were present. I think out of the 47 or 48 allocating agencies, 35 were there. And we had a specific panel discussion on this matter.

And we had an informal survey to ask what states specified -- or whether states specified a minimum income requirement. And without exception there were no states that had imposed a minimum income requirement unless there was one already imposed by the state.

In some states minimum income -- or income is protected or is included as part of their protection. But
even those states don't specifically use a multiplier when talking about minimum income requirements.

They are more focused on the fact that when income issues are taken into account, it's not just employment, that it could be the 10-F or food stamps so that those types of assistance would be taken into account when someone determines whether or not a prospective can meet their debt obligations under a lease.

MR. JONES: Mr. Brewer, besides the staff recommendations, which I presume will be part of the blanket amendment that they've gone over with us, do you have another amendment you want to make in this area?

MR. BREWER: I would like to see something in B with the minimum requirements though, as far as the percentage goes. But quite frankly, I -- you know, I don't have a recommendation on the percentage. I mean, I didn't really see anything wrong with what the Task Force come up with or what was in there initially and -- unless someone else does.

MS. BINGHAM: The two-and-a-half represents what? It was two-and-a-half times the amount that the tenant would pay.

Let's assume that it's a -- can somebody walk me through an example? If the apartment rent is $400 and the tenant pays 200, then we're saying they have to have
two-and-a-half times that. Do we exclude anything, food
stamps or anything --

MS. PHILLIPS: Food stamps -- those types of
assistance are not included in the calculation of annual
income. It's typically employment income, asset, regular,
recurring cash, whether it's from, you know, a part time
job or whatever. But typically, those types of
assistance --

MS. BINGHAM: Mr. Brewer, what --

MS. PHILLIPS: -- would not be included.

MS. BINGHAM: -- what -- where is the -- you
know, you've served on this Task Force. I'm trying to
learn from you. What is the -- what harm is done -- or do
you see any harm done from not having a ratio?

MR. BREWER: Well, Margie, I just see the good
that it's done. Because I have a Section 8 property, you
know, with HUD. And I was just trying to equate what we
have to provide the type of housing we do that this would
be beneficial to, you know, have a percentage ourselves
because it would make it more --

MS. BINGHAM: So what do you use?

MR. BREWER: -- affordable.

MS. BINGHAM: What do you use?

MR. JONES: Why couldn't you use the same
percentage?
MR. BREWER: You could, I would imagine. They just changed it. I don't have all the particulars on it. It was 30 percent and then it went up to 40 percent. Tony, would you mind --
Suzanne, do you know how that -- how it -- can you explain how they got to the 40 percent? Because one thing HUD's done, too, is if a person wants to spend more of their own income for a higher rent they can do that, too. But --
MS. BINGHAM: Well, what --
MR. BREWER: -- the government's still only going to subsidize so much money.
MS. BINGHAM: What we are -- what I know to be used is that the -- you know, on the income and rent restrictions that the -- that it cannot exceed more than 30 percent of the --
MR. BREWER: Yes.
MS. BINGHAM: -- gross income for the individuals -- the wage earners. And then you add a component for utilities, if paid. Okay. So I -- not having served on the Task Force, I don't know if there's -- what you got to --
MR. BREWER: Well, that's all -- basically all the --
MS. BINGHAM: So I don't know why -- does

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anybody have any problem with using the -- that regular test?

Tony, you have an idea?

MR. FREEDMAN: I'd -- the -- HUD limits the amount of rent a tenant can pay out of pocket.

MS. BINGHAM: That's what I'm saying. Thirty percent. And that's --

MR. FREEDMAN: What HUD -- no, Ms. Bingham.

MS. BINGHAM: It's not going to --

MR. FREEDMAN: If you rent the unit at the payment standard --

MS. BINGHAM: Right.

MR. FREEDMAN: -- then you'll pay 30 percent out of pocket. But under the law you can, in fact, rent a more expensive unit and pay more out of pocket. And the law, I believe, in '98 was changed to say that even still, that you can't spend more than 40 percent out of pocket. So --

MS. BINGHAM: So a total of 40?

MR. FREEDMAN: Yes, ma'am.

MS. BINGHAM: Okay. So what -- I guess what I'm trying to say is what's the harm in having something like that in this rule?

I'm trying to say is what's the harm in having something like that in this rule?

MS. PHILLIPS: Well, this --

MS. BINGHAM: Or is there any harm?
MS. PHILLIPS: I don't believe there's harm. I think that the question that came up through this process is whether or not this would be a reasonable application and a reasonable criteria --

MS. BINGHAM: Well, we use HUD rules on everything else on the -- 60 percent --

MS. PHILLIPS: Yes.

MS. BINGHAM: -- of this, the 50 percent of that. I wonder why we can't adopt the other --

MR. BREWER: That's what I'm wondering.

MR. JONES: Ms. Bingham and Mr. Brewer, you all kind of convinced me. I -- you know, it's just why don't we?

MS. BINGHAM: Why don't we just use the HUD rule and drop it in there. And -- you know.

MS. PHILLIPS: There's really -- it's at the board's will. I mean, there's --

MS. BINGHAM: May I make a motion, please?

MS. PHILLIPS: It's just that --

MR. JONES: Yes. Ms. Bingham, you can make a motion.

MS. BINGHAM: Mr. Chairman, I'd like to make a motion that we adopt the HUD income and rent restriction levels for the -- for this section of the QAP and --

MS. STINER: By using this qualifier, 2.5?
Or --

MS. BINGHAM: No. Using the HUD 30 or 40 percent test. And he said in one instance -- the way I use it in the City of Houston on the income and rent restriction, the family can't pay more than 30 percent of their gross income for rent.

MR. JONES: But how's --

MS. BINGHAM: And then Tony --

MR. JONES: -- that work?

MS. PHILLIPS: I'm not --

MR. FREEDMAN: Again, it depends on the rent of the unit, Ms. Bingham.

MS. BINGHAM: Right. I knew that.

MR. FREEDMAN: So if they're renting more expensive units they are permitted to use more.

MS. BINGHAM: That's right. To pay up to 40 you said?

MR. FREEDMAN: Yes.

MS. BINGHAM: Okay. So we need the both of those in there. That's the HUD criteria. Why are we running from it?

MR. CONINE: I thought we were talking about minimum incomes though, relative to --

MS. BINGHAM: Well, but that's -- it is minimum --
MR. BREWER: Well, that's what it is.

MS. BINGHAM: That's what it is. It's income and rent. That's the way HUD describes it. Income and rent restriction. And you do both.

MS. PHILLIPS: So we -- is the question, Ms. Bingham, that using the 2.5 multiplier --

MS. BINGHAM: What?

MS. PHILLIPS: The 2.5 multiplier?

MS. BINGHAM: I'm not using the multiplier. I'm --

MS. PHILLIPS: Okay.

MS. BINGHAM: -- I'm using the maximum -- I'm using the income and rent test. Income not to exceed the HUD limit of 30 percent. They say -- HUD claims that you're a rent burden if you pay more than 30 percent of your gross income.

But like Tony is saying that if you -- they allow you, if you are getting a more expensive unit, to go up to 40. We need to put both of those benchmarks in there and adopt their criteria.

And if we are -- Mr. Conine --

MR. CONINE: I just need some specific language. It's --

MS. BINGHAM: Okay.

MR. CONINE: I'd be, I think, a little more
comfortable with some specific language.

    MR. JONES: Well, I tell you what. Why don't we take a five-minute break so you can make some specific language in your motion. And we'll be back in five minutes and we'll plunge on.

    (Whereupon, a short recess was taken.)

    MR. JONES: I call the meeting back to order.

We've heard back from those wonderful public servants -- they do us all so much good -- the lawyers. And they have provided a proposed change concerning the -- making the applications available to the public.

    And if I could, I will read it to the board.

And then if any board member wants to move that we adopt this change, you can do so. The chair would entertain that motion.

They've suggested we add a section (c) and a section (d) to 50.4 to read as follows: "Availability of application. Applications for tax credits are public information and are available upon request.

"Exhibits to an application will not be available for public disclosure until after the board approves the allocation for tax credits in accordance with the Texas Public Information Act, Government Code Chapter 552(d), confidential information.

"An applicant shall mark each exhibit or a
portion thereof that the applicant considers confidential
as a trade secret or commercial or financial information
in which the applicant desires not to be disclosed under
the Texas Public Information Act.

"A request for such information shall be
processed in accordance with Section 552.305 Government
Code."

MS. BINGHAM: Read that one more time, Mr.
Chairman.

MR. JONES: Sure.

MS. BINGHAM: First -- just that first part.
I'm sorry.

MR. JONES: Okay. "(c), availability of
application. Applications for tax credits are public
information and available upon request. Exhibits to an
application will not be available for public disclosure
until after the board approves the allocation for tax
credits in accordance with the Texas Public Information
Act Government Code Section 552."

Do you desire me to read (d)?

MS. BINGHAM: No, I got it. I got.

MR. JONES: Okay. Would any board member like
to move that that be approved?

MS. SAENZ: I move.

MR. DAROSS: I'll second.
MR. JONES: Okay. It's been moved that it be approved and seconded. Discussion?

MR. CONINE: I want to talk about amending it to after the application date has expired, I guess, or whatever you want -- between there and the time we decide on which one of the deals get credit.

Because it doesn't look -- it doesn't do any good to look at applications that we approve. I think the idea on public disclosure is looking at every one that was submitted and being able to see who your competition is. And if there's questions you want to raise, you can raise them at that time, before we decide as a board who gets credit and who doesn't.

MR. JONES: This does that. It just does not disclose the exhibits to the application.

