

AFFAIRS

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY

BOARD OF DIRECTORS MEETING

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

November 9, 2009  
9:30 a.m.

MEMBERS:

C. KENT CONINE, Chair  
GLORIA RAY, Vice-Chair  
LESLIE BINGHAM-ESCARENO, Member  
TOM GANN, Member  
LOWELL KEIG, Member  
JUAN MUNOZ, Member

MICHAEL GERBER, Executive Director

INDEX

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER, ROLL CALL CERTIFICATION OF QUORUM	3
PUBLIC COMMENT	4
CONSENT AGENDA	
Item 1: Approval of the following items presented in the Board materials:	24
Executive Financial Administration Community Affairs Disaster Recovery Office of Recovery Act Accountability and Oversight HOME	
ACTION ITEMS	
Item 2: Rules	27
Item 3: Recovery Act	77
Item 4: Community Affairs	104
Item 5: Compliance and Asset Oversight	136
Item 6: Appeals	138
Item 7: Financial Administration	138
Item 8: Housing Resource Center	138
Item 9: Bond Finance	144
Item 10: Disaster Recovery	167
EXECUTIVE SESSION	133
OPEN SESSION	135
REPORT ITEMS	171
ADJOURN	173

PROCEEDINGS

MR. CONINE: Good morning.

AUDIENCE: Good morning.

MR. CONINE: Good morning, and welcome to a Monday meeting of the Texas Department of Housing and Community Affairs Board.

I'll call the roll right quick. Leslie Bingham?

MS. BINGHAM: Here.

MR. CONINE: Kent Conine is here.

Tom Gann?

MR. GANN: Here.

MR. CONINE: Lowell Keig?

MR. KEIG: Here.

MR. CONINE: Juan Munoz?

DR. MUNOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Everybody is here, thankfully. We do have a quorum. And the first thing we do, typically, those of you that want to address the Board on any particular issue, we have public comment. Make sure you sign a witness affirmation form, and you can either speak now during this public comment period or during the particular agenda item. Hopefully you let me know on the particular form which spot you want to speak at and we'll try to get through these as quickly as we can. Remember the three-minute rule for those of you that want to speak on a particular item. If you want to speak longer than that, you can have someone donate some time and you can speak

up to five minutes.

The first one we have, State Representative Joe Deshotel.

MR. DESHOTEL: Good morning, sir. Thank you very much.

MR. CONINE: Thank you.

MR. DESHOTEL: Good morning, members of the Board and Mr. Gerber. My name is Joseph Deshotel, I represent District 22 which is Jefferson and part of Orange County.

I'm here particularly today on the Arthur Robinson Housing Project in Orange County, Texas. It was built in 1954, it was 160 units, it was destroyed in Hurricane Ike a year and a half ago. It had \$1.8 million worth of insurance which was only able to get 54 units up and running. The whole area of town was devastated, over six foot of water in all the residences there. Were this project allowed funding, it would allow to build 28 free-standing homes and a 128-unit apartment complex.

You all were gracious enough to give the money for Navy Park and I wish you could see the difference it has made in that community with all the newly remodeled structures, the whole attitude of the community, and this is sort of the last piece in that part of town. If this is rebuilt the way it's being proposed, you'd have a city that people feel a lot better about their neighborhood, they're going to take care of their property a lot better because everything in the area is going to be new, and it will just uplift the spirit of that community, and I certainly hope that you all see fit to fund this project out of the CDBG funds.

If you have any questions.

MR. CONINE: Any questions of the witness?

MR. GERBER: Representative, this is the community that's just adjacent to Orange Navy Yards?

MR. DESHOTEL: Yes, sir.

MR. GERBER: And we've had a tremendous transformation. Ike Akbari and Chris Akbari have done just a tremendous job as a development team, working with the community. It's very inspiring, about two months ago we did an event there to dedicate the opening of many, many units there, and it's just an area that's been neglected for a number of years, and the old historic Navy Yard, really a great project that would be a very worthy investment of the Department.

MR. DESHOTEL: Thank you very much.

MR. CONINE: Thank you very much, appreciate you being here.

Mayor Brown Claybar.

MAYOR CLAYBAR: Thank you, Mr. Chairman and commission. I certainly want to reiterate what Representative Deshotel said. In local parlance, I have been known as the Hurricane Mayor. Orange went 50 years without any hurricanes and the last seven years we've had three.

I want to again say through the Rita money and Chairman Gerber was there for the opening of the Navy Park, that is a major transformation in this area, and what we want to do is complete the project. This Arthur Robinson project, right now only 32 of the 128 units are available and we'll be able to spread out and get rid of a lot of blight and be able to go to some single family and be able to multiply the efforts of what this commission has already done. And this will be a real example of government

that works, and we encourage that TDHCA move quickly because we have the need for this. Thank you very much.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much, appreciate you being here.

Mayor John Windham.

MAYOR WINDHAM: Mr. Chairman, Board members, and Director Gerber, my name is John Windham, I'm the mayor of Center, Texas. Lufkin is 50 miles south of Center just to let you know where I live.

MR. CONINE: Anybody know where Lufkin is?

(General laughter.)

MAYOR WINDHAM: I'm here strongly in support of file number 09803 concerning the Union Acres Apartments in Center, Texas. I have with me Alicia Pierce from Senator Nichols' office, and of course, Senator Nichols is strongly in support of this project here. And Representative Wayne Christian's office also supports this. Ellen, I don't know her, she may be here, but I couldn't get back in touch with her, she was supposed to be here.

Union Acres is an apartment house project built in the early '60s, and it does serve the lowest income residents of Center and Shelby County. Since Hurricane Ike, 20 of those units are unoccupied and the other 80 are getting in really bad shape because of all the damage to the roof, they don't have a lot of money to do things, HUD is getting ready to close it. It will be disastrous if that happens because these folks have no place to go.

The folks that moved into Union Acres -- of course, I was there

when it was built and I feel close to that operation, it was put together by some folks that wanted to help some people. People moved out of one-room huts with no electricity or water into what was called a real home, and those folks have lived there for many, many years. It's in trouble because of Hurricane Ike. It needs this Board to approve the \$3.3 million to prevent HUD from closing this property.

Like I say, there are no places to rent in Shelby County. We're very fortunate right now to have the Shell gas production deal there and our little community is really doing well. You can't find a place to live. I know some people here are builders and I hinted to them you ought to come to Center and build some apartments. There's some being built right now, but this is for folks that are not as fortunate as we are that need to be able to stay and exist in a project that's been here for a long time, and I do urge passage of this number 9803. Any questions?

MR. CONINE: Thank you, Mayor. Any questions of the witness?

(No response.)

MAYOR WINDHAM: Thank you very much for your time.

MR. CONINE: You bet.

Ann Lott. She's got some dedicated time, I think -- or you're here on two different issues, I guess.

MS. LOTT: Actually, there's just one but I completed two forms just in case.

Good morning, Board and Mr. Gerber. My name is Ann Lott and I oversee the Housing Initiatives Program for the Inclusive Communities

Project. ICP's president, Betsy Julian, had a longstanding family commitment and regrets that she cannot be here today to personally address this very important matter concerning the NSP program. I believe you have a copy of the letter addressed to Mr. Conine that outlines the issues and advises you that I would appear today to request the Board to add an agenda item to December's Board meeting that allows the Department to review and modify the rent structure and loan criteria for NSP.

Now, by way of background, the Inclusive Communities Project applied for and received approximately \$2 million in funding under NSP for the acquisition of single family homes in Collin and Denton Counties, and we are targeting the cities of Frisco and Little Elm with approximately \$1 million for acquisition of homes in each of these cities. ICP is structuring a rental program for families with DHA, or Dallas Housing Authority Section 8 housing vouchers.

Now, HUD requires that each grantee develop standards to ensure affordability under NSP, and to meet this obligation, the Department has required that rents under the rental program conform with rents under the HOME Program, and ICP estimates that HOME rent levels would allow us to purchase homes in the city of Frisco at \$64,000 and in the city of Little Elm at \$60,000. And I'm sure you will agree that single family homes at this price are difficult to find in an urban market and virtually impossible to find in a suburban market, particularly Frisco and Little Elm.

Now, HUD in its October 2008 federal notice encourages that each grantee of NSP review its analysis of impediments to fair housing choice to determine whether an update is necessary because of current market

conditions. Now, I recognize that the Department's consolidated plan is not such an analysis, however, we do believe that a review and analysis of NSP is warranted at this time to ensure the program meets its goal of affirmatively furthering fair housing choice.

The letter that you have before you highlights some reasonable approaches that ICP feels will make this rental program feasible in low poverty, non-minority areas. Unfortunately, time doesn't permit me to discuss all of the recommendations in detail, but I will say that minor modifications to this program will provide good quality housing in good neighborhoods.

Because ICP proposes renting housing units to families participating in the voucher program, we will be limiting the portion of the family's rent to 30 percent of their income and so we will be able to maintain the affordability that the Department sought after, and more importantly, the modifications that we are suggesting are well within the realm of the HOME Program and the purview of this Board, so I encourage you to consider our recommendation. Thank you. Are there any questions?

MR. CONINE: Any questions of the witness?

MR. GERBER: Mr. Conine, just to confirm, what Ms. Lott is requesting is that this item be placed on the agenda because the Board is unable to take action on this item today, but that the Board authorize or direct that staff place this on the agenda for the December Board meeting where a full hearing of the issues would be taken up. This is, in general, ICP was successful in receiving an NSP award under the existing NOFA, and so what ICP is requesting is a departure and a series of waivers from the NOFA as issued by the Department, although the Department did not fully -- we utilized

most of the flexibility from the federal government under the NSP program, but there were things that are unique to the Texas program that were not necessarily included in the federal guidelines. It's fully federally compliant.

MS. LOTT: It is, and I believe that what we are recommending is also fully compliant but it will require some action on the part of the Board.

MR. GERBER: It would be a departure from the Department's policies and the NOFA as it was issued by the Board.

MS. LOTT: Correct.

MR. CONINE: Ms. Lott, Denton and Collin counties are pretty big places --

MS. LOTT: They are.

MR. CONINE: -- and I would suspect you could find -- which is the intent of the program -- a foreclosed house in the mid \$60,000 range that you articulated in either one of those two counties. Can you enlighten me on why we have to be in Frisco or Little Elm, I guess, related to that program?

MS. LOTT: I can. We actually solicited other cities in Collin and Denton counties, they were not so inclined to participate in the program, and as you can recall with the NOFA, we did have to have a letter from the municipality that agreed that we could actually apply for and receive money on their behalf. So Frisco agreed to give us such a letter and the City of Little Elm agreed to give us such a letter, no other city would agree to give us the letter.

MR. CONINE: Really?

MS. LOTT: Yes.

MR. CONINE: That's pretty interesting.

I'm okay at this point with asking staff to put this on the December Board agenda so we can full flush out the issues. As you can imagine, I went to the website and tried to find foreclosed houses in Denton and Collin counties prior to this meeting and was successful in finding quite a few, and this particular Board's policy of recycling funds for future Texans is preeminent on our minds up here because when we get a gift like this from the federal government, we like to recycle as many times for as many Texans as we possibly can. So we'll be glad to air our questions out and our thoughts out at the December meeting.

Any other questions of the witness?

(No response.)

MR. CONINE: Thank you.

MS. LOTT: Thank you.

MR. CONINE: Cynthia Bast.

MS. BAST: Good morning.

MR. CONINE: Good morning.

MS. BAST: I'm Cynthia Bast of Locke Lord. The pictures that Miss Michele will be handing out are Moore Grocery Lofts in Tyler which now provides 88 units of affordable housing and just won the Texas Downtown Association President's Award for the best adaptive reuse in the State of Texas. The developer retained the historical character of those buildings while adding some beautiful new features, and as you all know, there are very few developers who can combine housing tax credits with historical facilities successfully, so when they do, it's a really terrific result. Once this development earned its certificates of occupancy, it filled up all of its units in

about 40 days. Clearly there was a tremendous need.

But as you can imagine, I wouldn't be up here just to tell you wonderful things about a development, now, would I.

(General laughter.)

MS. BAST: I'm here to ask for your help because behind those beautiful buildings is a story of a developer's struggle, of a lender that walked away from a transaction when it had already been basically all negotiated, of a syndicator that walked away from a transaction when it had been already negotiated, of about \$175,000 of costs associated with effectively closing the transaction multiple times, and of a series of events that have led to financial hardship.

So how can you help? Well, everyone is asking for help these days and I don't want this plea to fall on deaf ears. I do think that there is a special way that you can help this particular property. It received an allocation of tax credits in the 2007 pool so it was one of the ones that received the 10 percent boost for the additional construction costs, and although its actual costs would have qualified it for a much greater award of credits, the gap method restricted the amount of credits that were to be awarded.

But when the award was actually made, we believe that there was an error in the calculation, and as a result, fewer credits than it should have received were awarded, and I believe that staff will acknowledge the error. It had to do with the fact that they were historic tax credits and housing tax credits and a blended rate for the tax credit purchase amount that perhaps was not calculated just right on.

To be honest, the owner thought that this error would be

corrected when the carryover allocation agreement had been sent out but it was not corrected. So at this point we have a development that has less financing than perhaps we believe it should have, while it is also balancing these increased costs that I just mentioned. The cost certification is being completed, the placement in service year is coming to an end, and so this is the time when additional tax credits would have to be awarded to make up for the error.

All I'm asking you today is to allow this owner to be heard at the next Board meeting. If you would please put this on the December agenda, you don't have to decide the merits today, but if it's on the agenda in December because it is the end of the placement in service year, there will be no opportunity and this developer's ability to do this kind of work in Texas may be impacted. So that is my request, and I do appreciate your time.

MR. GERBER: Mr. Chairman, could we ask Tom or Brett Stewart to come forward and just give a quick staff update on it?

MR. CONINE: Sure. I'm surprised she got up and said Tom made an error.

(General laughter.)

MR. GOURIS:

MR. HICKS: Hi. Tom Gouris, deputy executive director for Housing Programs.

There was some confusion on this transaction when the 10 percent increase was done. The 10 percent increase was a very out-of-the-box kind of thing, and once it was completed and posted, we would expect that folks finding an error, having to address an error would do so kind of in that

time frame and bring that to the Board's attention. There was some dialogue initially with regard to that, but there wasn't an actual appeal of the decision at that time.

They've come down the road to this point and now know what their final deal is and realize that they really could use those extra credits. We've seen that they could use those extra credits, the question is are there credits available which we don't know yet -- well, there aren't but would we need to bring some forward or find some to make them available.

MR. CONINE: What size are we talking about here, how many? I heard her say \$175,000, but I don't believe that that was the right number or wrong number.

MR. GOURIS: It's like \$26,000.

MS. BAST: From \$8,000 so that would be an \$18,000 increase. And also, remember we couldn't appeal because we were the '06 with an '07 forward so we weren't on the list initially.

MR. GOURIS: Okay. There are a lot of complexities, they were an '06 deal and they got an '07 forward, but it's less than \$50,000.

MR. CONINE: We'll hear it in December. Thanks.

MR. GOURIS: Thank you.

MR. CONINE: Steve Ford.

MR. FORD: Mr. Chairman, members of the Board, Mr. Gerber. This December agenda looks like it's getting pretty crowded, so I'm just going to add one to it, since nobody has got anything else going on in December.

(General laughter.)

MR. FORD: I would like to request that the issue of forward

commitments be put on the agenda as I still firmly believe the fallout on '09 is going to be a lot more substantial than we think, and while the credits will move over into 2010, it puts all the housing another year out from where it will be because we still have to go through a QAP and an allocation and so forth. That's request one.

Request two is the problem I have with my '09 application will be repeated if we don't modify the QAP to move the penalties to cities that are in a region that have a major city. So in Region 6, Houston has a lot of soft money, some people tell me it's \$50 million, I really don't know, but it's a lot of soft money. It's very easy to get soft money in Houston, therefore, you get points for soft money and you also get points, substantial points for deep skewing that you can do once you have soft money.

However, Pasadena, La Porte, Baytown, Deer Park, pick them, Conroe, Friendswood, none of these have soft money, so if you wanted to go into an area that, in my opinion, needs the housing, and they might want the housing, you can't get the soft money so you can't get the points so you can't deep skew. So there's about a 16 to 22 point penalty to every one of those small towns. And I think this came up before, I think it was New Braunfels had this same problem because New Braunfels had no soft money and they were competing with San Antonio.

So I can't change the 200 QAP but for the 2010 QAP, this is something to consider because the problem will happen again. Houston, I hear, has a staggering amount of soft money again, I don't know what the number is but it's a lot, and the smaller towns don't have it so all the housing will go into the city as opposed to the county or into the smaller cities

surrounding int.

Any questions?

MR. CONINE: Any questions of the witness?

MR. CONINE: Another December agenda item, please.

Jim Brown. Barry Palmer will be after Mr. Brown.

MR. BROWN: Good morning. My name is Jim Brown, I'm the executive director of the Texas Affiliation of Affordable Housing Providers.

Mr. Chairman, members of the Board, TAAHP is here to support item number 3(d) this morning which is the clarification, if you will, of the dates which we discussed at the October Board meeting. That's all.

MR. CONINE: That's all?

MR. BROWN: That's all. If you do that for us, we would be gladly appreciative.

MR. CONINE: Thank you very much. Any questions of the witness?

(No response.)

MR. CONINE: Barry Palmer.

MR. PALMER: Good morning. Barry Palmer with Coats Rose Law Firm. I wanted to talk this morning for a few minutes about the TCAP program. You're going to be awarding the '09 TCAP awards today and last month the '07s and '08s were awarded, and an issue that we've been talking about for several months regarding the TCAP program is the structuring and whether the TCAP money is going to be hard debt versus soft debt. Developers and investors and lenders had urged that money be soft, payable out of cash flow, the Department had decided that it would be hard so that the

money could be recycled, as Mr. Conine mentioned earlier, in future transactions.

So now we're trying to close on the '07s and '08s and we're struggling some with some of those deals, particularly on the bond transactions. Some of these deals have already closed but have a gap but we already have a lender and an investor in place. It's hard to get them to agree to this money coming in hard.

So I would urge that you allow the underwriting department to look at some flexibility on the structuring of the TCAP money and look at alternatives where there might be a compromise between hard and soft. And a couple of things that we've talked to investors about are either having the payments of the soft during the compliance period that would then convert to hard at the end of the compliance period, or another alternative would be to have the payments hard but in your inter-creditor agreement agree that you would not foreclose or go for a judgment against the partnership so that you would not throw the partnership into default but would still have an obligation of the sponsor for the repayment. So I guess I'm just asking that the Board direct the underwriting staff to look at these alternatives.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. That concludes the witness affirmation forms I have for the public comment period. We'll close the public comment period and move to the consent agenda. Oh, you've got a couple of others, I'm sorry. We'll open the public comment back up for two letters to be read into the record.

MR. LYTTLE: Michael Lyttle with the Division of Policy and Public Affairs at TDHCA.

The first letter that we received was from Senator Robert Nichols, it's addressed to Mr. Gerber.

“Dear Mr. Gerber, Union Acres Apartments provides needed housing for low income residents in Center, Texas, however, these units may soon be closed because of failed quality inspections as a result of damage from Hurricane Ike. Please consider this letter an expression of support for the TDHCA grant for which Union Acres is eligible. This grant will make sure that the 80 families now living there will continue to have housing and that the 20 units left uninhabitable will be available again. As you know, rural Texas faces unique challenges in providing affordable housing for low income residents. This grant will help the City of Center meet those needs. If you have any questions on this or any other matter, please do not hesitate to contact me. Sincerely, Robert L. Nichols, State Senator.”

The next two letters we received are from State Senator Tommy Williams. Both are addressed to Mr. Gerber. The first says:

“Dear Michael, Construction of housing projects destroyed by Hurricane Ike along severely impacted by rising interest rates and other market conditions. In the event any of the conditionally awarded TCAP projects under the Round 2 funding program are not initiated, please review for funding purposes the projects located in southeast Texas. Sincerely, Tommy Williams.”

And then the final letter, again addressed to Mr. Gerber says:

“This letter is in support of the award and timely release of

funds for the Arthur Robinson venture project in the City of Orange to reconstruct and redesign the original 160 units damaged by Hurricane Ike in September 2008. Only a very small number of the 160 units are now livable, so the City of Orange continues their struggle to provide affordable housing for residents displaced over a year ago by this devastating storm. This project is important to the city's recovery and very important to the hundreds of families who still need affordable housing. Thank you for the opportunity to express my support for the release of previous received funds so this project may immediately move forward. Sincerely, Tommy Williams.”

MR. CONINE: Thank you, Mr. Lyttle.

I don't see the project Union Acres in Center on my list. Where does it fall amongst all the opportunities we have at the Department these days?

MR. GOURIS: It would be in the disaster section of your Board book. There are two awards today, we've made one previous. This one is still working through the underwriting and we hope to bring it forward to you at the December Board meeting.

MR. CONINE: All right. Thank you.

That then ends the public comment for the public comment period. We'll move to the consent agenda. Board members, these are the items that are on the consent agenda, items 1 through -- all of item 1. All of them still there, we're not pulling any of them?

MR. GERBER: We're not pulling any of them, but Mr. Chairman, if I could make mention of just a couple of quick things. Item 1(g) is staff's report on the implementation of our ARRA funds, the \$327 million, that

to date 48 percent of the sub-recipient contracts on our weatherization funding have been executed, the rest are in legal with the sub-recipients working through their respective legal processes, and we expect to have all those contracts, hopefully, executed by the next Board meeting.

As of October 30, TDHCA has drawn down about \$138,000 in weatherization funds, obviously we have a long way to go in the \$327 million that we have available to us. We're expecting to see real up ticks in numbers over the next several months and in the first quarter of the new year.

With respect to the Community Services Block Grant contracts, that's a \$48 million program under the stimulus, \$4 million to date has been drawn, so our community action agency partners are doing a splendid job in that area.

All of the Homeless and Rapid Re-Housing Program contracts have been executed to date and we're expecting to also see significant up ticks in the amount of funds being drawn for that program, that's a \$41 million program.

One highlight under our Home Ownership Division led by Eric Pike which has been taking advantage of the \$8,000 tax credit, to date that division has processed a total of 607 loan files totaling more than \$3.2 million, and what that means is that an awful lot of low income Texans are getting their down payment and closing costs paid for by the dollars that we're fronting them as they await their IRS tax credit. So that's an exciting that we're very pleased with the progress that our Home Ownership Division is making with that.

And finally, with the action that you're going to take, hopefully,

a little later today, we will conditionally approve almost all of the TCAP and many of the Exchange awards which are the remainder of the stimulus funds that are under the jurisdiction of the Department.

The last thing I want to highlight for you is item 1(h) which is the HOME Program awards. They're in the consent agenda but it's important not to miss the good works that you are going to be doing today. With the Board's approval of this item, over \$2 million in HOME funds are going to get awarded cities or organizations that will result in housing assistance being provided to 81 low income families, and approximately \$21 million remains to be drawn down and we're working hard to get small communities in Texas to take advantage of the availability of those funds. But a significant amount of help will be delivered today thanks to the awards that will be made on this item.

MR. CONINE: Any questions of Mr. Gerber? If not, I'll entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: Mr. Chairman, I move to accept the consent agenda.