MR. CONINE: Oh, I'm sorry.

MR. DAROSS: The application's open all the time.

MR. JONES: The application's open all the time, which is the information you are referring to. It just does not disclose the exhibits.

MR. CONINE: The exhibits are the financial information we're talking about?

MR. JONES: Yes.

MR. CONINE: Excuse me.
MR. JONES: Okay. Can I -- I'll read it one more time.

MR. CONINE: Yes. I --

MR. JONES: Okay. "(a) Availability of application. Applications for tax credits are public information and are available upon request. Exhibits to an application will not be available for public disclosure until after the board approves the allocation for tax credits in accordance with the Texas Public Information Act Government Code Chapter 552."

So the application itself will be -- whether it's granted or not, will immediately be available as public information.

MR. CONINE: Okay. Now, I --

MR. JONES: The exhibits.

MR. CONINE: Now I have a problem with burdening our staff, I guess, through the submission period. Can we -- is it -- does it make sense? Give me some help, staff, relative to --

MR. NJIE: Are we talking about making it available after the close of the cycle prior to a decision? Or are we making it available as submitted to us?

MR. JONES: As submitted is the way I would read that.
MS. STINER: That would be --

MR. CONINE: Well, I'm trying to find a middle ground. And that's after the submission cut off date and the incoming --

MS. STINER: I would think it would be after the -- I'm speaking for you all's staff. Because I would have to deploy some folk down there to help you otherwise. I'm -- I would suggest that it be after the acceptance period close.

MR. CONINE: Right.

MS. STINER: Because it would be very burdensome each time an application come in to have that --

MR. CONINE: Right.

MS. STINER: -- application available.

MS. BINGHAM: Uh-huh. Now, what -- let me -- let's talk about exhibits. What are some examples? I know financial information, those are things. But what are some other examples of exhibits?

MR. NJIE: Well, I suppose partnership documents?

MS. BINGHAM: What?

MR. NJIE: Partnership documents.

MS BINGHAM: Oh, okay. Thank you.

MR. JONES: Okay. Well, then -- okay. Let me
make the proposed change. And then we'll see if the --

    MS. STINER: Okay.

    MR. JONES: -- movants and --

    MR. CONINE: Move to amend.

    MR. JONES: Well, why don't we just see if they'll accept it first.

    MR. CONINE: Okay.

    MR. JONES: And then we'll go. So it would be, "Applicants for tax credits are public information and available for -- upon request after the," closing date --

    MS. STINER: After the application acceptance period --

    MR. JONES: After --

    MS. STINER: -- closes.

    MR. NJIE: That's correct.

    MR. JONES: After the --

    MR. NJIE: After the close of the --

    MR. CONINE: I hate to --

    MR. NJIE: -- application acceptance period.

    MR. CONINE: I hate to keep suggesting things.

    But in the spirit of helping staff out -- to be troubled the least can we put -- shall we put a number of days --

    MS. STINER: Yes.

    MR. CONINE: -- that there would be open to,
say 30 or 45, maybe 45 days so that they can be harassed
for -- with public and -- disclosure and information for
45 --

MR. JONES: You're --

MR. CONINE: -- days but then it's over.

MR. JONES: Legally, you're not going to have
an opportunity to do that.

MR. CONINE: Oh, really?

MR. JONES: Yes. Once you make it public
information, you're not going to be able to shut it down.

MS. STINER: Uh-huh.

MR. CONINE: Okay. I tried.

MR. JONES: Okay. Let me read it -- let me
read (c) since it's been amended one more time.

And, Mr. Conine --

MR. CONINE: I'm eating a cookie.

MR. JONES: "Applications for tax credits are
public information and available upon request after the
application acceptance period closes. Exhibits to an
application will not be available for public disclosure
until after the board approves the allocation for tax
credits in accordance with Texas Public Information Act
Government Code Chapter 552." And then (d) remains the
same.

Would you accept that as a friendly amendment
to your motion?

    And the person who seconded accepts it, also?
    And Mr. Conine says, Thank you very much.
    Further discussion?
    (No response.)
    MR. JONES: Are we ready to vote on this
    motion? I assume we are. All in favor of the motion,
    please say aye.
    (A chorus of ayes.)
    MR. JONES: All opposed to the motion, please
    say nay.
    (No response.)
    MR. JONES: All abstentions?
    DR. GRIFFIN: I abstain.
    MR. JONES: The ayes have it. Thank you.
    Then we'll move from that to Ms. Bingham was
    going to make a motion with regard to a proposed amendment
    when we kind of took the five-minute break.
    MS. BINGHAM: No, that was Mr. Brewer's going
    to make the motion on the two-and-a-half times that equals
    the 40 percent.
    MS. STINER: Did they put it back in there? Or
    is she just --
    MR. BREWER: I'm going to --
    MR. JONES: Okay. We will -- you ready, Mr.
Brewer?

MR. BREWER: I'm going to let Suzanne explain it and then I'll make a motion.

MR. JONES: Okay.

Suzanne?

MS. PHILLIPS: One of the comments that we received was from a -- one of the professional trainers for the Tax Credit Program. And he's pretty well known. I think he's also a member of the National Home Builders Housing Credit Group.

And he suggested that to the extent that we maintain the 2.5 times the tenant paid ratio that we would also allow a minimum income that would give the residents the ability to demonstrate that they have the financial ability to maintain their apartments in a sanitary manner, pay their utilities, in case their utility bills were greater than what the utility allowance defined.

And he suggested a minimum income of $1,500 per year. And based -- and he used that based on his review of hundreds of tax credit files across the country. We had other people who recommended higher amounts.

MR. JONES: Sure. Go ahead. Mr. Brewer?

MR. BREWER: You know, we did one thing that I -- we need just a little bit more discussion from the point of view --
Suzanne, I'd like you to look at this because this is what we, the Task Force, have come up with. And see if it's not saying the same thing that you are because I'd be more comfortable with these two suggestions really. Would you take a look at this? Because it's saying the same thing.

MS. BINGHAM: Yes, it's saying the same thing. Uh-huh.

MR. BREWER: But it's a little more comprehensive.

MR. JONES: Well, why don't we come back to you then, Mr. Brewer --

MR. BREWER: Let's do that.

MR. JONES: -- after she has a chance to look at that. Because Mr. Conine said he had something.

MR. CONINE: Back on page 24 of 33 we had the discussion of -- or at least, public comment relative to how much per project and how much per applicant and all that kind of stuff. And I don't want to mess with those numbers.

But there is one sentence in paragraph one there --

MS. BINGHAM: What exhibit is it?

MR. CONINE: I'm on page 24 of 33 right up at the top of the page. It's -- the top of the page says,
Number one, the Department shall issue tax credits. That paragraph. You got it?

MS. BINGHAM: Okay.

MR. CONINE: As it gets further into that particular paragraph, it says the -- "These limitations will apply to all affiliates of any applicant, developer, project owner, general partner, sponsor or their affiliates or related entities unless otherwise provided for by the Department."

I think I'd like to suggest a word change from, The Department to, The Board, so that we would be made aware if those have been made. There may have been some exclusions or some differences in the past that we haven't been made aware of. And so if we change Department to Board, that takes care of that.

I make that as a motion.

MS. BINGHAM: Could you read the whole thing again, please?

MR. CONINE: Sure.

"These limitations will apply to all affiliates of any applicant, developer, project owner, general partner, sponsor or their affiliates or related entities unless otherwise provided for by the Board."

MS. BINGHAM: Okay.

MR. JONES: So --
MR. CONINE: So we --

MR. JONES: -- we will accept that formal

motion. Is there a second?

MS. SAENZ: I second that.

MR. JONES: And it's seconded by Ms. Saenz.

Further discussion of the motion?

(No response.)

MR. JONES: All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No response.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: The ayes have it.

And anything else?

(No response.)

MR. JONES: Let me do this. I will -- I had asked the staff in preparation for our meeting, after going through public comment, to just not to say we were going to do it, but just say, prepare some language on certain issues to see if in fact, you know, the board wanted to make changes to them they could.

Let me raise a couple of those issues. And if
anybody does have a motion with regard to the issue, let me know because we do have some proposed wording. One was raising the non-profit limit to 20 percent as had been suggested. Any board member interested in that?

MS. SAENZ: I --

MR. JONES: Okay. Ms. Saenz --

MS. SAENZ: I'd like to see --

MR. JONES: -- would you like to make that motion?

MS. SAENZ: I will -- yes, I make that, that we raise the 10 percent for non-profits to 20.

MR. JONES: So Ms. Saenz would make the motion that we change Section 50.6(b)(1) and (4) so that the set-aside limit is raised from 10 percent to 20 percent. Is there a second to the motion?

MR. DAROSS: I'll second.

MR. JONES: Okay. The motion's been made and seconded. Discussion?

MR. BETHEL: Is that a floor or a -- that's a floor, isn't it? It's got to be 20 percent --

MR. JONES: Yes. It is a floor.

MR. BETHEL: It's a floor?

MR. JONES: What -- the 10 percent now --

MR. BETHEL: The 10 percent's a floor.
MR. JONES: -- is a floor. That's correct.

MR. BETHEL: So then we got -- if we do that we've got 20 --

MR. JONES: As a floor.

MR. BETHEL: -- non-profit, 15 --

MR. BREWER: -- rule --

MR. BETHEL: -- rule. What else we got?

MS. STINER: Elderly, 10.

MR. BETHEL: Ten for elderly at preservation?

MS. STINER: Ten percent across all of those set-asides. And how much they lease for general. It's 55.

MR. CONINE: You want ten for Lamesa, too?

MR. NJIE: No.

MR. CONINE: Is this the discussion period?

MR. JONES: It is.

MR. CONINE: I think that it would fly against what's happened in our -- some of our federal legislation here recently. And again, I think the market takes care of itself relative to the product that's awarded, the tax credits, not necessarily the tax status of the particular entity. So I'd have to speak against the motion.

MS. BINGHAM: I have to speak against it for the same reasons, that the federal legislation is moving against that direction, as well as the market issues.
And, in fact, that is a -- the 10 percent is not a ceiling, it's a floor.

MR. JONES: Further discussion?

(No response.)

MR. JONES: Are we ready to vote?

(No response.)

MR. JONES: I assume we are. All in favor of the motion, please say aye.

MS. STINER: Aye.

MR. JONES: All opposed to the motion, please say, nay.

(A chorus of nays.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: The nays have it.

MR. CONINE: Okay.

MR. JONES: The next one that was brought up in public comment was raising the maximum tax credit allocation to -- excuse me -- lowering it to 1.2 million, as opposed to 1.6 million. Is anybody interested in discussing that?

MS. BINGHAM: I am.

MR. JONES: Thank you, ma'am.

MS. BINGHAM: Although I agreed with a lot of the changes that we made last year, one of the things that
I can -- in my summary of them that we increased the red
tape, we lowered the dollar amount. So I don't see any
need to further reduce the amount.

Again, the marketplace will take care of that.

We have 30 million as opposed to 24 million. So I don't
see a need to lower the limit any further.

MR. CONINE: And in addition to that, I think,
again, speaking for some of the revitalization of some of
our inner cities and the definite need for affordable
housing in those areas, we may find that that 1.8 is too
small relative to providing some of that housing, and
raise it later on.

So I'd like -- at least from a public
standpoint, I'd like some input in those areas as you go
through your deliberations on trying to provide some of
that sort of housing.

MR. JONES: Then hearing no motion on that, I
will then move -- the Chair will move -- the other issue
that came up in public comment was Section 50.2.56, where
we had changed the definition with regard to non-profits
so that it now was simply an ownership interest, as
opposed to a local mission-driven non-profit that
controlled or materially participated in the development.

MS. BINGHAM: Oh, well, I need to determine --
before I comment I need to determine do we have non-
profit as identified by -- in two sections of the QAP, one, the definitions as identified by the IRS, so we can't change that.

The next one is when the non-profit is participating -- or when an applicant, whether he be for-profit or otherwise, go into business with a non-profit.

Hopefully, we haven't made it a shotgun wedding. But I'm trying to figure out -- if you could read that again? Why do we need to mess with the definition just because it's a -- I mean, is this a voluntary relationship, Cherno?

MR. NJIE: Yes. There are two provisions. One is the set-aside. In the set-aside --

MS. BINGHAM: One is the set-aside. You can't change that. That's the law.

MR. NJIE: That's correct. But one thing we have done that is quite apart from the law is to say that in the set-aside the non-profit must control the general partner.

MS. BINGHAM: That's --

MR. NJIE: Must be 51 percent.

MS. BINGHAM: -- law.

MR. NJIE: No, that is not law.

MS. BINGHAM: What is it?

MR. NJIE: That is Texas.
MS. BINGHAM: That's Texas? Okay.

MR. NJIE: Yes.

MS. BINGHAM: Okay. What does the law -- what does the federal statute say about the --

MR. NJIE: It merely --

MS. BINGHAM: -- 10 percent?

MR. NJIE: -- requires that the non-profit be a general partner and materially participate in the project.

MS. BINGHAM: And by materially participate, we have to assume that 51 percent is control?

MR. NJIE: Well, on -- in the set-aside that's correct.

MS. BINGHAM: Oh.

MR. NJIE: We have raised that standard.

MS. BINGHAM: Okay. So --

MR. NJIE: On the federal law --

MS. BINGHAM: -- where are you? Are you on the set-aside non-profit or are you on another non-profit?

MR. JONES: I'm on 50.2.52.

MS. BINGHAM: Which one is that? 50 point --

MR. NJIE: What page are you --

MR. JONES: And the public comment was that we had changed it. And they wanted it returned back.

MR. NJIE: That's correct. We have.
MR. JONES: Okay.

MR. NJIE: During the -- in the proposed QAP, we had deleted that language requiring control if you are participating in the non-profit set-aside. That has been restored.

MS. BINGHAM: Could the person who made the comment come up and let us know what area they are talking about so --

MS. STINER: Are they here?

MR. JONES: Sure.

MS. BINGHAM: Who was it?

MR. JONES: Mr. Ocanas.

MS. BINGHAM: Okay. Could he come up and tell us exactly what -- under which scenario he's talking about.

MS. STINER: Cherno, can you direct us to --

MR. JONES: Mr. Ocanas?

MR. OCANAS: Bottom of page 5.

MS. BINGHAM: Which section are you alluding to?

MR. JONES: Bottom of page 5.

MR. OCANAS: This is a non-profit -- the definition of a non-profit.

MR. NJIE: Look at page 5 of your document.
MS. BINGHAM: Okay.

MR. JONES: At the very bottom.

MR. NJIE: -- of the black line copy.

MS. BINGHAM: Oh, okay. Oh, under definitions.

Okay.

MR. DAROSS: We hadn't changed anything.

MS. STINER: That's the point. That's --

MR. DAROSS: Oh. We did it last year or the year before or --

MS. STINER: When was it -- oh, okay. I'm --

Cherno and Brooke --

MS. BOSTON: The difference is when we -- after -- based on public comment, we had a lot of comments saying, We would like you to reinstate control. We did do that. The difference is that we did not do it in the definition for non-profit -- qualified non-profit organization. We did it under set-aside.

That allows if someone is willing to do a joint venture, they can still qualify for the joint venture points without having to have control. They just wouldn't be in the set-aside.

MS. BINGHAM: They'd have to -- but they can participate?

MR. NJIE: That's correct.

MS. BINGHAM: And at any level. And that would
satisfy, in some cases, the syndicator because -- or they can switch roles during certain periods. For example, if you're doing construction, the syndicator may say, Well, I don't want to -- I need a for-profit entity to sign the guarantees until this project is built and beefed up and then we can reverse it. What you have done -- give that option.

MR. NJIE: That's correct. Look at page 10 of your -- where it's Re Set-Asides, regional allocation formula and set-asides.

MS. BINGHAM: In other words, if I sign a million -- $10 million note I want control until -- and I can reverse and give the non-profit management and let them work on it after my guarantees are run off and I'm no longer liable for the debt or --

MR. OCANAS: I guess my comment was -- and maybe it has been satisfied by the staff -- why bother removing it from the qualified non-profit definition? What's the benefit to the Department or to the program?

MS. BINGHAM: Well, the benefit --

MR. NJIE: Because --

MS. BINGHAM: -- under the 10 percent set-aside --

MR. OCANAS: No, I understand.

MS. BINGHAM: Okay.
MR. OCANAS: What I'm saying --

MS. BINGHAM: Okay.

MR. OCANAS: -- is under the definition of non-profit, it was removed. It's still in that set-aside. Maybe my concern is satisfied there. But why did you bother removing it from the definition?

MR. NJIE: Because it would impede the joint venture relationship that we fostered --

MS. BINGHAM: Right.

MR. NJIE: -- in one of our exhibits. In other words, we -- generally, non-profits are less experienced than for-profit developers. We wanted to foster a relationship between non-profits and for-profit without prescribing that the non-profit maintain control, without prescribing either maintain control. That is purely a business decision that has to be worked out between the parties.

MS. BINGHAM: Right. And it may reverse -- it may be one control during construction. When the guarantees run off then it could be non-profit total control. It -- but it's a business decision. It's a --

MR. CONINE: I like the current language.

MR. OCANAS: Thank you.

MR. JONES: Thank you.

Okay. No interest in that. The last one that
I'll bring up is the public comment, the suggestion -- well, really two more -- the suggestion that former staff and board members be prohibited from involvement with submitting a tax credit application for three years after they leave the Department or board.

Any board member interested in that?

MR. BREWER: Should be whatever the law says, not -- I don't --

MR. CONINE: We have a -- there's a state statute already, isn't there, on --

MS. BINGHAM: Yes. We got a revolving door statute that's currently under the law.

MR. CONINE: Okay.

MR. JONES: No interest in that. And then the final one was -- the final suggestion that we've heard in public comment was the prohibition of ex-parte contact with board members by developers. Any board member interested in that?

MR. CONINE: You know, on the one hand that sounds good just offhand. But --

MR. DAROSS: Sounds wonderful.

MR. BREWER: Sounds good to me.

MR. CONINE: You know, I tend to -- before I make decisions like to get as much input as possible. And a lot of times just a notebook full of papers is not the
best way for me to hear about something. So I -- you
know, I -- you know, I have mixed emotions. One of those
favorite mixed emotions on that one.

MR. JONES: Well, I'm just bringing it up if
there's any board member that wants it discussed or wants
to make a motion on it.

MR. DAROSS: Well, let me go ahead and make a
motion that developers be prohibited from ex parte
communication with board members. Now, the time period is
where I have a problem with it. Is it just during the
application period that was suggested or totally?

MR. JONES: Well, I think that's up to us.
I -- you know, I think -- you know, the time period that
would be -- to me if you were going total quote unquote it
would be from the time the application is submitted until
the time it is either approved or not approved by the
board. That's the total time period. I don't see any
other time period.

MS. BINGHAM: I, too, have mixed emotions about
it. But the biggest concern I have about it is, you know,
you describe contact. And I know what the revolving door
policy at the -- that's already a part of the law talks
about is with the intent to influence.