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

MR. GANN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

Item 2(a), Mr. Gerber.

MR. GERBER: Mr. Chairman and Board members, item 2(a) is staff's request to approve the 2010 Real Estate Analysis rules. This action is being made in two parts: the repeal first of the old rules and then the order adopting the new final rules to be used for underwriting transactions in 2010. Staff has taken into account the public comment which is included in your Board book, we've made some changes but not many. We appreciate those that did comment on these rules.

With what's in the Board book, we're recommending approval of the 2010 rules and approval to make the administrative changes that are necessary for consistency within the ARRA rules as well as within other Department rules.

MR. CONINE: I have no witness affirmation forms on this particular item, so I will entertain a motion.

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

MR. CONINE: Ms. Ray moves for approval. Do I hear a second?

MS. BINGHAM: Second.

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

(No response.)

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

aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 2(b).

MR. GERBER: Mr. Chairman and Board members, item 2(b) is the approval of a final order adopting amendments to the compliance and monitoring rules. Minor changes, including cleanup language, have been made to the rule based on public comment.

Staff is recommending two significant changes in response to public comment. Staff are recommending that the score for events of non-compliance drop off a property's record one year after correction instead of the current three. Secondly, in the rules that were put out for public comment, staff suggested that an owner not be found in material non-compliance under certain circumstances, one of which was if they had a pattern of timely responding. Commenters suggested that this language was too subjective, and in response, staff is recommending the following language which I'll read out:

“If an owner is unable to correct all issues during the corrective action period, the owner may supply a corrective action plan for review by the Department that establishes dates that each uncorrected issue will be corrected and evidence of the correction will be supplied. Provided that the Department approves the plan and the owner follows the plan, upon correction of all issues a development score will be reduced by the number of points needed to be one point under the material non-compliance threshold, provided

that the Department has no previously reported non-compliance events that are uncorrected and that the development was not already in material non-compliance at the time of its most recent review.”

We believe we’ve made a number of changes in these compliance and monitoring rules to try to dial them back just a little bit. The Department knows the challenges of the real estate community and the development community is facing. We still want our developments to be well maintained and we have high expectations of consistency and compliance in meeting the awards at the time that the awards were given to our development partners.

That said, working with our director of Portfolio Management and Compliance, we believe that we have come up with a set of rules where we can dial back some of those things to make it a little easier, a little more flexibility, but at the same time hold folks to account. And so with that, we’re asking your adoption of these rules as presented.

MR. CONINE: I have a couple of witness affirmation forms.  
Jean Latsha.

MS. LATSHA: Good morning. Jean Latsha with National Farm Workers Service Center.

I just wanted to say that regarding the compliance rule changes, especially from three years to one year, I really appreciate staff’s listening to all of our comments regarding those. We submitted written, also attended the public hearing and made some at the last Board meeting, and I appreciate the fact that those were heard.

I did have one question: If that was retroactive, for those

developers who are already in material non-compliance, if that's still going to last three years or if it is only going to last one year?

MR. CONINE: Okay, we'll see if we can get that question answered.

MS. LATSHA: Thank you.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. GERBER: Chief Murphy.

MR. CONINE: Ms. Murphy. Uh-oh, every time you have to talk to the lawyer, we know we're in trouble.

(General laughter.)

MS. MURPHY: Patricia Murphy, chief of Compliance and Asset Oversight.

Upon adoption of the rules, events of non-compliance that are corrected, the score will drop one year, so in a way, yes, it kind of is retroactive. So if you currently are in material non-compliance and the correction date was, say, December of 2007, our current system would show those points don't drop off until 2010. Once this rule is adopted, those points will drop off immediately because from December 2007 to 2008, the year has already passed and it will drop off. This will significantly reduce the number of properties that are in material non-compliance.

MR. CONINE: Great. Any questions of Ms. Murphy?

MR. GERBER: May I ask one question of Ms. Murphy? It's fair to say, though, that we worked hard with the development community this year to try to work these rules to be more flexible and appreciative of the

situation that they're experiencing on the ground. However, there was significant concern that these rules not be taken advantage of, that the Department has a high expectation that the properties continue to be well maintained and that the conditions in which the awards were made be lived up to. Any thoughts that you'd have on that or any concerns that you have with respect to that other than to deliver the same expectation?

MS. MURPHY: The compliance monitoring rules should reflect the Board's policy, and I do believe that the rules set forth a high standard for what we expect from owners and managers. And I would like to take the opportunity to point out that the vast majority of the properties in our portfolio are in compliance and that most of our properties are well maintained and well operated, and unfortunately, what you typically hear from me is about the handful of owners and properties that have difficulty in complying with our programs.

But we definitely have made some adjustments to these rules based on public comment and I hope that they do reflect your thoughts on what does it mean to be in material non-compliance and that the provision in the rules that would allow reinstatement is going to give you the flexibility to use your judgment and see when it makes a difference and when it doesn't that we should award funds.

MR. GERBER: And for those who are chronic offenders, the same list of heavy penalties and other tools that the Department has that this Board has worked hard to put in place over the last several years remain squarely in place and ready for you to exercise should you so choose.

MS. MURPHY: Subchapter C of the compliance monitoring

rules is the administrative penalties, and through the administrative penalties process we have been very successful in getting some longstanding non-compliance cleared up. It's unfortunate that it takes a hefty administrative penalty to garner compliance, but it has been successful.

MR. GERBER: I just don't want anyone to think that after all these years TDHCA is going soft.

MS. MURPHY: After all these years, I'm certainly not going soft.

(General laughter.)

MR. CONINE: On the other hand, I do think the landscape has changed significantly with respect to expense escalation on these projects over the last several years and virtually no income escalation, so therefore, you've got this squeeze that takes place on a lot of our properties, and I know we had a lot of public comment and a lot of input to this rule process, but during the course of the conversation, I had a discussion with Mike and staff regarding maybe a springtime roundtable where we can sit down in a less stressful atmosphere of saying how can we take our compliance rules and make sure they're fully adapted to the new industry, as we see it in the syndication business and in the debt business, as well as the outlook for income growth and expense growth into the future, especially utility allowances, as we all have come to know and love them.

So I think that needs to happen in a more informal discussion atmosphere, and for all of you out in the development community, I got a commitment from staff to do that sometime this spring, along with the QAP rewrite and so forth, so we'll have a chance to sit down with these compliance

rules and really scrub them and make sure not only that the Department is getting what they're wanting but also you guys can have enough input into the recognition that the Department is taking into account all the different factors that are going on in the industry today.

MR. GERBER: With that, Mr. Chairman, we'd ask for a motion to approve the compliance rules.

MR. CONINE: I'll take a motion.

MS. BINGHAM: So moved.

MR. CONINE: Motion approve by Ms. Bingham. Is there a second?

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

(No response.)

MR. CONINE: Seeing one, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 2(c).

MR. GERBER: Mr. Chairman, is the 2010 QAP. There's many things in the QAP. Robbye, do you want to highlight maybe just a couple of them and then we'll open it up to public comment and maybe be better to respond to that.

MS. MEYER: Robbye Meyer, director of Multifamily Finance.  
Mr. Conine, Board.

There were six major items of significance that the staff has

outlined for you. There was much comment for the QAP but there's six that we've outlined for you. We had administrative deficiencies and material deficiencies that we've defined. Drafting that definition, it was staff's intention that the terms that we employed be given their formal meaning and that if an application is susceptible to being corrected within a reasonable cure period, one that will enable the application to be processed within the application round, the applicant would be given the opportunity to respond. However, if the application is so fundamentally flawed and it would not be susceptible to much corrective action, or taken as a whole it does not demonstrate that the applicant made a reasonable effort to prepare and submit the application, staff would have the ability to terminate.

The administrative process was not given for the applicant to be able to delay the submission of the application, it was actually an opportunity for the applicant to be able to correct deficiencies in the application. So the staff is actually -- I think we've given a better definition for administrative deficiencies and we will allow the applicant to correct those deficiencies but we still want the ability to terminate an application if the applicant still has fundamentally not done what they were supposed to do when they submitted the application.

The credit amount, Sections 50.6(d) and the credit amount, one of the things that we offered in the draft QAP was to allow experienced developers to team with experienced developers. The statute only allows an applicant to apply for \$2 million in one given application round. This part of the QAP was to allow two experienced developers to divide that application \$ 2 million. Staff backed up and only allow inexperienced developers to team with

experienced developers to divide that \$2 million cap. We feel that it keeps the spirit of what we originally intended and builds the capacity and it would not diminish that capacity-building effort that the Department has had for many years. Comment was received during the comment period to support this consideration. Staff recommends keeping the language as it was written to begin with in the 2009 QAP.

Staff does recommend a revision to that section, though. The Department would prorate the credits ascribed to each developer based on the higher of the percentage of ownership of the applicant, developer, related party or guarantor, or the proration percentage of the developer fee received. In the event the percentages of the ownership or developer fee are equal, the Department will prorate the credits based on the percentage.

To be considered for this provision, a copy of a joint venture agreement or similar document between the developers must be provided. At a minimum, the document must clearly state the structural decision-making process for the development and providing direction to the Department in the event of a conflict who may withdraw or terminate an application. The decision-making structure must also be clearly stated when the credit limit form is completed and if the joint venture agreement and credit limit form conflict, the credit limit form will control.

Another area was Section 50.9(g), the experience certificate. The recommended changes in the draft were due to the fact that the current process of issuing experience certificates in the entity name was problematic when personnel changes occur and the experienced personnel leaves the entity with the experience certificate. Staff believes the experience should be

at the personal level in the names of the individual and the certificate will follow the person. No exception will be warranted for public housing authorities because the same issue arises for public housing authorities as with any other entity. New certificates will be needed for the 2010 cycle.

Section 50.9(h)(7) and 50.9(i)(5), the elimination of the intent to apply -- this is also another area that we received substantial comment. This has to do with financial commitments in the 2009 cycle; we had several issues with intents to apply. Right now they're allowed to give us a certification that they intend to apply for certain funds at an entity, and we found during the real estate analysis review that we would call these entities and the funds weren't even available. So we're asking that the Board allow a language change and what we are providing is evidence that the lending agency that an application for funding has been made by the funding entity along with a statement from the applicant with respect to the loan amount to be applied for and the specific requested terms.

One more area is Section 50.(i)(2), quantifiable community participation. Staff is trying to establish a balance between requesting too much information and not having sufficient information to determine the validity of an organization and its support or opposition. Staff appreciate the organizations that are primarily volunteer in nature and loosely organized. The intention of the quantifiable community participation is to get participation within the community. The intention of the proposed change is to discourage a landowner from going out and forming a single purpose entity to oppose or support a particular development. This is the second highest scoring item for scoring in the process, and we're asking the Board to help in that.

We had quite a bit of comment in two areas -- actually different areas in the quantifiable community participation. We are taking part of that and deleting from what we've already put in there in the draft. We accepted comment to delete sections, we are proposing one additional section that we received additional comment for, and I think you'll hear additional comment today and we will hear some compromising language and staff will give you compromising language once you hear additional comment today.

Finally, Section 50.14(b), 10 percent test, staff believes that the 10 percent test should be at a six-month deadline and believes that is a more prudent time line for developing, considering the market issues the industry is facing today. Right now the 10 percent test is twelve months after the date of carryover and that is December of the year the awards are made. Staff believes that it should be six months. The actual federal deadline is twelve months, we believe that there should be a check at that six months date. The owner will still have the ability to extend, but we think that the actual date for the QAP should be six months.

Staff is requesting one final change that there are dates in the QAP right now that refer to the application acceptance period. We would ask that we be allowed to change those dates so that they reflect the correct dates of the application acceptance period starting December 8 and the pre-application deadline would be January 8 of 2010, and the application acceptance date be March 1 of 2010.