So, you know, in order to deal with it, you got
to know -- you got to be listening to the conversation
almost. It creates a burden of, Yes, you talked to Paul
but what did you talk to him about.

    I know in my life I serve as Director of
Housing for the City of Houston and serve on boards with
some developers who develop tax credits. Some of them do
business with the City of Houston.

    So it's similar to the revolving door policy to
state you're supposed to -- you're not to contact them
with intent to do something. Who defines intent?

    I think one of the things the rule would do is
just to -- the honest people will get penalized and those
who want to talk and lobby -- it's like gun control.

    MR. DAROSS: Well, having had some experience
with the --

    MS. BINGHAM: All of the criminals end up with
them.

    MR. DAROSS: I've had some experience with the
rule against ex parte communication. And that's with
attorneys and -- had cases in front of me as a judge. It
did not prohibit communication with those attorneys
altogether.

    MS. BINGHAM: Uh-huh.

    MR. DAROSS: It prohibited any kind of
communication with respect to the case that was in the
court.
MS. BINGHAM: I -- yes. I understand. And, you know, even with lawyers there's a club. So, you know, if you're another lawyer that attend a social function, you get an opportunity to discuss whatever you want to talk -- to discuss. It's just the people who wouldn't normally be privileged enough to be in those settings.

So I think this is the same kind of rule. And like I said about gun control, you know, you can control folk lives to the extent that only the criminals got a right to carry a gun because the law-abiding citizens get strangled by laws and regulations. I think this is just a typical example of that. And I can't support it.

MR. JONES: Well, we have a motion. Do we have a second?

MR. BETHEL: No, I wasn't going to second it.

That's --

MR. JONES: Is there a second to the motion?

MS. SAENZ: I second.

MR. JONES: Okay. The motion has been made and seconded.

Would you like to discuss it, Mr. Bethel?

MR. BETHEL: Yes. The problem I have with this -- if you're in a city like Houston with, you know, there's a little different thing about like, Margie -- developers in Houston.
But you -- where we are -- and you have like, Lamesa and your next door neighbor is doing a -- I mean, not your next door neighbor, but it is next door, 30 miles or something, they're doing a project --

I don't know how -- I would think that the board would have to just -- yes, you'd have to be self-governing. And it's the same thing if there's a bill coming before the Legislature, well, you talk to your representative or senator -- I just have a problem with it. And I don't know how to -- it's going to be self-enforced, I guess. I don't know.

MR. JONES: You know, I'd respond to that, Mr. Bethel, by just saying, I -- you know, I'm familiar, as Judge Daross is, with ex parte rules concerning judges. And they work quite well in my opinion. I think they're very easy to enforce.

MR. BETHEL: Yes?

MR. JONES: I would have to say that I believe the vast majority of lawyers would never talk to the judge about a case pending in front of him. I mean, that is just unthinkable for most of them. Now, some people may debate that. But I believe that in my --

MR. BETHEL: Are you saying that --

MR. JONES: -- heart to be true.

MR. BETHEL: -- lawyers are more honorable
than --

MR. JONES: No. I --

MR. BETHEL: -- developers?

(Laughter.)

MR. JONES: No. I'm saying that --

MR. BETHEL: You said it. I didn't. But it sure was sweet to hear those words. No doubt about it.

MS. BINGHAM: Well, you're the only that believes it, if you do.

MR. JONES: And, Bethel, you're going to believe -- yes, you're going to hear about it the rest of your life then, boy.

Anyway, what I -- my comment is this. That I think if you had such a rule -- I respect developers. I think they'd respect it. I think that if a developer called you up and said, You know, I want to talk to you about this project, you'd say, Hey, I really can't do that, that they'd understand that.

I think that if you had such a rule, it would make it easier for the board members through this season. I think you'd get, you know, more people to be willing to do what we do, perhaps, if you had such a rule.

And then finally, I think if you had such a rule, it puts the decision-making process, other than the approval, right where it belongs. And that's on staff.
And doesn't get the board involved in it at all.

So I think that there's some good points to it.

So I would just, you know, just raise that in rebuttal to your statement.

MR. BETHEL: Yes. Would that include printed material that's sent to you?

MR. JONES: It does include that. Sure it would.

MR. BETHEL: I might go along with that.

MR. JONES: But anyway, we have a motion and second. Any further discussion of the motion?

(No response.)

MR. JONES: Okay. Hearing none, are we ready to vote?

(No response.)

MR. JONES: All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(A chorus of nays.)

MR. JONES: Okay. And abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: Okay. So let me -- all in favor of the motion, please raise your hand. Okay.
All opposed to the motion, please raise your hand.

The motion carries.

Anything else? We've got Mr. Brewer's issue that's on the table.

MR. BREWER: You've got it done?

MS. BINGHAM: Oh, we're going to leave him behind. He is operating too slow here.

MS. PHILLIPS: Ms. Cedillo asked me whether or not establishing a -- an addition to the 2.5 -- how a minimum or a floor would affect the population with disabilities. And a brief conversation in the hall with Ms. Langendorf -- because she asked that I put back on the table the discussion that the Task Force had when they initially put the 2.5 multiplier on the table.

MS. BINGHAM: Well, let me interrupt you.

MS. PHILLIPS: Okay.

MS. BINGHAM: Well, what did Mr. Brewer request that you do?

MS. PHILLIPS: He had --

MS. BINGHAM: Why don't we get to what he --

MS. PHILLIPS: He asked me to take the Task Force --

MS. BINGHAM: Look at that.

MS. PHILLIPS: Uh-huh.
MS. BINGHAM: Okay.
MS. PHILLIPS: -- which is the 2.5.
MS. BINGHAM: Okay.
MS. PHILLIPS: And does -- it does not contemplate a floor or a minimum income.
MS. BINGHAM: Okay.
MR. JONES: Isn't that where we're at though, as to whether or not to use the 2.5?
MS. BINGHAM: Yes, that's what I thought. I thought we --
MR. JONES: All right.
MS. BINGHAM: -- had graduated to -- at least to that point.
MR. JONES: Yes. I think that's where we are. So --
MS. PHILLIPS: All right.
MR. JONES: Is there a motion?
MS. BINGHAM: Mr. Bethel won't get to Lamesa tonight if we keep on.
MR. JONES: Is there a motion in this regard?
MR. BREWER: Yes. I would make a motion that we use the 2.5
MS. BINGHAM: And --
MR. JONES: Which would be to re-insert that language that was in there.
MR. BREWER: To re-insert the language.

MS. BINGHAM: I second it. And with the comment that it equals the 40 percent, according to HUD rules -- according to Mr. Freedman.

MR. CONINE: What page is that on again one more time?


MR. CONINE: Twenty-six. The problem I have with it is that every human being and family --

MS. BINGHAM: What --

MR. CONINE: Twenty-six.

Needs some sort of minimum daily living allowance in a property. And if their income is, you know, a hundred dollars a month --

MS. BINGHAM: Why don't you show him the sheet that Mr. Brewer had? I think it explains that. Let him see the example. It explains that.

MR. CONINE: Again, there's no floor in this. I'm trying to create a --

MS. BINGHAM: Okay. I --

MR. CONINE: Okay.

MS. BINGHAM: -- understand that point.

MR. CONINE: A floor.

MS. BINGHAM: I understand where you're coming from.
MR. CONINE: Because we're all for mixed income projects and we'll all for all that kind of stuff. But there -- I mean, just to eat and pay utilities and --

MS. BINGHAM: Uh-huh.

MR. CONINE: -- it requires something. And I think to force that same owner who's put his name on his -- on the guaranty on that note -- to put at risk, you know, even though he's getting the rent --

MS. BINGHAM: Why don't you suggest a floor?

MR. CONINE: Oh, now you're -- now this is the hard part.

MR. BREWER: Well, Suzanne, why don't you -- have you got a floor --

MS. BINGHAM: Huh?

MR. BREWER: -- on that?

MS. BINGHAM: But Mr. Brewer got some -- sat on the committee and he got some issues about having something.

MR. CONINE: I personally -- you know, I don't know what minimum wage is and all that kind of stuff. And of course, the disabled don't get a chance to work 40 hours a week. I understand that. But to me, you know, it takes --

MS. BINGHAM: Mr. Chairman, could I make a suggestion?
MR. CONINE: Yes.

MR. JONES: Certainly.

MS. BINGHAM: Could we -- Mr. Conine is in building and in property management. Mr. Brewer sat on the committee. Can we approve this document subject to their review and come up -- and have enough -- a final something on it?

MR. JONES: I don't know that you can do that legally. I -- you know, I don't think we can, Ms. Bingham. I'd be --

MS. BINGHAM: Well, then we're going to need another break then.

MR. JONES: Well -- or either that or -- you know, I really think that if we don't pass the motion, we will adhere to Mr. Conine's concerns. I mean, I understand his concerns.

MR. CONINE: I'm just trying to amend the --

MR. JONES: We could -- yes, I understand that. But I mean, we're either going to have to pick a figure, which I think is going to be very hard to do and that's what everybody is having trouble with -- and that's where the motion, I think, gets killed -- or it doesn't get killed -- but where the motion becomes very hard to draw up.

It's because nobody asked to sit on this dais
has a figure in mind for this floor that you're suggesting. It's been suggested several times now and nobody has a figure.

I think if you leave it as vague as it is when it was originally presented by staff, your concerns are accommodated.

MR. CONINE: Right.

MR. JONES: I think we can change it as Mr. Brewer has suggested it be changed -- we have a motion on the floor to that effect, it's been seconded by Ms. Bingham -- then I think that, you know, unfortunately your concerns are not alleviated, but the other concerns are, you know, sustained. It's either that or we just pick a figure and put it in there.

MR. CONINE: Yes. If a family of four is paying $4 a month out of his pocket for the rent and the Section 8 voucher's picking up the rest and he's making $10 a month then he qualifies under the two-and-a-half rule. And I just think that's ludicrous.

MR. JONES: And I guess I think that's when you'd vote against the motion.

MR. BREWER: Well --

MR. CONINE: Okay.

MR. JONES: Unless there's a figure to put in there for the floor. I mean, if there is one --
MR. BREWER: Suzanne looks like she wants to say something.

Go ahead.

MS. PHILLIPS: Well, to go back to the Task Force, some of the issues -- this issue was discussed at great length. And what was suggested as part of the --

MS. BINGHAM: Where is Mr. Henneberger? Didn't he bring up this issue?

MS. PHILLIPS: -- was that the owners would then also be allowed to have criteria that included credit reports, criminal history and those -- I think there were four -- I go back to the -- credit, criminal and rental history could also be taken into account.

So in addition to the 2.5, there were additional criteria that an owner could use that would allow him to turn down a Section 8 tenant who had, you know, a negative credit history, a negative rental history or a criminal record.

And the Task Force believed that --

MS. BINGHAM: Well, don't --

MS. PHILLIPS: -- that that would take into account those issues.

MR. CONINE: There may be a better way to solve this. And that's that hundred percent paragraph -- sentence right above that, If Section 8 pays 100 percent
of the rent, the project owner may establish other reasonable minimum income requirements. Why does that hundred percent have to be there? Why can't it be 80 or 70 or some other number?

MR. NJIE: It can be.

MR. CONINE: If we did that, then my concern about the guy who's just going to pay $4 a month out of his pocket goes away.

Because if the market rate for that unit's 400 bucks then if that number was -- I'm not that good at math -- but if that number was 80 percent then he'd be paying $80 a month and 80 times two-and-a-half would be whatever that number is. Maybe the right number is 70. I don't know. I'm thinking out loud here, obviously.

But --

Any comments from the public?

(Laughter.)

MR. CONINE: Oh, gosh. Not them.

MR. JONES: Mr. Henneberger?

MR. HENNEBERGER: I can spare the board. My name is --

MS. STINER: Mike?

MR. HENNEBERGER: My name is John Henneberger. I'm the co-director of the Texas Low Income Housing Information Service.
Mr. Conine, I understand your concern. But I really think that the HUD -- if you look at it, there are -- this is not unique to the Tax Credit project. I mean, other landlords, private landlords who don't take government subsidy, other landlords who have HUD properties and the like who take Section 8 tenants are -- We allow HUD to promulgate a set of regulations which defines what reasonable rent is on the part of the tenant. And the federal government guarantees the balance of the rent.

So really, you're -- we're trying to create a special set of minimum rent categories that apply just to Tax Credit projects when I really don't think we have to do that.

MR. CONINE: Well, there's one major difference.

MR. HENNEBERGER: I wish Mr. Clark was here.

MR. CONINE: There's one major difference. We're signing personal guarantees on notes on these projects. And in your other example, they're not.

MR. HENNEBERGER: Oh, but they are. They clearly are.

MR. CONINE: Well, not --

MR. HENNEBERGER: I mean, private landlords do and -- as do --
MR. CONINE: 221(d)(4)s -- last time I --
221(d)(4)s don't require personal guaranty, I don't believe.

MR. HENNEBERGER: Well, a (d)(4) might not.
But you know, certainly a privately own -- private -- but irregardless of that, you know, if --

MS. BINGHAM: Irregardless of that.

MR. CONINE: Yes. I mean, that's a big thing to me.

MR. HENNEBERGER: Well, but -- I mean, where -- the -- HUD is guaranteeing that the rent will be paid.

MR. CONINE: I understand that.

MR. HENNEBERGER: So the liability becomes an issue of a management issue, as I understand your concern. It's one of, Is this tenant going to trash the place, Is this tenant going to be a bad tenant in some way and, Is the minimum income standard a good way to be able to judge whether they're a good tenant.

The Task Force talked about this like for three days. And what we came up with, with the Apartment Association agreeing with us, Mr. Clark and others here in this room, we decided that we needed to leave in place all of the other standards, that you could get credit reports, criminal background checks, all of those type of things. Those are the good management tools which are in place.
that allow an owner to be able to exercise the type of
discretion that they need.

But this income issue had -- that it's sort of
been hijacked, if you will, as a vehicle to exclude
Section 8 tenants from occupancy in the thing.

But that those other tools were sufficient to
allow the owners of those properties to guaranty that if
they had a bad tenant, they had somebody who had no income
and had trashed the previous place where they had lived or
who had, you know, just come out of prison and didn't have
a job and that type of thing, you could do the criminal
background check, you could do the other property
reference check, you could do the -- you could do all
the -- the credit report.

You can do all that type of stuff but you just
can't use the minimum income standards as a subterfuge to
get around the requirement -- the federal requirement that
Section 8 tenants are allowed to reside in tax credit
projects. This is the only thing we're asking for in
this.

And this is the central point, I think -- this
is the most important thing that the Task Force struggled
with. Certainly, the most contentious thing.

And we did get, as Mr. Brewer I think will tell
you, a unanimity of -- a reluctant unanimity of opinion,
including my own, because I wanted more. But, you know, I mean, I think we constructed a standard that we thought could get us there.

MR. CONINE: Can you speak to my comment about the hundred percent and whether that should be -- could be something less and why a hundred and --

MR. HENNEBERGER: I'm sorry. I --

MR. CONINE: It -- in our language that the committee provided it says, However, Section 8 pays a hundred percent of the rent for the unit. The project owner may establish other reasonable minimum income requirements to ensure that the tenant has financial resources to meet daily living expenses.

And I guess what I'm suggesting -- and I'm kind of hanging on this 80 percent number and the more I think about it -- because that at least provides indirectly a minimum standard that -- letting me know it's not ridiculous -- letting me know it's not zero.

MR. HENNEBERGER: Okay. I'm having just a real difficult time getting my brain around this one. I'm sorry.

MR. NJIE: It's in that language there, right there.

MS. PHILLIPS: It's underlined.

MR. NJIE: It's underlined.
MR. HENNEBERGER: Well, there's a whole page of underlined data. The -- what you're saying is that you would not apply this standard -- I'm sorry.

MR. BETHEL: It's under B. Start at the bottom. Go up to B.

MR. HENNEBERGER: Okay.

MR. CONINE: It's Section 8 pays --

MR. HENNEBERGER: Yes.

MR. CONINE: Up to 80 percent of the rent. And the owner could establish the amount of other minimum income.

MR. HENNEBERGER: Well, you know, I think then -- you know, I don't see what that gets us really. I mean, what -- how does that resolve the problem that you --

MR. CONINE: Well, if a guy -- if Section 8's paying 90 percent --

MR. HENNEBERGER: Yes?

MR. CONINE: -- then he would have to make other income requirements if --

MR. HENNEBERGER: Well --

MR. CONINE: -- at 80 or below he could do the two-and-a-half test and be done.

MR. HENNEBERGER: I guess the logic of it -- and it seems to me like what we're trying to do is we're
trying to open up Tax Credit projects to tenants who have HUD Section 8, not just to tenants who have virtually no income and get HUD Section 8. But to all tenants.

And there are many working tenants who have Section 8, they got as low-wage job. A lot of people move from welfare to work that have got these welfare Section 8 certificates.

MS. BINGHAM: Give me an example of a tenant who would, I guess -- who -- what kind of tenant do you have that Section 8 is paying a hundred percent of their rent?

MR. HENNEBERGER: It's probably going to be a disabled person.

MS. BINGHAM: Okay. That's what I'm saying. Disabled person, 80 year old person living in -- lying in his bed with home health care coming in may have a hundred percent of his rent paid by Section 8. No other income.

So under your scenario, Mr. Conine, you wouldn't serve that person?

MR. CONINE: Well --

MS. BINGHAM: Look up. Because --

MR. CONINE: Social security income.

MS. BINGHAM: -- they're paying a hundred percent versus 80 percent or 90 percent.

MR. CONINE: All right. Social security income
would be there under your example.

MS. BINGHAM: Well --

MR. HENNEBERGER: Well, but --

MS. BINGHAM: -- some people don't have social security benefits.

MR. HENNEBERGER: And part of it gets into how -- what's defined as income --

MS. BINGHAM: And those are the ones that find themselves in public housing.

MR. HENNEBERGER: -- as the housing authority calculates.

MR. CONINE: I want to let Henneberger win one. Let's go.

MR. HENNEBERGER: Bless you.

MR. JONES: We have a motion. We have a second. Are we ready to vote?

I'll kill you. I swear I'll come down there and kill you.

(Laughter.)

MR. JONES: We have a motion. We have a second. Are we ready to vote?

(No response.)

MR. JONES: All in favor of the motion, please say aye.

(A chorus of ayes.)
MR. JONES: All opposed to the motion, please say nay.

(No response.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: They ayes have it.

All right.

MS. STINER: You finished?

MR. JONES: I'm finished.

MS. STINER: There was a typo on a provision in the QAP that the staff would like to correct.

Cherno, I'm trying to look for a cite. It's 50.7(e)(3)(e). Just give the page number.

MS. BINGHAM: What's that?

MS. STINER: It's a typo.

MS. BINGHAM: Oh, yes. That's right.

MS. STINER: 50(e). They're going to give you a page number in just a minute. I'm citing the cite.

50.7 --

MR. NJIE: It's on page 20.

MR. CONINE: That a boy.

MS. BINGHAM: Okay.