MR. GERBER: Mr. Chairman, I would just interject that our Multifamily team, I think, has done a great job in preparing these rules. We've gotten a lot of public comment, and the issue areas that you're hearing about

are largely ones, like QCP, are perennial issues, they're issues that the legislature has spoken clearly about, and so we welcome the public comment that we hear today and maybe make some fine-tuning to these.

But it's always a struggle each year, based upon the situations and the appeals and challenges that come forward to get it right, but we feel very comfortable that we've struck the right balance to try to get you the information about the environment in which the development community is working in and get you the information you need for good decision-making, along with giving staff the information it needs in order to be able to appropriately award points and make recommendations. So we'll turn it over to public comment and we'll go from there.

MR. CONINE: Okay.

MR. GERBER: Thanks, Robbye.

MR. CONINE: Jean Latsha.

MR. GERBER: Mr. Chairman, one thing that we don't do very well -- and I think Jean, maybe you sense this, because you work for the Farm Workers Service Center.

MS. LATSHA: Yes, sir.

MR. GERBER: All the members of the development community build -- it's challenging to build affordable properties, but what Jean is doing is building some of the most challenging properties for the migrant farm workers. So as folks come up, I think it may be helpful also to just give us a sense of your business and maybe just go a little beyond just the issue itself, just for perspective.

MS. LATSHA: I appreciate that. Jean Latsha with National

Farm Workers Service Center, and we do primarily new construction projects in Region 11 rural towns of 3- to 4,000, so these are difficult projects, and admittedly, most of my comments do stem from trying to do those types of projects. I also work for a non-profit organization, and one thing that didn't come up too much in these comments, recently -- and I don't know if it's really going to be a change for 2010 but something that could be considered in the future -- one thing that came up on our recent applications, and I know some other developers, especially in the non-profit community, had the same issue, was board member certifications.

Sometime in the last couple of years, things changed to where we had to get certifications from all of our board members, and my particular board, you're talking about 15 people spread across four different states and a lot of them actually live in the similar communities of 3,000 people with no FedEx or anything else, too, so obtaining those signatures, especially if you made a change to your development and you had to obtain them again was really challenging, especially if you're responding to a deficiency that it's due in five business days.

And if I remember correctly -- and I went back to look at some '05 and '06 applications that we had submitted and we were allowed to have a board resolution that had someone that had signature authority for the rest of the board when it came to issues regarding the development and the application, and I think going back to that might be helpful. I understand that a lot of the certifications have to do with if you have committed a felony or anything like that, and I think one solution might be if you had a previous participation form that was similar to the compliance form that's in the

application and simply listed the board members and checked a box if you needed some disclosure as far as those certifications went.

I don't know, like I said, if it's too late to make that kind of change for 2010, I think it would be helpful, but I think it would be something to consider in the future.

Regarding neighborhood organizations, too, I do, again, appreciate staff's listening to all of our comments regarding those. I know that every year that this is a huge issue because everybody has different situations with their neighborhood organizations, depending on what kind of community they're dealing with. I can tell you that dealing with communities close to the border and the Valley, obtaining contact information from neighborhood organizations is probably going to be difficult. We will probably give it a shot.

I can tell you that I went to a couple of neighborhood organization meetings, of course, for my previous developments, and these were people who were really excited to find out that they might have a voice with the State of Texas, and we would have 30 people show up which is pretty good for those small communities. But these are the same communities where I asked them a simple survey that they didn't even have to sign and they didn't want to fill it out because it made them very, very nervous to put anything in writing. So if you could consider some leeway there, we'll make our best efforts to satisfy all of those requirements. I understand the problems when you're comparing neighborhood organizations in Houston to ones in Ed Couch.

And I just want to say really quickly, too, I don't think there's been any change to the bonus point, but again, I think this is something that

we should probably hold off on until we iron out some other things in the QAP and the application and not include bonus points on this 2010. But I think that's about it, unless you have any other questions for me.

MR. CONINE: Any questions of the witness?

DR. MUNOZ: Kent, I have a question.

MR. CONINE: Yes, sir, Dr. Munoz.

DR. MUNOZ: I'd just like to ask a couple of followup questions on your point about the difficulty in obtaining the names of the members of these neighborhood organizations. Here's the problem I'm having, on the one hand, they're there at this meeting, 30 strong, interested in whatever sort of support the state might provide and then realizing some form of home ownership, on the other hand, you say that they're reluctant to fill out a survey or provide their name. Aren't they eventually going to have to do that if they're to avail themselves of these services?

MS. LATSHA: I can't really explain the motivation or the fear.

DR. MUNOZ: You say that they're anxious.

MS. LATSHA: Quite honestly, I think that you might be dealing with a lot of illegal immigrants in the communities that I serve and they're afraid to put their name and address down there because they don't want somebody to come knocking on their door. But that's not to say that these people don't care about what happens in their community and they don't live there. And that's just me guessing, and it's quite possible that I wouldn't have a problem. I know that I managed to get about a dozen people to come up here and fill out witness affirmation forms, so there may not be, but I know that in other instances I've had trouble getting anyone to commit something to

paper -- and maybe it's the day of the week.

I just hope that if there are some special circumstances there where you really do have a legitimate organization in a small, not so sophisticated community that are somehow reluctant to give out all of their personal contact information, that maybe we could address those individually.

I don't know how many instances we will have there. We'll make every effort to follow everything, all the rules in the QAP

DR. MUNOZ: And I make the point because I'm very sensitive to the importance of distinguishing the different ways you might appeal to a population along the border, in Houston or Dallas or Austin, and I think those are very different populations. I guess what I'm concerned about is not coming up with a mechanism where this silent population, this invisible population is given an opportunity to communicate their interests and their priorities, these very poor people along the border in Hidalgo County, I suspect, and others, because, that seems to me, part of the goal of these programs is to serve this very population.

And when I hear you, somebody who probably has a great deal of authenticity with this population, say they're reluctant to identify themselves, then it strikes me there's something broken in the machinery where we can't make them comfortable about availing themselves of the very services that the State is working hard to present them with.

MS. LATSHA: And I have to agree with your point, and I think I'm anticipating a problem that I may have in the future that I hope I don't have, and that anticipation, like I said, just came from a very, very recent experience in a different kind of project, a senior project that we're trying to

build down there and it was a simple survey, you know, would you like a one-story or a two-story building, and I could get people to talk to me but I couldn't get anybody to put it to paper. And so I might not have this problem at all, but in case I'm here in April begging for 24 points because I couldn't get some contact information, then just anticipating.

MR. GERBER: Dr. Munoz, I think it's a really good point because in a lot of parts of Texas, it's the biggest scoring item so people are heavily incented to go and make sure that they're working with neighborhood organizations. That also said, the process can be intimidating and I think some of the things that we need to do on the education side of this is to help explain what the advantages are and disadvantages, and there are opportunities for public comment. They need to be bilingual, it needs to be non-threatening, and it needs to be done in a way that really encourages public comment, because that's what we really all want and it's clearly what the legislature wants as well, we want legitimate neighborhood organizations to be able to weigh in and have an impact on points.

DR. MUNOZ: You know, Michael, I might just add -- and I hope that we have people within the agency -- there's one thing to be bilingual, there's a separate thing to be culturally competent. You might speak the language and have no sense of the life along the border. It's very different being a Spanish-speaking Cuban from Miami and trying to be down there in Eagle Pass telling them what you think is in their best interests. So I hope, as we find the staff that are down there, that they have the capacity to translate the spirit of the legislation and the programs into a vernacular that resonates with the populations living there.

MR. GERBER: I think that's a great point. We actually have three offices right now: one in Edinburg, one in Laredo, one in El Paso. I'm going to ask each one of those staff -- even though they work with our Office of Colonia Initiatives, they and Homer Cabello, in particular, who does a lot of things beyond running OCI -- I think have a great deal of that sensitivity and cultural competency, and it's probably worth, as we move toward this QAP roundtable in the spring, being sure we've got that capacity in place, if not sooner, to make sure that people can weigh in in a meaningful way and not feel intimidated.

But, Jean -- as I mentioned at the outset of this thing -- her organization is really the outgrowth of the Cesar Chavez United Farm Worker Movement, and they do some tremendous work, we've been involved in deals with them for many years, and so helping them to do their job and not make it harder is ours as well, so fair point.

MS. LATSHA: I appreciate that, and we'll still work to do our job and follow the QAP and everything else as well. Thank you.

MR. CONINE: Any other questions of the witness?

MR. GERBER: I would just mention that we did, of course, take out the provisions that require name and telephone numbers and e-mail addresses and all that stuff, and we also did take out the bonus points.

MS. LATSHA: I'm sorry if I missed that. I appreciate that.

(General talking and laughter.)

DR. MUNOZ: And it was in consideration of some of the limitations of access to technology that you've already alluded to, so that was already preemptively sort of stricken to create greater access.

MS. LATSHA: I appreciate that again. Thank you.

MR. CONINE: Thank you. Sara Anderson. Tamea Dula will be next.

MS. ANDERSON: Good morning. My name is Sara Anderson and I'm here representing S. Anderson Consulting and S2A Development Consulting.

Two-second spiel. We represent developers, we represent a lot of, actually, very experienced developers, not so much inexperienced because they can't really enter the program now with the way that the financial markets are, but we work with people all across the state in pretty much every region.

So today you'll be pleased to know I only have a couple of items. The staff listened to a lot of things we said and we'd like to thank them a lot for their hard work. We didn't get everything but the things that we didn't get, we're just fine with -- except for a few items.

Number one would be the 10 percent test. This is a huge issue for, I think, the entire development community. The six months is just too short, considering the current economic climate. It was a different day five years ago when we could get pre-development loans, we could get out there and spend money that wasn't necessarily our own, and we could meet these deadlines. We would strongly request that you go back and stick at least for another year with the eleven-months, just to get us through another year, let's see what it looks like in a year, pre-development loans come back, if we can get money flowing again.

Another one is just a very, very minor question, and I don't

know if it has to actually be in the QAP, but it has to do with reason for re-notification. In the letters that we send out to the local government and to the public, now we're going to be stating the amount of credits that we're applying for. When we do that, it's very early in the process and chances are 95 percent of the time that there will be a change in the amount of credits that we're going to be requesting.

Staff did put in some language that said that -- de minimis language that said basically it was a small amount, we wouldn't need to re-notify. I'd like some clarification as to what that means. I mean, if it's \$50,000 and a limit at \$50,001, would just like to know what triggers, so if there's a percentage change -- and this is something that maybe can be in the manual that backs up the QAP, but certainly I think most of us would feel more comfortable understanding exactly what would trigger a re-notification.

And the last item has to do with the amendment process. We'd like to thank staff for admitting that there probably are some issues that need to be worked with and committing to doing some work in the future. I'd like to request if there could be, maybe, some sort of proposed deadline for that. With everything so busy and so much going on, I have concerns for all of us if we're not pushed to some deadline that we're just going to let it go, and that's on my side also. So if I had a deadline that I knew I had to work to for at least draft, that would make it make it easier to allocate my time as we try and work through some of this. So it doesn't, obviously, have to be three months, but six months, maybe, where we could agree to have something drafted and ready to go.

And just lastly, I'd like to thank staff. I sat with Robbye and

Raquel for three hours and went over the application and I understand that they're redoing it, can't wait to see it, and believe that it's going to help staff and the development community a lot, and I'd just like to give them kudos for having taking on basically creating an entire new application. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Robbye, do you want to come up and address those three issues?

MR. GERBER: Tom, why don't you join in as well.