MR. NJIE: At the top of the page the item F dealing with density. "Proposed development is designed as a multi-story elderly development or highrise of a
project." The 20 should be a 21 to 24. And the 25
should -- the second item should be 25 units per acre to
28 units per acre.

MS. BINGHAM: Twenty-five instead of that 24?
MR. NJIE: That's correct.
MS. BINGHAM: I make a motion that we accept
that.
MR. BETHEL: Second.
MR. JONES: Motion's been made and seconded.
It was made by Ms. Bingham and seconded by Mr. Bethel.
Discussion?
MR. CONINE: Are we capping out at 28?
MR. NJIE: That's correct. Yes.
MR. JONES: Discussion?
(No response.)
MR. JONES: Are we ready to vote? I assume we
are. All in favor of the motion, please say aye.
(A chorus of ayes.)
MR. JONES: All opposed, nay.
(No response.)
MR. JONES: Abstentions?
DR. GRIFFIN: I abstain.
MR. JONES: The ayes have it.
MR. NJIE: The other one was on page 12
regarding the accessibility for persons with disabilities.
We wanted to ensure that for projects designed as townhomes that all units must meet fair housing. All units -- let me see. Oh, okay. Let me read the exact language.

"The amendment will commence up to 5 percent of all tax credit of restricted units. The project owner shall provide reasonable accommodation or modifications on a one-time basis in conformance with the ANSI standards as required by the tenant with disability. Project owner shall incur the related costs for the reasonable accommodation and/or modifications.

"Properties that are designed as townhome units, the project owner must include one bathroom and one bedroom on the ground level of all units."

So we are adding, Of all units, to ensure that project owners understand that we're not just talking about 5 percent, we're talking about all units.

MR. BETHEL: I make a motion we accept that.

MR. BREWER: Second.

MR. JONES: Motion's been made and seconded.

Discussion?

(No response.)

MR. JONES: I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)
MR. JONES: All opposed, nay?

(No response.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: The ayes have it.

Does anybody have anything further?

If not, Ms. Bingham, would you like to make the blanket motion?

MS. BINGHAM: Oh, okay. I would move that the board accept and recommend to the Governor the 2001 Qualified Allocation Plan with the changes that have been adopted by the board up to this point.

MR. BREWER: I second it.

MS. BINGHAM: Cherno, do we need to repeal the other one?

MR. NJIE: We will do that after this one is signed.

MS. BINGHAM: Okay.

So that's my motion.

MR. JONES: The motion's been made. Is there a second?

MR. BREWER: Second.

MR. JONES: It is seconded by Mr. Brewer.

Further discussion of the motion?

(No response.)
MR. JONES: Hearing none, are we ready to vote? I assume we are. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: all opposed to the motion, please say nay.

(No response.)

MR. JONES: Abstentions?

DR. GRIFFIN: I abstain. And I'd like to note that I abstain involuntarily because of the Attorney General's opinion so as not to delay the board's progress. And I'd like for that to be in the minutes.

MR. JONES: Thank you.

The ayes have it.

Ms. Bingham, Item 2(b).

MS. BINGHAM: Okay.

MR. CONINE: I thought we did that as --

MR. JONES: Have we done that as part of this?

MS. STINER: Yes, we did that as part of the --

MR. JONES: Is that to be included in the prior motion?

MR. CONINE: He read it into the record. I know that.

MS. STINER: Yes.

MR. JONES: Okay.
MS. STINER: Did we get all of them in now, Cherno? Okay.

MR. JONES: So those amendments have already been adopted by the board?

MS. STINER: Yes.

MR. JONES: Thank you.

MS. BINGHAM: We've got that.

MR. JONES: All right. We will then move to Item 3 on the agenda, which is the approval of the 2001 State of Texas Low Income Housing Plan and Annual Report.

Ms. Stiner?

MS. STINER: Thank you, Mr. Chair. Sara Dale Anderson [phonetic] will be making the presentation on behalf of --

MR. JONES: Oh, excuse me. We're going to have to take a five-minute recess at this point. Thank you very much.

(Whereupon, a short recess was taken.)

MR. JONES: I call the meeting back to order.

Ms. Stiner?

MS. STINER: Thank you, Mr. Chair.

Sarah Dale Anderson will make the presentation on behalf of Staff; they've had a real thorough public hearing process on the State Low Income Housing Plan, and she's going to present it. We have some legislative
mandates that have been included in it that she will
highlight, and I think she -- at the end, she will talk
about some potential changes that relate to changes in the
QAP that we just made.

So I will turn it over to Sarah, Ms. Anderson, and let her walk us through that.

MS. ANDERSON: Thank you. For the record, my name is Sarah Anderson; I'm the Director of Strategic Planning in the Housing Resource Center.

I was actually going to ask if the Board would like me to go through general issues in the Low Income Housing or if you'd like me just to cut to changes in the plan.

MR. JONES: I'd -- you know, whatever they want you to go through, why don't you let them ask you?

MS. ANDERSON: Okay.

MR. JONES: But why don't we cut first to the changes? And then I'll leave it up to Board members to ask what they wish to inquire about.

MS. ANDERSON: Okay. You have before you a list of four changes and two potential changes. The first two will look familiar; they are identical to changes that were made to the five-year or -- three-year consolidated plan that was brought before the Board in the December board meeting.
The first -- it's on page 137 -- involves a portion of the HOME action plan and, specifically, a $500,000 set-aside within the HOME program for the Texas Home of Your Own Coalition as that has been a partnership between -- that the agency has been with HOYO, we felt that the language -- the following language should be included, that being: "To ensure the continued success of the Coalition, $500,000 of the special needs set-aside will be reserved for HOYO."

In addition, the second, as I mentioned, was also -- the second change was also part of the consolidated plan. And it was just the removal of a line which had to do with consultants and CDBG. Both of those were approved by the Board last board meeting.

The third has to do with a performance measure number that was reported for the Tax Credit Program. Initially, it was reported that they did 8,887 units in 2000. Those numbers were adjusted -- what went to LBB -- and that has been changed to 10,720 units.

The fourth has to do with the inclusion of the summary of public comment in the appendix: Two potential changes for which we can't -- I can't -- I could not have brought before the Board before now. One has to do with any changes that came with the Qualified Action Plan. As you've just voted, the plan will reflect those changes.
within the program statement for the Tax Credit Program.

Also, the second one has to do with -- we're currently in the middle of working with HUD on our three-year plan. There will be possibly some changes to program statements having to do with the CDBG, HOME and ESG programs. Those will be reflected, also, in the Low Income Housing plan if we have to make any changes.

And that would be it for changes; otherwise everything is as it is, and you have the copies of the plan. And I'll take any questions if you have any.

MR. CONINE: A real generic question. Those who like to critique the Department and the agency have all -- have said we don't have a plan. You know, I keep hearing that even legislatively, we don't have a plan. Have you responded in those changes to some of those issues in this plan? And overall, do you feel like it's a worthwhile path to follow?

MS. ANDERSON: I think that we've made initial changes toward that. To have a real plan requires a lot more demographic information and a lot more research than what the agency currently has. And, as you know, in our exceptional items request, we have put forward to have more employees out in the field doing research to be able to put together a 10-, 20- or 30-year plan.

This is a step ahead from last year. It takes
into account the funding as far as what we have, and it
puts a -- it has laid out a strategic plan and a
subsequent action plan.

So I would say that from the previous years,
yes, it's more of a plan that I think the legislature
specifically is looking for -- and the constituents. I
wouldn't say that this is the ultimate and best we can do,
but we're certainly working toward getting there.

MR. CONINE: What would you -- are there some
resources you need to improve upon this plan next year?

MS. ANDERSON: For the most part, the resources
are staff and the money to pay them, and travel, et
cetera, and that's what we've put in in our exceptional
items request: Six additional employees to work in the
field to do research, to work with local entities to do
market -- generally market-type studies and that sort of
thing, centralizing the information so that we can put
together a statewide plan.

MR. BREWER: Sarah, how do you feel that we did
in meeting our plan and everything for the past year?
Because it looked like -- it looks like -- to me from the
plan for last year, we did a lot of good things --

MS. ANDERSON: Oh, certainly. I think we've
done --

MR. BREWER: -- and met a lot of goals and had
a lot of great -- good things happen --

  MS. ANDERSON: Yes.

  MR. BREWER: -- in affordable housing.

  MS. ANDERSON: Definitely. I think that the agency did a wonderful job of addressing the legislative bills that came through last year, pilot programs -- addressing those issues. Our performance measures for this year are really high; it hasn't been verified yet by the LBB, but they're upwards of 89 percent.

  I think the agency has certainly improved in its numbers but, also, in its attempt to work with outside entities and folks in inclusion with agency programs.

So --

  MR. BREWER: Well -- and I think we -- 89 percent is a great accomplishment, working with the bureaucracy and the things that we endure with the things that are leveled on us. So I appreciate your comments.

  MS. ANDERSON: Thank you.

  MR. DAROSS: I move that we adopt the 2001 State of Texas Low Income Housing Plan and Annual Report with the amendments that were suggested just to us by Ms. Anderson.

  MR. JONES: We have a motion.

  MR. CONINE: Second.

  MR. JONES: And there's a second. Further
discussions --

DR. GRIFFIN: Yes.

MR. JONES: -- or comments?

DR. GRIFFIN: Mr. Jones --

MR. JONES: Yes?

DR. GRIFFIN: -- I have discussion.

Just informally, at the break, you informed me that you and the Attorney General had decided that I could not participate in this item. Is that still your desire: To deny me the right to participate in this, as you did Item Number 2? This is Item Number 3 on January 26, 2001.

MR. JONES: Let me be very, very careful in how I respond to that. I and the Attorney General and members of HUD who've sent certain demands and letters to us have met and tried to determine those items on the agenda that HUD believes you can participate in and those items on the agenda that you cannot. Your attorney was invited to be part of that meeting; he chose not to be.

The Attorney General has been advising me on where she believes HUD feels, under the communications they have sent to us, the items are that you can participate in and you cannot participate in.

If you insist on participating in items that HUD has told us that you should not participate in, the Attorney General -- and I think I quote her right, and,
certainly, you know, you're entitled to come on this record any time you want to -- has told me that we have no option -- because we cannot bar you from participating, we have no option but to seek relief from a court before the Board goes any further.

DR. GRIFFIN: Well, thank you, very much, Mr. Chairman. I was simply asking a question. So I think that with that explanation, you have explained it. In essence, you are barring me from participating. And I voluntarily accept your bar, but I just needed it in the minutes. Thank you.

MR. JONES: Okay. And my statement stands for what it is.

DR. GRIFFIN: And so does mine.

MR. BETHEL: We have a motion and second.

MR. JONES: We have a motion. It has been seconded. Further discussion?

(Pause.)

MR. JONES: Are we ready to vote? I assume we are.

All in favor of the motion please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion please say nay.

(Pause.)
MR. JONES: Abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: The ayes have it.

We'll move to Item 4 on the agenda, which is the presentation, discussion and possible approval of the report from the Audit Committee.

Mr. Conine?

MR. CONINE: Thank you, Mr. Chairman.

In your board package, there's one action item I'd like the Board to take action on; it's a resolution which requests for the establishment of an Administrative Fee Reserve threshold.

The recommendation by Staff recommended that the Board approve a resolution establishing a maximum threshold for the Administrative Fee Reserve expenditures of $100,000 per fiscal year that may be charged against the Administrative Fee Reserve without specific approval from the Board and the authorization of the executive director is approved, expenditures which may be made from the Administrative Fee Reserve for other housing purposes that do not exceed the maximum threshold amount established.

In essence, what that says is we're giving the executive director the latitude to spend up to 100,000 out of our reserve and anything above that comes back before
the Board. The Audit Committee unanimously recommended to approve this to the Board, and I so move.

    MR. BREWER: I second it.

    MR. JONES: We have a motion and a second.

Further discussion of the motion?

    MR. CONINE: Let me amend it to say Resolution Number 01-02.

    MR. JONES: We have a motion that has been made and seconded. Any further discussion of the motion?

    (Pause.)

    MR. JONES: Hearing none, are we ready to vote? I assume we are.

    All in favor of the motion please say aye.

    (A chorus of ayes.)

    MR. JONES: All opposed to the motion please say nay.

    (Pause.)

    MR. JONES: Abstentions?

    DR. GRIFFIN: I abstain.

    MR. CONINE: One other point of information, if I might, Mr. Chairman? The Audit Committee has completed the performance evaluation of our internal auditor, Mr. Gaines. And I'll just -- can I quote from the last line? "From the committee's perspective, Mr. Gaines performs admirably and professionally."
And I think that that process went well and has been done. And his performance -- written performance evaluation will be on file if any of the board members care to review it.

MR. JONES: Thank you, Mr. Conine.

Okay. We'll then move to Item 5 on the agenda, which is the presentation, discussion and possible appointment of committee by Board to develop appeals process for agency housing programs.

Ms. Stiner?

MS. STINER: Thank you, Mr. Chair.

Several of our major divisions within the Department have an appeals process, including CDBG and some of our community affairs division. The Housing programs divisions do not have an appeals process once a decision is made.

Additionally, one of the recommendations that came out of the Sunset review of the agency and which will be contained in a bill that they're moving through the legislature this session has to do with establishing an appeal process for the Tax Credit Program.

So what we want to present to the Board today is a recommendation for the Board to establish an internal committee to start working on an appeal process for the housing programs across the board. We thought that we
didn't want to do one for the Tax Credit Program in isolation; we wanted to cover all of the housing programs. So Mr. Burrell has come up with the recommended names of some staffers, but we'd like very much for the Board to appoint a board representative if that's your desire.

Mr. Burrell?

MR. BURRELL: Good afternoon.

DR. GRIFFIN: Do you have that list?

MR. BURRELL: Good afternoon, Mr. Chairman, members of the Board and Ms. Stiner.

MR. JONES: If you would, hold that up. I think --

(Pause.)

MR. JONES: Thank you, sir.

MR. BURRELL: As Ms. Stiner was saying, during the Sunset Commission review, it was recommended that we establish a board appeals process committee. And we had worked with Ms. Stiner back during the fall to try to come up with some programs.

And now we are requesting that the Board approve -- appoint a committee which would be primarily staff members, but we also want to request that the Board appoint one board member which would be on that committee to represent the Board while we're developing the
committee and information. And then, upon completion of an appeals process, then we would bring the policy back to the Board for approval so that we would have a complete operating process here.

At the current time, we have the process in the CDBG program and in community affairs. And we'd like to make sure that housing has something very similar to that.

MR. JONES: And who would the folks be?

MS. STINER: You gave me a list, and I don't have it, Mr. Burrell. Do you have your list?

MR. BURRELL: Yes. I have a list here.

(Pause.)

MS. STINER: It would be my suggestion that it be: A board representative as determined by the Board; David Burrell, who is Director of Housing Programs; Tom Gouris, who is Director of Underwriting; Sandy Mauro, who is Director of Community Development; and Ann Paddock from our legal department. Those are the recommended, of course -- and Ms. Groneck, as a member of the executive administration -- Delores Groneck.

MR. BETHEL: Is that by position, or are -- the committee we're going to -- I mean if it's going to be a standing committee, should it not be by position? I mean -- you had it pretty much by position, instead of by the person?
MS. STINER: No, sir. It's not intended to be a standing committee.
MR. BETHEL: Oh, okay.
MS. STINER: It's only a committee to work to put together the appeal process --
MR. BETHEL: Oh, okay. I'm sorry.
MS. STINER: -- and then report back to the Board.
MR. BETHEL: I'm sorry. Okay. I thought we was already doing the -- okay.
MR. JONES: Okay. Do we have a motion?
MR. BETHEL: I'll make that motion.
MR. JONES: Well, do we --
MS. STINER: You'll need to say --
MR. JONES: Do you want to include in your motion who you're going to add from the Board?
MS. STINER: Or not?
MR. BETHEL: Let's see.
MS. STINER: Or not?
MR. BETHEL: I would defer to the Chair to appoint someone since he appoints committees.
MR. JONES: Ms. Williams, would you serve?
MS. WILLIAMS: Yes, sir.
MR. JONES: Okay. I would --
MR. BETHEL: Okay. I'll --
MR. JONES: I would suggest Ms. Williams --

MR. BETHEL: All right. I'll --

MR. JONES: -- to you, Mr. Bethel.

MR. BETHEL: I'll make the motion that Ms. Williams serve from the Board.

MR. JONES: We have a motion. Do we have a second?

MR. BREWER: Second.

MR. JONES: We have a motion that the committee be approved and that -- seconded by Mr. Brewer that the committee be approved and that those individuals who were read into the record be part of the committee.

(Pause.)

MR. JONES: We have a motion that the committee be approved and that the individuals whose names were read in the record, with Ms. Williams, be included on the committee. Any further discussion of the motion?

(Pause.)

MR. JONES: Hearing none, are we ready to vote?

(Pause.)

MR. JONES: All in favor of the motion please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion please say nay.
(Pause.)

MR. JONES: Abstentions?

(Pause.)

MR. JONES: Are there any abstentions?

(Pause.)

MR. JONES: Ms. Stiner?

MS. STINER: Yes?

MR. JONES: Can we talk to you?

MS. STINER: Sure.

(Discussion held off the record.)

DR. GRIFFIN: Is this an item that I need to abstain on, Mr. Chairman?

MR. JONES: Yes. It's an item that --

DR. GRIFFIN: I don't have a problem with abstaining, but I need to --

MR. JONES: Okay. Thank you. So I'll call for the vote again.

All in favor of the motion please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(Pause.)

MR. JONES: Are there any abstentions?

DR. GRIFFIN: I abstain.

MR. JONES: Thank you, ma'am.

The motion passes.
All right. Why don't we do -- if we could do it out of order -- Item 7, which is the first quarter investment report unless there's an objection from a board member?

(Pause.)

MR. DALLY: Good afternoon, Mr. Chairman, board members and Ms. Stiner.

MR. JONES: Good afternoon.

MS. STINER: Bill.

MR. DALLY: Under Tab 7, you'll find the quarterly investment report, as required by the Public Funds Investment Act. This is for the quarter ending November 30, 2000, and I'll skip to the highlights.

Overall, the portfolio increased in size due to the issuance of a single-family issue and the RMRB issue of about $125 million. We also had a lot of activity in the multi-family area. We had about three of those deals close this year, which added about $40 million to the portfolio.

Those things are -- typically, as plot proceeds are received, we'll put those in investment agreements. And then they will be used over time as -- to buy and purchase mortgage-backed securities. The portfolio consists of about 65 percent mortgage-backed securities, 28 percent kick investment agreements, 4 percent...
repurchase agreements and 3 percent other.

    Overall, the market value of this portfolio increased due to the decline in interest rates over that quarter. As sort of a bench mark, the typical single-family mortgage was about 8 percent in August. It has gone -- it had gone down to 7.65 in November. And as a result, the portfolio as a whole has increased.

    And those, I think, are the highlights unless there are other questions.

    MR. JONES: Any questions?

    MR. BETHEL: I make a motion that we accept the first quarter investment report.

    MR. DAROSS: Second.