MS. MEYER: On the 10 percent test, I kind of stated that we're only asking to keep it at the six-month -- well, bring it back to the six-month level because of the market conditions, and it gives the Department a way of checking on the development to see if they're working through the process so that we don't get into the same situation where we are now where we have all these developments that haven't moved through the process. If we wait until December of the following year, they've only got seven months to place in service. When we get to the placed in service date, there's nothing that we can do, it's a federal deadline, and if they're not there and they can't place in service, there's nothing that this Board or the Department can do.

MR. CONINE: Remind the Board right quick that we do the awards in July.

MS. MEYER: We do the awards in July. We do carryover which is the actual allocation at the end of the year, we do that by December 31 and that's what actually starts the award, but they actually know in July when we do the awards and actually a year and a half.

MR. CONINE: Then the 10 percent test means they've got to spend 10 percent of the total budget of the project by a certain date.

MS. MEYER: By a certain date. The federal legislation is twelve months from the date of carryover. Carryover is sometime in December, usually, and that's when they're usually signed, and that actually gives them until December of the following year. They would still have that federal deadline, we're just actually asking you to move that -- for Texas, move it to June, July if you want to do it that way, and it gives the Department a way to check on the development and make sure everything is moving. If they're not getting there, they can always come and ask you for an extension, at least you can check and make sure they're moving through the process.

MR. GOURIS: Can I just jump in too on that issue, that historically was much earlier in the process, the 10 percent test actually used to be consistent with the carryover time frame, and the federal law changed to allow states the opportunity to salvage some transactions that could meet that. I don't believe that the intent was just for going to push to that next deadline as the deadline, but rather to give states that flexibility when needed, and we still have that flexibility. There's still the ability, even with a deadline in June, for that to be extended another six months through executive action, so it's there, it's the flexibility.

MR. KEIG: Question.

MR. CONINE: Mr. Keig.

MR. KEIG: Can you give me a little historical context? I believe you said that it had been six months in the past and then moved to eleven months. Why was the change made to move it to eleven months?

MS. MEYER: The legislation for HERA last summer is what changed it to the eleven months. It's been at six months for several years and it's been six months from the date of carryover, and then the HERA legislation last year, federal legislation, changed it to twelve months. We did it at December 1 so that we have enough time to process it by the end of the year. December 1 is just the documentation that they turn in to us to meet that 10 percent test by the twelve-month date.

MR. CONINE: I think this is a good barometer check, especially if the development community is still having financial issues. You know, hitting the six-month test, they can come in and let us know about the financial issues and it will give staff a good indication of how many of these things are for real and not for real in light of the financial concerns. I think not only the development community has those same concerns, but we as an allocating agency have those same concerns because if they're never going to be able to get it done, then we need to have the time to reprocess that for whatever reason. And I don't know how much longer we can depend upon the United States Congress to bail these things out.

She also mentioned the re-notifications, I guess the threshold, that was her second issue.

MS. MEYER: It's notifications at pre-app, and this year we added the amount of credits that they're asking for, and then if they change the amount of credits from pre-app to app, she's asking if they have to re-notify, and we can put a figure on that if they put a percentage.

MR. CONINE: What would staff be comfortable, either a percentage or an absolute number?

MS. MEYER: We normally have a percentage and I'd actually have to look and see what the other percentages are, but we can make it in reference to the other percentages.

MR. CONINE: Do you want to huddle and figure that out?

MS. MEYER: Sure.

MR. CONINE: And the other?

MS. MEYER: The amendment changes, we had already discussed that among staff and we were looking at doing a whole revamp of the amendment and the ownership transfer process in the first or second quarter of next year.

MR. CONINE: Okay, great. Thank you.

Tamea Dula. Barry Kahn is after Tamea.

MS. DULA: Good morning. Tamea Dula with Coats Rose. I'm here to speak on the quantifiable community participation points, without which you really don't have a viable application.

As attorneys, we represent a diverse group of developers. Some of these developers actually want to put affordable housing into master planned communities. As the QAP is currently drafted, this is not possible to do this and get QCP points because there is a provision in there that a property owners association or a homeowners association that was created by the seller of the land is not qualified.

Now, this is the way most property owners associations get created, it's a developer that has a large tract of land and he puts into place various restrictions for a homeowners association or a property owners association, and if you have a seller of land who is creating a master planned

community and they are willing to put in affordable housing, why are we telling them no? Thank you. Any questions?

MR. CONINE: Yes, I do have a question. I'm sympathetic to your issue because especially down around the Houston area you've got these thousand-acre deals, and 2,000-acres and 10,000-acre deals that want to get started on developing. How can we, I guess, define -- being a lawyer -- a master planned community so that the development community can understand what a master planned community is and staff can understand what a master planned community is relative to having a property owners association created by the seller?

MS. DULA: Well, I would suggest that you not try to define the master planned community, but instead define perhaps a period of time in which this property owners association has to have been place so effectively to prevent the developer from going and soliciting a property owners association. Maybe it has to have been in existence for a year before the application cycle, or two years. That would be a way that you could handily determine whether or not it would be a qualified association.

MR. CONINE: Okay. Any other questions of the witness?

(No response.)

MR. CONINE: Staff, do you want to comment on that particular issue?

MS. MEYER: Staff would go for the seller as far as having a time period on there and I would suggest at least a two-year period, so the developer wouldn't come in the year before and set up the property owners association.

MR. CONINE: All right, thank you.

Barry Kahn.

MR. KAHN: Good morning, Mr. Chairman, Board. I'm Barry Kahn, developer from Houston.

I'd like to bring up the neighborhood organization issue which I think has unintended consequences the way that it is written, and as Robbye mentioned earlier, I think we may have come up with a solution for it. But the way it currently reads is 50.9(i)(2)(A)(7) is requiring the certification by a neighborhood organization that all households within the neighborhood organization's defined boundaries were notified of the neighborhood organization in accordance with its bylaws.

Well, very few organizations have continual board members, so saying that everybody was notified in accordance with the bylaws is very difficult for someone to certify to because who knows when somebody received the certification -- or notification. I mean, people have often lived in their houses 20, 30, 40 years and there's no way for anybody on the board -- which generally turns over every year or two -- to certify that notified in accordance with the bylaws.

Secondly, there are probably a lot of officers who have never even looked at their bylaws, and not every neighborhood organization has bylaws. In fact, I can even attest to the subdivision I live in, we don't have bylaws. So it's very hard to have somebody certify to something that very well may not be true. A question comes up is recorded restrictions a notification to satisfy the requirement as it is written, and that's an unknown.

Then we have super neighborhoods in Houston that comprise

thousands or tens of thousands of people. There's no way that they would know all the households or have a complete list, and for somebody to certify, it almost makes it an impossible task. It's almost too burdensome for neighborhood associations, and let's face it, most of us in the development community aren't openly welcome with trying to get neighborhood organization support. When we do, it's usually a struggle and we have to convince a lot of people what our objectives are and why it's important, and to get their support is really what you're after, not fulfilling certain technicalities.

Now, this morning I talked to Robbye, and the suggestion which apparently the Department is trying to achieve with this language is to make sure that everybody has been notified in the neighborhood, not necessarily complying with technicalities of notice in accordance with bylaws. Getting people to say they certify to something when they don't have any allegiance, when they really don't have a huge interest in whether the development goes forward is very strong.

So the language I'd like to suggest is that a statement is required from the neighborhood organization, and rather than all households -- because there's always turnover and even the best neighborhood organizations don't necessarily have a list or current list of all their members -- is saying a notification to the membership of the neighborhood organization, that they were notified -- and scratch in accordance with the bylaws -- but the customary business practices of the neighborhood organization. Because really what the Department is after is making sure that the organization is notifying its members and they need to do it in a way that will work for the organizations, not put anybody on the spot that they're signing a certification

that they can themselves in trouble when they know they may not have all the information.

And I'm happy to discuss this if anybody has any further questions.

MR. CONINE: Any further questions of the witness?

MR. GERBER: Mr. Chairman, this is an area where there's a lot of concern. Tim, why don't you touch on it a little bit.

MR. IRVINE: Tim Irvine, secretary of the Board.

I think that certainly the staff's intent not just that the members be notified, but more importantly, that the process be open and that people who would be interested in participating in the process have an opportunity. And what we, I think, would recommend is something that effectively requires that some reasonable measures be taken to let the folks in the area know that there's a neighborhood organization that's considering this matter and they're having some sort of meeting or something, and if you want to participate, come on.

I mean, I've lived in a lot of neighborhood organizations that have done it by e-mail list, they've done it by the flyers in the neighborhood newsletter, they've done it by stapling things to telephone poles -- probably in violation of local signage ordinances -- but there are all kinds of ways to do it, and we're just looking for something reasonable to make sure that the word is out there.

MR. GERBER: I think our goal is to try to make sure that everyone who is part of a neighborhood organization had some meaningful opportunity to actually participate in the neighborhood organization, not

necessarily participate in a vote on this particular item, should that neighborhood organization be voting on this item, but that the neighborhood organization was intended for them to participate and it was created for their benefit, that they're at least aware of it. I don't think that staff is absolutely wedded to this language as it is, I think there may be some tweaks in what Mr. Kahn is suggesting, and there's a couple of other things that you've asked the staff to tweak, so perhaps if we could have a break after we're done with public comment, I think we can probably get to where we need to be on the language and come back with a recommendation to you.

MR. CONINE: Okay. Any further questions of Mr. Kahn?

(No response.)

MR. KAHN: Thank you. I'll be happy to work with staff.

MR. CONINE: Appreciate it.

John Henneberger.

MR. HENNEBERGER: Good morning. My name is John Henneberger, I'm the co-director of the Texas Low Income Housing Information Service. We're an advocate for the tenants of low income housing tax credit units and low income people in general.

MR. CONINE: Residents.

MR. HENNEBERGER: The residents.

I'm sort of a little frustrated with the fact that the development community seems to be happy that their issues got considered and many of them got adopted, and I can tell you that of the 15 issues that we submitted, not one got adopted, and I guess I should find out what the secret is.

But I want to suggest that, listening to this discussion, I think

the overall problem with my approach this year was that I tried to address broad policy issues which I think are the fundamental things that this board really needs to come to grips with about the Tax Credit Program to make it more efficient and effective, and I think that this year the QAP comments had to do mainly with process-oriented type of activities. I hope that there is an opportunity at some point for the Board to consider the broader policy issues. In response to virtually all 15 issues that I raised, the staff responded that these are important policy issues that the Board needs to address and will require further vetting and consideration.

So, again, I offer to you the comments that we offered. We think that the NIMBY issue is crippling the program right now and needs to be addressed in a much more substantive way than defining what a community participation is, whether it's a registered member of a neighborhood association or a non-registered member of a neighborhood association. I'm sure those are important operationally to getting a project developed or not developed and I don't want to belittle that and I think it's appropriate to deal with it, but there's a broader question here, and that is that NIMBY is essentially shutting down whole communities from access to tax credit developments and from low income people being able to live in those communities.

Tenant services issues, fundamental to the operation of the program, I think that tenant services points are largely meaningless as they're currently awarded under the QAP and we made some substantive suggestions about ways that things like that could be addressed. Fair Housing implementation issues, the duty of the Department to affirmatively further Fair

Housing which we don't think is fully being met, and offered very specific suggestions for dealing with those. The staff feels that those are important policy questions which can't be addressed here at the QAP but have to be pushed back to some future point in time.

I provided you a letter, however, outlining the three areas that I think are the smallest, least policy issues in hopes that you would consider those issues. And my time is up but I'd be happy to answer any questions that you might have.

MR. CONINE: Any questions of Mr. Henneberger?

MR. GERBER: I've got one.

MR. CONINE: Okay.

MR. GERBER: Mr. Chairman. John, could you talk a little bit about your perspective on recommending a general limit of a total of 150 units per development, just sort of explain the dynamics of that as you see it and the basis for that recommendation.