    MR. JONES: We have a motion that has been made, and it has been seconded. Any further discussion?

    DR. GRIFFIN: Is this an item I need to abstain from?

    MR. JONES: I don't believe so.

    MR. JONES: All in favor of the motion -- do we have any further discussion?

    (Pause.)

    MR. JONES: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

    (A chorus of ayes.)

    MR. JONES: All opposed to the motion please
say nay.

(Pause.)

MR. JONES: The ayes have it.

DR. GRIFFIN: I abstain.

(Pause.)

MR. JONES: Thank you, sir.

And at this point, before we take up Item Number 6, I believe, we need to go into executive session.

MR. CONINE: And we'll let her do it as the Director?

MR. JONES: Okay, yes.

Do you want to go ahead and do the executive director's report before we do that?

MS. STINER: Sure.

MR. JONES: Great.

MS. STINER: Is Mr. Lyttle here?

(Pause.)

MS. STINER: Do you want to do a summary of legislation, or not? Kind of surprise us.

MR. BREWER: I think his answer was, Not.

(Laughter.)

MR. CONINE: We'll be here all night.

MR. JONES: Yes, the answer was, No.

MS. STINER: Now just --

(Laughter.)
MR. LYTTLE: For the record, I'm Michael Lyttle, Director of Communications and Government Relations.

I think I can sum most of the legislation in telling you that we have a Sunset bill that I'm told will most likely be filed next week. This legislation will have the recommendations that the Sunset Commission sent forth -- was it two weeks ago -- in their meeting, I believe. And we'll kind of wait and see what happens with -- as a result of that.

There are also a number of other bills that have been filed that deal with colonia issues. I know there's one issue with regard to -- a bill that was filed this week that looks at the terms of how colonias are defined. There are a number of other bills that deal with water rights and things like that, but I would not describe them as major pieces of legislation.

One piece of legislation that Senator Moncrief filed involves the extension of contract for deed across statewide. Instead of applying strictly to colonias, it would take -- go statewide. And that's another piece of legislation that we're following. Next week, we will have a complete report that I know we'll be filing with the Board in terms of what's out there and how it will affect the agency.
Any questions?

(Pause.)

MS. STINER: Thank you.

MR. JONES: Thank you.

MS. STINER: Our next report is on the building configuration. We came to this Board earlier this summer to talk about a waiver to our capital budget in order to do reconfiguration of our lease space.

Is John Gonzales in the room?

(Pause.)

MS. STINER: Mr. Gonzales, will you come forward and give the Board an update on where we are with this particular issue, please?

MR. GONZALES: Good afternoon. For the record, my name is John Gonzales, Director of Administration.

As Ms. Stiner said, last August, we came in here and gave you an overview of a line-item budget that is a budget that talked about the building reconfiguration. And we were looking at an expenditure of $275,000.

At that time, our plans were to reconfigure the building because we had to get out of the third floor by the end of December. We were negotiating with GSC at that time and managed to get a hold-over on our lease on the third floor until the end of August. Through their own
discussions, internal a special date [phonetic] refused us
the waiver, and so we had to get off the third floor and
we had to reconfigure.

Now, since Sunset has made an additional
recommendation to the legislature, we have appealed to
them again. They've granted us the waiver to the 153
Rule. We're currently renegotiating the hold-over lease
for the third floor and, also, talking to LBB to allow us
to expend the funds to reconfigure the building.

And we've looked at several different options
that could happen with doing reconfiguration, from a high
to a low, and, also, depending on whether or not we have
additional FTEs to the exceptional items listed in the
LAR.

But that's where we're are right now. We've
been sending out communications to employees. There are
some communications that we've sent out, and I think you
have, also, a copy of a letter that was sent to the Board
members that describes where we were with the building
reconfiguration.

I'm open for questions.

(Pause.)

MR. JONES: Thank you, sir.

MR. GONZALES: Thank you.

MS. STINER: Thank you, John.
I think the next report, the MOU with the Justice Department and HUD and regarding the Section 8 -- I think that has all been discussed within the context of our limited discussion on the Section 8 admittance policy. So I don't feel the need to make that presentation this afternoon.

The last issue that I wanted to speak to -- and you heard Mr. Leonard, who came before you -- I think he was one of the first speakers this morning -- in public comment speaking to the Youth Works program. As you will recall, in our consolidated plan here and in presentations to the Board, we indicated that Youth Works was a program that we wanted to continue; our task was to identify a source of funds and financing and to try to structure that program within the Department.

In our attempt to reconcile our funding availability balances, we've identified some funds that the CFO have certified that we will be bringing to this full board next month in order to make a recommendation. But I wanted to let you know in response to Mr. Leonard's comments that there has been a great deal of work and meetings and guidance by our oversight committee, the Housing and Urban Affairs along this -- these issues. So next month, we'll be bringing back to you, hopefully, a -- well, next month, we'll be bringing to
this board a program to continue Youth Works within the
Department. So I just wanted to get that on record and to
let you know that we have continued to look for ways to
fund what we feel is a very, very viable and important
program to provide housing -- affordable housing
throughout the state, as well as to provide advantages to
this disadvantaged class of juveniles between the ages of
16 and 24.

That concludes my Director's report. I just
wanted to add to what Mr. Lyttle told you -- made a
presentation. We will get out to you what, once we have
it, is the final recommendations of the Sunset Commission.
I don't think we've done that yet, but we'll put that in
the mail to you by next week.

That concludes my report.

MR. JONES: Thank you, ma'am.

Any questions?

(Pause.)

MR. JONES: Hearing none, I presume we're ready
to go into executive session.

On this day, January 26, 2001, at a regular
board meeting of the Texas Department of Housing and
Community Affairs held in Austin, Texas, the board of
directors adjourned into a closed executive session, as is
evidenced by the following:
The board of directors will begin its executive session today, January 26, 2001, at 3:39 p.m. The subject matter of this executive session is as follows:

Personnel matters: Discussion and possible approval of the performance evaluation for the executive director, under Section 551.074, Texas Government Code, and; receive advice of counsel, under Section 551.071, on litigation and anticipated litigation (potential or threatened litigation), under Section 551.071 and 551.103, Texas Government Code litigation exception, and; consultation with attorney pursuant to Section 551.071(2), Texas Government Code.

And we'll go into executive session.

(Whereupon, the Board met off the record in executive session.)

MR. JONES: I will now call the -- it's turned off.

MR. DAROSS: You can just holler.

MR. JONES: Holler? Okay.

I will now call the board meeting of the Texas Department of Housing and Community Affairs for January 26, 2001 back into session.

The executive session of the board of directors was completed on January 26, 2001 at 4:03 p.m. The subject matters that were deliberated were: Personnel
matters, discussing the possible approval of performance
evaluation for executive director, under Section 551.074,
Texas Government Code, and; to receive advice of counsel
under Section 551.071, litigation and anticipated
litigation (potential or threatened litigation) under
Section 551.071 and 551.103, Texas Government Code
litigation exception, and, finally; Number Three,
consultation with attorney pursuant to Section 551.071(2)
of the Texas Government Code.

No action was taken on any of those items.

I hereby certify that this agenda of an
executive session of the Texas Department of Housing and
Community Affairs was properly authorized pursuant to
Section 551.103 of the Texas Government Code, posted at
the Secretary of State's Office seven days prior to the
meeting, pursuant to Section 551.044 of the Texas
Government Code, that all members of the board of
directors were present and that this is a true and correct
record of the proceedings, pursuant to the Texas Open
Meetings Act, Chapter 551, Texas Government Code, signed
by myself as Chair.

And with that, I will note that we are back in
open session, and recognize Mr. Conine, the Chair of the
evaluation committee.

MR. CONINE: Thank you, Mr. Chairman.
The evaluation committee has met a couple of times now and has agreed upon a process to finish the evaluation of our executive director that we'd like to move for this Board to take action on. We have completed a form that was a compilation of three or four other forms from other states that we feel like is a useful tool in this evaluation; that form will be submitted to all the Board members sometime very soon.

And we ask for the Board members to respond on their evaluation and to get those back to the chairman for compilation. We will also ask Ms. Stiner, if she would, to fill out the evaluation form and then submit it back to the chairman of the evaluation committee.

And at such time, the evaluation committee will then get back together, after we've gotten those forms back, and review and compile those issues. We will then meet again and make a recommendation to the Board; the Board will hear the same reviews and probably have an opportunity to meet with Ms. Stiner at that point and visit with her and come to a final conclusion on her evaluation at a future board meeting.

So we feel like that since this is the first time we've gone through this process, it's one that will serve us very well this time, and, obviously, we'll be looking for things to improve it. But that's our
recommendation to the Board at this time, and I so move.

MR. JONES: And I'll accept that form of a motion. Is there --

DR. GRIFFIN: And I second.

MR. JONES: There's a second to the motion.

Discussion of the motion?

(Pause.)

MR. JONES: All in favor of the motion please say aye.

(A chorus of ayes.)

MR. JONES: All opposed say nay.

(Pause.)

MR. JONES: The motion carries. With that, the Chairman would entertain a motion to adjourn.

MR. BETHEL: I move to adjourn.

MR. DAROSS: I so second.

MR. JONES: Motion to adjourn made and seconded. All in favor say aye.

(A chorus of ayes.)

MR. JONES: The ayes have it. Thank you.

(Whereupon, at 4:10 p.m., this meeting was concluded.)
CERTIFICATE

MEETING OF: TDHCA Board Meeting
LOCATION: Austin, Texas
DATE: January 26, 2001

I do hereby certify that the foregoing pages, numbers 1 through 214, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

02/05/01
(Transcriber) (Date)

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