MR. HENNEBERGER: Well, our recommendation is twofold. One is to eliminate the requirement that you produce at least 32 units in a development which we think there's no public policy reason for doing that, and in fact, there's substantial negative reasons for continuing that policy because neighborhoods are going to be much more acceptant of smaller scale development than larger scale development, by and large, if given the opportunity.

On the question that you asked specifically, the Department allows, I believe, 252 units as the maximum size of a development, and in our opinion, that's simply too large unless it's a mixed use development that

includes perhaps an urban core type of development where you have a certain number of low income units but you're bringing market units in on top of it. In essence, you get to define what you're building here. And the question do we want to continue to try to move forward with very large tax credit developments, or would be better off adopting a policy to encourage the development community and to level the playing field in terms of the cost of developing these smaller units to build smaller scale developments, 150-, 100-unit developments instead of the larger units.

So I think it helps to break down the NIMBY problem, I think it builds greater acceptance in the community, and I think, by and large, the people that I've talked to who I work with who live in these type of developments would much prefer to live in smaller scale developments than in 200-unit tax credit developments.

MR. CONINE: I think the only counterpoint to that would be the debt and equity participants generally like larger projects and the efficiency of which you can manage something over 32 units as opposed to five or ten or 15 and the penalty cost for having to spread that salary over fifteen versus 32. It just historically has been an issue and in light of the more recent financing issues that the industry faces, it's probably a good time to take a hard look at it and have that discussion.

It's not like you to go 0 for 15, and I don't want you to go 0 for 15, yet I think a couple of things are in play. For one, staff has just been overwhelmed with the TCAP and Exchange program, and trying to have broad policy discussions with QAP, we just haven't had that sort of time, and I apologize for that. But in recognition of that, we have placed on the agenda

for the spring a policy discussion of the QAP, and I don't want to act like a bureaucrat saying wait till next year, but I think in light of where we are in the whole scheme of things, I want to make sure that John's 15 items get placed in a policy discussion agenda -- assuming we don't do any of them here today, we might -- but to make sure that that happens over the course of next spring so that we can, as a Board, understand more fully what you're driving at and where you think some improvements can be made to the program, because I can assure you this Board and Mike and his staff want to make sure that this is the best run program in the country, and we want to make sure that it reaches as many low income Texans as we possibly can, and economically feasibly can.

So no excuses from us -- maybe there is an excuse from us, and I apologize for the lack of attention, but given the other issues that are before us in trying to get some of these 2007 and 2008 transactions actually built and on the ground, as some of the 2009, that's probably the reason that I would say we've had some issues getting to the more broad policy discussions.

MR. HENNEBERGER: I very much appreciate that, and I want you to know that my frustration and my criticisms has to do with recognizing that this Board, I believe, has made great progress in improving the quality of programs, and I offer it as a constructive suggestion that broad policy issues merit the Board's attention in addition to a lot of the -- I think 90-95 percent of your time is spent on very important but more narrow process questions, and I would hope you and all the rest of us enjoy an opportunity to have a robust policy discussion at some point.

MR. CONINE: Thank you. Any other questions for Mr. Henneberger?

(No response.)

MR. CONINE: If not, that's the last witness affirmation form on this particular agenda item, we'll take a ten-minute break.

(Whereupon, a brief recess was taken.)

MR. GERBER: Mr. Chairman, I think Mr. Gouris and Ms. Meyer are going to come forward, I think some compromise language has been worked out in two areas. First I'd mention to you on page 46 of the QAP, this deals with the master planned community issue. We're going to strip in item 6 there in the middle of the page the new language that reads: "any seller of the land comprising the development site." We're just going to strike that language, this will be an issue that we'll take up when we do the spring roundtable on the QAP.

MS. MEYER: And we'll revert back to the old language.

MR. GERBER: So we'll revert back to the old language for another year. Not ideal, we still have some concerns, but obviously addressing them this way doesn't quite hit the mark so we'll take it up during the spring roundtable and reworking of the QAP.

As we look to the item dealing with the certification of households within neighborhood organizations, Mr. Kahn suggested some language that staff has tweaked, so the new language will read --

MS. MEYER: "A neighborhood organization must take reasonable measures to provide notice to persons eligible to joint or participate in affairs of the organization of that right. Examples of reasonable

measure would be giving the notice in a newspaper distributed where residents will likely see their posting notice in compliance with local signage requirements. Neighborhood organizations must also comply, as applicable, with their own bylaws or other constitutive or governing documents.”

MR. GERBER: MR. Kahn, does that do the job for you? I guess so.

There’s one more change. Tom.

MR. GOURIS: On page 23, 50.8(d), on page 23 of the QAP, it was a pre-application notice and addresses the notice requirements and the re-notification potential requirements. There was on the top of that page the amount of housing tax credits requested was added this year and we’re proposing just to strike that. It would be consistent with the notification process in the rest of it, and in retrospect, the amount of credit requested at the time of pre-app is not as indicative of what might be necessary down the road and it might cause problems with the notification, as we discussed earlier, so we’re recommending that that be stricken as well.

MR. GERBER: Tom, do you want to also just touch on the 10 percent test and the associated penalty for next year and the fee, just to make sure that that’s clear to the Board.

MR. GOURIS: Earlier I mentioned the fact that an extension of the 10 percent test could be requested and granted. All extensions are required to provide a fee, and then there’s also, because of the 10 percent test, it’s an issue with regard to readiness to proceed and what the developer is working on, and so it’s not a penalty for that application but for the next year’s application there’s a five-point penalty or reduction in score for a future

application if they get the extension of the 10 percent test, as proposed.

MR. GERBER: But again, staff believes that it's an important check-in point given that we've already extended, even in the current economy -- I mean, this is a year later -- that it's important, and there is some flexibility to do the extension, admittedly the fee, but there is that sense that we do need to have that check-in.

MR. GOURIS: That's correct.

MR. CONINE: Okay. Any other questions from Board members regarding either the changes in the QAP or QAP in and of itself?

MR. GERBER: Mr. Chairman, I would just interject we did hear additional comment from Ms. Anderson and from Ms. Latsha and from Mr. Henneberger, all will be issues that we'll add to the agenda for the spring roundtable and revamping of the QAP. With that we'd ask for a motion.

MR. CONINE: Hearing none, I think a motion would be in order.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I think I'll take a stab at it.

MR. CONINE: Okay, good.

MS. RAY: I recommend the approval of staff's recommendations, along with the agreed-upon adjustments to those recommendations as approved within this Board book. Clear enough?

MR. CONINE: It is for me. Motion to approve the QAP for 2010 and I guess repealing the 2009 QAP with those amendments so described.

MR. GERBER: 2008.

MR. CONINE: 2008, I'm sorry. Excuse me, wrong year.

MR. GERBER: And Mr. Chairman, just also to clarify the motion to also allow the staff the ability to make any conforming changes or technical changes necessary before publication.

MS. RAY: Also to include that.

MR. CONINE: Do I hear a second to that motion?

MS. BINGHAM: I'll second it.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

I want to thank both the development community for all the input, and staff, again, to do this at the same they're doing TCAP and Exchange and everything else that's going on, I appreciate everybody's hard work.

A couple of things from the chair. One, you heard the commitment to have a spring roundtable on the QAP which we want to make sure we have a broad section of dialogue and commitment from everyone to participate. But secondly, you heard a lot of statutory language, and that

statutory language either occurs at the national level or at the state level, and seeing that this agency is up for Sunset next session, it's an opportune time to get some statutory relief, if that's what's in order, and try to give this Board and the Department a little more flexibility in dealing with some of the issues probably that Mr. Henneberger and others would like to deal with but can't because of some statutory shackles that upon us.

So I would encourage all of you out there to participate in the process, and we ended up having to meet today on Monday to meet a statutory deadline of November 15, and given schedules and so forth, this was the only day we could meet. Those are just some of the issues that we have to deal with in trying to, quote-unquote, make everybody happy, and I would encourage participation in the legislative process as we move forward in the next session.

Item 2(d), Mike. Mr. Chairman and Board members, only one comment was received during public comment related to our Multifamily Housing Revenue Bond rules. Staff has included that comment in your materials. Staff is recommending the Board adopt the repeal of 10 TAC Chapter 33 and adopt a new 10 TAC Chapter 33 for the 2010 Multifamily Housing Revenue Bond rules, as presented, and allow staff to make changes to these rules where applicable to be consistent with other programmatic rules.

MR. CONINE: Do I hear a motion?

MS. BINGHAM: So moved.

MR. CONINE: Moved by Ms. Bingham. Is there a second?

MS. RAY: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 3(a).

MR. GERBER: Mr. Chairman, item 3(a) is the presentation, discussion and possible approval of ARRA WAP awards for Community Action Corporation of South Texas, Community Services Agency of South Texas, and the Greater East Texas Community Action Program.

In the initial awarding of weatherization funds under ARRA action on awards to several members of the existing provider network, these were held back because these three had issues of material non-compliance under other programs that had been identified in the previous participation review process. All but three of those situations remain, and today we are bringing back these three awards with the recommendation that this Board, in fact, award those ARRA stimulus funds.

However, the manner in which we're recommending these awards has several unusual aspects. This agency's historic approach has been that if you're in material non-compliance, any application for additional funding under any program automatically is terminated and the matter cannot be appealed. Earlier, under item 2(b), you adopted significant amendments to the compliance rules and one of the more significant changes was to revamp this process. Under the new rule, as soon as it takes effect -- which will be 20

days from the date that we file it with the Texas Register -- these terminations will become subject to appeal and the Board will have four very clear criteria for proceeding with the reinstatement and award, notwithstanding the material non-compliance at the present for these three on the housing side -- not on the weatherization side but on the housing side.

The four criteria are: that there has to be a finding that it's in the State's best interest to make the award; two, that it won't present undue risks; three, that the applicant has not been acting in bad faith; and four, that the applicant has taken all reasonable measures to address their material non-compliance.

In the writeup we've tried to provide for you a description of how staff believes each of these three applicants meets the criteria of the new rule, and I will say that I've been involved in meetings with all three of them, I think they're all working in very good faith to try to figure out a solution to the limited number of housing units that are not in compliance, and I appreciate their efforts, and all three agencies, I believe, have staff here today, including their executive directors and board members.

Through the authority of the Texas Government Code, Section 2001.006, you have the authority to approve these matters as if the new rule were in effect, provided that the effect of the approval is delayed until the new rule takes effect. Each of the applicants has been requested, again, to be here today so they can address any specific issues of material non-compliance, but all of them know that they have the heavy burden of trying to resolve these non-compliance issues, and yet, we also know that these three have performed well in the Weatherization Assistance Program and they are

already receiving significant additional dollars from the Department for weatherization.

We made the WAP funding an application because we wanted to see their capacity and ensure that, given the large amounts that were going to be coming their way, that they had good plans in place to be able to administer these funds, and we're confident that the three do and that they know what they're doing on the weatherization side, have every capacity to get those dollars out within the time frames that are allowable under the ARRA legislation.

But this has been a difficult process because of those earlier issues of non-compliance, and every one, to an agency, has stepped up, and so we appreciate that and believe it's appropriate to bring forward these awards today. And these were the last three, we'll execute those contracts, and then the entire state will be covered with the weatherization network and be eligible to receive weatherization services under the stimulus program. So that's the good news of it, albeit a very difficult set of issues.

If it's the Board's pleasure, the various agencies are here to assure of their abilities and their commitment to resolving the issues of non-compliance, and I might add, each one of them understands the seriousness that this Board places on compliance, and we are going to be reporting to you regularly about the progress that's being made to address those non-compliance issues.

MR. CONINE: I have several witness affirmation forms, some of them only if the Board has questions or not. I'll call them out now. David Ojeda, Anna Walt, Royal Rodriguez, all these are from the Community Action

Agency of South Texas.

MS. RAY: Mr. Chairman, I understood that they have comments only if the Board has questions?

MR. GERBER: Only if the Board has questions or if they would like to add something to the mix to make sure the Board understands their seriousness.

MR. OJEDA: Mr. Chairman, we're just here to affirm that we do support the staff recommendation and we're here to answer any questions that you may have.

MR. CONINE: Okay. Thank you very much. Any other questions or comments from any of the witnesses?

DR. MUNOZ: Michael, can I just ask a question? If we weren't to do this, it would take a considerable amount of time to find other providers.

MR. GERBER: Under the Department of Energy rules, these agencies have a designated service area. Were they to be removed from the program, were we not to fund them, we would have to go through -- correct me, come forward, Ms. Boston.

MS. BOSTON: Brooke Boston. I think you're thinking of the CSBG Act.

MR. GERBER: I'm sorry, I am. But go ahead.

MS. BOSTON: To answer your question, Dr. Munoz, it would be a fairly lengthy and onerous process, not for that reason, but the experience level for the current providers is pretty extensive and it's a very technical program, so over the years, as we've tried to go out for bid for replacements for this program, it's been very hard to find replacement

providers. They have to meet certain criteria, they have to be a non-profit, they have to be willing to serve the full array of counties. And so in this, because we have an experienced provider, that's one of the reasons why we feel like the State has a compelling reason to want to do this.

And yes, we would have to go out for bid, we'd have to go through the procurement process, and then if we were lucky enough to have someone respond and represent all those counties, we'd then have to totally train them as a new provider.

MR. GERBER: And it's fair to say the last time we had -- and I guess I'm confusing it because these are three community action agencies, in some instances our weatherization providers are not community action agencies, but when we had a community action agency last year that failed and lost their weatherization program, when we put it out for bid, we wound up having contractors, other non-profits and other organizations coming in and cherry-picking counties which left a number of counties unserved. That would be a real risk here.

MS. BOSTON: That's right.

MR. CONINE: Okay, let the record also reflect that Karen Swenson is here from the Greater East Texas Community Action Program, only available for questions, in addition to these three fine folks. And I guess the only thing I'd like to say is -- two things: one, we would encourage you to get the material non-compliance taken care of as quick as possible, and secondly, we would encourage you to get the folks weatherized as quick as possible. I know these are stimulus dollars and there's various contractors and the like that need a little stimulus out in the marketplace today, as do the

low income residents who will ultimately benefit from those particular activities.

So appreciate all your help and appreciate you being here today.

Did you want to make a motion, Dr. Munoz?

DR. MUNOZ: I move staff's recommendation.

MR. GANN: Second.

MR. CONINE: Motion to approve by Dr. Munoz, second by Mr. Gann. Any further discussion?

MR. IRVINE: Tim Irvine, Board secretary. I'd just like for the Board to make it clear that by taking action you are making a finding on the record that the four factors have been addressed to your satisfaction.

MR. CONINE: Is that okay with you, Dr. Munoz?

DR. MUNOZ: Yes.

MR. CONINE: Secunder yes?

MR. GANN: Yes.

MR. CONINE: Make that affirmation. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Thank you.

MR. GERBER: Mr. Chairman, I would interject, if you're a board member from one of these community action agencies, would you raise your hand? We've got a couple that are here. We thought it was important

that they be here and I appreciate their commitment because they know at the policy level, just as with our Board, setting the tone at the top is very important, and we appreciate your working well with your staff to get all these issues addressed and look forward to good results on the Weatherization Program.

Mr. Chairman, item 3(b) is presentation, consideration and possible approval of clarification of the extension deadlines and allocation priority for the Housing Tax Credit Exchange Program. At the October Board meeting, the board set several benchmark deadlines specifically for the 2007 and 2008 tax credit awardees that are participating in the Exchange Program. Staff believes the Board action intended to extend the 10 percent test date to the same May 31, 2010 date as the commencement of substantial construction deadline for 2007 and 2008 developments, the motion by the Board did not specifically reflect such action.

In addition, the December 31, 2009 closing deadline created by the Exchange Program policy supplement should have been specifically identified and extended to at least March 31 of 2010 for all awardees, including 2009. Through the Exchange Program, the Department will be able to exchange 40 percent of the 2009 annual allocation available to the State but this means, though, that not every 2009 tax credit awardee will be able to receive an Exchange award -- in fact, in eight urban regions of the state, the amount of Exchange funds requested by the highest scoring applicant is more than the amount that's initially available to the region, and this results in an eight-way tie for the most under-funded regions of the state and remaining funds available statewide are only sufficient to fund about half of these 100

percent under-funded regions.

The tiebreakers -- which has been a new challenge for the Department -- the tiebreakers available in the QAP break ties with regard to score but not with regard to this type of percentage under-funded region tie. To break this, staff suggests prioritizing the developments based on the total dollar amount available for their region with the highest dollar amount representing the most under-funded region, and therefore, the highest priority to fund, affirm the intention to extend the closing date for 2009 tax credit awardees participating in the Exchange Program to March 31, 2010, we're asking you also to confirm the extension of the 10 percent test deadline to be extended to May 31, 2010, as well as for the 2007 and 2008 applicants, and clarify the allocation priority of under-funded regions to include the total dollar amount that's available for each region. So those three items.

MR. CONINE: Okay. I have no witness affirmation forms, so I'd entertain a motion.

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

MR. CONINE: Motion to approve the staff recommendation. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Motion was by Mr. Gann, second by Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. I think that was a polite way of saying that the Board screwed up instead of the staff screwed up, but we got it fixed.

MR. GERBER: Mr. Chairman, item 3(c) is the presentation, discussion and possible approval of conditional awards for Round 2 Tax Credit Assistance Program applications. This action item presents award recommendations for applications received from the 2009 tax credit awardees for TCAP funding. Today's action will conditionally approve an estimated \$66.5 million in TCAP funds to approximately 25 of 46 applications with 2009 tax credit awards -- remembering that TCAP funds can only be linked when you have an existing tax credit award.

Approximately \$3.6 million remains to be combined with other returned funds to fund transactions on this list that are reflecting an award today. The awards will be conditioned on completion of threshold and scoring review, underwriting, previous participation review, and changes in application status. Changes in application status could result from the pursuit Exchange funding which automatically indicates withdrawal from TCAP, could include ineligibility such as termination of the tax credit award or material non-compliance, as well as additional funds perhaps being carried over from Round 1 and allowing for additional awards.

Staff recommends the approval of conditional awards for Round 2 TCAP applications as detailed in the logs in your book and any

changes that may occur in the application status due to the pursuit of Exchange funds ineligibility or the availability of additional funds from Round 1.

MR. CONINE: I have one witness affirmation form, Chris Akbari.

MR. Akbari: Good morning, Board and staff. My name is Chris Akbari. I represent Itex Developers. My father and work in southeast Texas to build affordable housing, and we have a project 09790, Grace Lake Townhomes, it's located in Beaumont, Texas. And I'd like to point out that from the Board's writeup there were four factors that you used for evaluating these TCAP awards: one was the development's readiness to proceed, two was the leveraging of other resources, three was the previous tax credit score, and four was the development's location.

Number one, our project is ready to go, we're ready to receive these funds, we could close within 60 days of the award, we're fully supported by the City of Beaumont with HOME funds already supported for the project, we have the highest rank in our region, and we're in southeast Texas where we need the funds the most.

I ask you today to amend your conditional request by the staff to add Grace Lake Townhomes. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: That concludes the public comment on that particular agenda item. Do I hear a motion?

MS. BINGHAM: Mr. Chair, I move to approve staff's recommendation for the TCAP.

MR. CONINE: Motion by Ms. Bingham. Is there a second?

MS. RAY: Second.

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

(No response.)

MR. CONINE: Seeing no other further discussion, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 3(d).

MR. GERBER: Mr. Chairman, item 3(d) is the presentation, discussion and possible approval to award 2007 and 2008 Exchange Program funds and to authorize the return of 2009 tax credit authority to the Treasury and award of 2009 Housing Tax Credit Program funds.

One significant policy issue has arisen under the Exchange Program: when you apply the regional allocation formula to eight areas of the state, those areas have insufficient funding to satisfy their top-scoring urban transaction, so in effect, each of these urban regions is, again, 100 percent under-funded. Although it is possible that the situation will change as other transactions fall out along the way, the current posture of these deals is that there would be approximately \$42 million available under a statewide collapse of the remaining balances in the under-funded areas but they would require over \$60 million to get these deals done. Therefore, a tiebreaker is needed. Staff recommends that the awards of the statewide urban collapse be awarded based, again, on the dollar amount by which each region is under-funded

going from highest amount down.

With this recommended policy clarification, staff is recommending that the additional awarding of \$586 million in Exchange funds as presented in your Board materials.

MR. CONINE: We have a few folks that want to visit with us about this. Mike Sugrue. Next is Randy Stevenson after Mike.

MR. SUGRUE: Good morning, Mr. Conine, Board members and Mr. Gerber.

MR. CONINE: Good morning.

MR. SUGRUE: Obviously I put the witness affirmation in support of this, of course, but I just want to call the attention to the e-mail I'd sent to Mike and others that some of us had conditions present at the closing, and in my case it happens to be the EDC loan is conditioned upon closing prior to January 1, 2010. We believe we're ready to go if we can get everybody else ready to go, and I know that we don't have docs yet so we have some things that we have to get done in order to be able to accomplish that.

So I just would like to let everyone know, and I do know, by talking to some of the other developers, that some others have conditions like their land evap rates and things like that, so there will be a number of us pushing hard to try to get closed, but we thank you for getting us to this point and we look forward to it.

MR. GERBER: Mr. Chairman, this is probably a good point to maybe mention we've talked a lot last week at the staff level, the last two weeks, about how we sort of manage this workload. And I'm glad you

mentioned this, Mike, because I want to assure the Board that our goal as staff is to underwrite and to work all these deals through to the extent that we can, we're going to try to get as many done by the December Board meeting. My hope is that we will be closing a huge number of deals in the month of December, late December, early January at the latest, But we have pulled every available resource within the staff who has had experience and even gone out to other parts of the Department to bring in and deal with this workload and to try to manage it well.

And so we're sensitive to it and we know that all of you are anxious to get this housing on the ground. These are conditional awards of a huge amount of stimulus dollars today. It's exciting and everybody out there is ready to proceed. So between the lawyers, the Multifamily staff, Underwriting staff and many others, we're trying to be as creative as we can at the staff level to incentivize and to do what we can to get through this bit of a logjam. But we're sensitive to it and bear with us.

Obviously, to the extent that deals are ready to go and there is not lots of confusion about numbers or changing numbers or lots of information coming in at the last minute, that helps us out -- and you just happen to be here so I'm not picking on you.

MR. SUGRUE: Just give us the money, we'll work it out later.

MR. GERBER: Fair enough.

(General laughter.)

MR. GERBER: We're committed to it and we hear you. Thank you.

MR. CONINE: Let me ask one more question -- not of you, go

ahead and sit down, I've looked at you long enough.

(General laughter.)

MR. CONINE: The TCAP documents are already out and done. Isn't that correct?

MR. GOURIS: That's correct. The written agreement for the TCAP document, as we believe to be final, was posted Friday. The Exchange written agreement draft was posted this morning -- it was supposed to be posted Friday, we had some technical glitches, but it was posted this morning as a draft. We're going to be taking comment on that for a week, like we did with the TCAP document, and try to incorporate those comments as much as we can into the document for the end of next week hopefully being close to wrapping the written agreement up.

The written agreement is critical because it's become this large document that is going to guide the whole process, so it's been a struggle but with that level of detail, we'll have a really good guiding document to get these deals closed.

MR. CONINE: Let me ask you this, based on the list of Exchange awardees as we see it here in front of us now, do you have a good indication of how many of those have 12/31 deadlines, such as the one we just heard from Mr. Sugrue, and those who don't have 12/31 deadlines?

MR. GOURIS: We don't have a good list of that, and that would be a very good thing for folks to start shooting me e-mails on to let me know and make sure that I'm aware if they're sending it to other folks, make sure that I'm aware so I can keep track of it as well.

And for the audience, if you can help us out in being as

straightforward with what those deadlines are, I know everyone is anxious to move forward, but I know there are some that are more high pressing than others, everybody is going to feel like theirs is high pressing. Obviously, our priorities are going to be to go to the '07 and '08 transactions first, as we've been given no other priority, our priority has been '07 and '08 TCAP, '07 and '08 Exchange, '09 TCAP, '09 Exchange, and that's because in that order of priority is how many other folks might be participating and where we stand in the dollar size. On '09 Exchange, we're putting in the majority of dollars and I'm hopeful that folks will be patient with us to be able to get those deals done with the last priority but still a priority.

MR. CONINE: And has the legal side of the house got their stuff together where they could respond in an aggressive manner once these documents get done?

MR. PENDER: Yes. We're busy trying to put together the closing documents for all these right now, and as soon as we get final draft of the agreements, it shouldn't take too long to get them out after that.

MR. CONINE: So I'm hearing November 15 for the Exchange document?

MR. GOURIS: For the written agreement for the Exchange document?

MR. CONINE: Yes.

MR. GOURIS: That's probably reasonable.

MR. CONINE: All right.

MR. GERBER: And I would just interject, we appreciate the help of several outside counsel in this room and others who have been

offering some assistance to us as we try to get the language right, as well as working with our own counsel up in Washington, Tony Freeman, who many of you know, to make sure that we're conforming with the letter and the spirit of the federal guidance on this. But the documents have been circulated and Theresa Shell and some of the others of our team have been really working to incorporate just lots and lots of comments that have come in, so it's taken a little longer to get it right but we think the end product -- which will go up later this week -- will be one that we can be pretty happy with.

MR. GOURIS: And there are some ancillary documents that we're still working on gathering and those are still kind of working through the process. The main documents are those written agreements and those, we feel, will allow a lot of folks to move forward, and I think we're going to send those out as deals are underwritten so we can go ahead and move the ball forward even if some of the ancillary documents aren't finalized, we'll continue to work through those, though.

MR. CONINE: And give me a perspective of where you are on the underwriting of these 86 transactions.

MR. GOURIS: The first group of TCAP deals, the '07s and '08s, are materially complete, there's a handful that have some tweaks that need to be done.

MR. CONINE: That's TCAP.

MR. GOURIS: That's TCAP, '07 and '08. The '07 and '08 Exchange are the next group of deals that are being prioritized and they're engaged right now.

MR. CONINE: What does that mean?

MR. GOURIS: That means they're in the underwriting process in some way -- they're there for underwriters to do and most of them have been -- a lot of them have been started or touched, but they're going back and forth with developers to get information. Those folks should be hearing from us; if they haven't heard from us, they can call us but they should be hearing from us.

The '09 transactions that were just underwritten, let me go with the TCAP first, those applications were recently submitted, the deficiencies and those initial reviews of those have been completed. Those are kind of in line to go to underwriting; we haven't really started underwriting those at this point. And then the '09 Exchange, we're going out with this award today with a letter asking them to bring back an application in ten days and we'll start going through the threshold review and underwriting those.

MR. CONINE: If I were to ask you to make a commitment right now on how many TCAP and Exchange deals you're going to close -- I don't care what year it is -- how many are you going to close before year end? And I know a lot depends on the other side, developers, financing, lawyer, banks, equity people and all that kind of stuff.

MR. GOURIS: As many as physically possible is the real answer.

(General laughter.)

MR. GOURIS: But if I had to guess --

MR. GERBER: Let's not. We all feel the boot to the back.

MR. CONINE: Okay. Any other questions of Tom?

(No response.)

MR. CONINE: Sorry, Randy Stevenson, I ended up talking about a lot of stuff. Randy, are you here.

MR. STEVENSON: I'll pass.

MR. CONINE: You'll pass. Okay, Tony Sisk.

MR. SISK: Tony Sisk, Churchill Residential, developer from the Dallas area. Mr. Chairman, Board members, Mr. Gerber.

I come today to speak briefly regarding the interpretation of the Exchange statewide collapse. I submitted some material that shows a copy of the policy statement for TCEP which under Section 2(b)(4)(I) says that of statewide collapse: "Funds shall collapse into a statewide pool and allocated to the next available application in the most under-funded sub-region." The Board action request today that is being submitted to you says that the allocation would be done on a regional basis versus a sub-regional basis.

The under-funding should be based on the sub-region's need -- sub-region being urban versus rural -- as established by the regional allocation formula, and the regional allocation formula, as you know, is TDHCA's determination of each sub-region's need when compared to the state as a whole. The need is shown by the amount allocated to that sub-region, so a sub-region with a small allocation has less need than a sub-region with a large allocation.

Therefore, what's the measure of under-funding? It's how much of the need has not yet been met. So to establish this, you would take the allocated amount of the funding and then subtract the amount of funding received, so the sub-region with the highest amount unfunded need should then be considered the most under-funded sub-region. So using this

methodology, then the Region 11 Urban is the most under-funded sub-region because it was allocated \$9.1 million but received nothing in the individual funding, so it's been under-funded by the \$9.1 million.

So the highest scoring unfunded urban application Region 11 should receive the first funds in the regional collapse of these Exchange funds.

Then going down the list, the second most under-funded sub-region is Region 3 Urban which had an allocation of \$31.9 million but only received \$23.9 million, leaving it under-funded by \$8 million, therefore, the second highest scoring unfunded urban application is in Region 3. And then if you work your way down the list, what we've done is we've attached the staff's ranking based on the collapse on a regional basis if it's done according to the policy supplement for sub-region, then the ranking of the most under-funded regions are shown in that second listing right there.

So I'm asking the Board to please have the staff re-look at the statewide collapse to make it on a sub-regional basis as stated in the policy supplement. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: We'll get staff to respond, please.

MR. GOURIS: I'm not sure I follow what he's asking us to do.

MR. SISK: Well, what I'm saying is that if you look at the language --

MR. GOURIS: Are you suggesting that we should look just at the dollar amount of under-funded?

MR. SISK: Yes, and just looking at it on a sub-regional basis

versus regional.

MR. GOURIS: But what you're talking about is looking strictly at the dollar amount that's remaining and that's the amount that they should be under-funded which is inconsistent with what we said we were going to do and the percentage basis that we clarified earlier that we're going to use percentage basis, but where percentage basis still results in a tie, then we're going to look at the dollar amount that's under-funded. Unfortunately, that region got funded and is not 100 percent under-funded, and therefore, Region 3 isn't -- the \$8 million in under-funding in Region 3 isn't being considered as being an under-funded or most under-funded region because it did receive two awards in urban.

MR. CONINE: Why don't you go out in the hall and talk, maybe at a break or during lunch or something.

MR. SISK: Are you going to vote on this after lunch?

MR. CONINE: No, I'll probably -- why don't you step out in the hall for just a minute and see if you can agree to disagree or if you can agree to agree.

And I'll listen to Jeff Crozier for a minute -- or three minutes, as the case may be.

MR. CROZIER: It won't even be 30 seconds. Jeff Crozier, executive director, Rural Rental Housing Association.

I'm kind of premature up here but if you were to vote on the staff recommendation today, there are a lot of great rural projects on this list, and I want to thank you very much for listening to what we had to say and helping out, because these are going to be very, very difficult things to do, and

like I said, there's a lot of good rural developers out here that are going to get an opportunity to do some work. And I want to thank you very much and thank the staff as well for the fine effort they did. Thank you all.

MR. CONINE: Thank you.

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes, sir.

MR. GERBER: I don't think we always appreciate, and it might be helpful, just by a show of hands, there's a lot of folks who are going to benefit in the development community today who are out here that we haven't heard from, and if you're going to be receiving a TCAP award -- unless there's a change made -- would you just raise your hands?

MR. CONINE: TCAP or Exchange.

(A show of hands in the audience.)

MR. GERBER: That's great, and this is just a sample of the development community that we work with, but it's also important to note that today you'll be awarding, between TCAP and Exchange, a total of \$652 million in stimulus funds, so whether you like the stimulus or don't like the stimulus, there's a benefit here to getting a lot of affordable housing on the ground through this Board and with this development community. So that's exciting and it's larger than the amount of any other award the Department has made, including our tax credit rounds where we get about \$48 million a year and the value of that, obviously, is ten times that. So it's a pretty exciting, it's actually taken a long time to get here, and I just wanted to note that.

MR. CONINE: And I want to reiterate how thankful I am for staff that has worked so hard to get not twice the work but two and three and

five times as much as in a normal year. Appreciate everybody's hard work, weekends and nights and so forth. I know it's been difficult and we've still got a long way to go to get them all closed -- as we were talking about a few minutes ago

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes.

MR. GERBER: If it would be the Board's pleasure, may we table this item until that discussion finishes and move to some other quick items to knock out?

MR. CONINE: We probably can do that. Do I hear a motion.

MS. BINGHAM: Move to table.

MR. CONINE: Until they get back.

MR. GERBER: Until they come back.

MR. CONINE: Motion by Ms. Bingham, second by?

MR. KEIG: Second.

MR. CONINE: Mr. Keig. No discussion. All those in favor say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, moving on to item 4(a) which is the presentation, discussion and possible action on an amendment to the TDHCA ARRA Weatherization Assistance Plan to be submitted to the Department of Energy. In this item, we're requesting the Board approve us to

submit a plan amendment to the Department of Energy for our Recovery Act Weatherization Assistance Program. Our initial plan was approved by the Department of Energy but for a variety of reasons, it requires some revision, and if you look at the writeup, you'll see that there are four items posted in the amendment.

The first of those revisions relates to a reallocation of funds among sub-recipients. Our initial game plan anticipated awarding \$180 million to the existing network of providers -- the three folks that we awarded funds to earlier that had compliance issues, those are part of that existing network of providers. \$100 million was also set aside for a newly expanded network of the state's largest cities of a population of 75,000 or more, and a small pot was allocated of \$7.5 million and earmarked to be awarded competitively.

In July, in response to applications, the Board awarded actually a total of \$9.5 million because we received some -- we had an over-subscription to that pot of funds and there were some great ideas that came from the non-profit community and from a number of small cities around our state, and that's why that \$7.5 million pot was added and why this Board expanded it to \$9.5 million to serve 13 entities under the competitive pool, and the awards in that competitive pool ranged from a half million dollars to a million dollars.

The Department of Energy, ever since we've made those awards, has spent just hours and hours with us and have raised numerous concerns about these small providers. The truth is the Department of Energy wasn't all that happy with us expanding the network of providers to include the largest cities in the state, but they went along with it because each one of

those cities already receives direct allocations of federal monies, they're familiar with the OMB circulars, they have experience in accounting procedures and other mechanisms in place to manage large federal grants.

With the 13, however, they had a very strong bias in favor of this existing providing network and against us providing funds to those 13, even though we were of the belief and are of the belief that those 13 do have capacity and can get the job done well for us. They've expressed such significant concerns to us about those 13, including monitoring visits, the promise of additional audits, we've had the secretary's office down here doing a readiness review, asking about all of our money, and during that review 50 percent of the conversation focused around these 13, and our assurance that basically we've concluded that we're not going to be in a position to succeed and certainly our non-profit and small city partners who got these grants are not in a position to proceed.

As painful as it is, we've made the decision to withdraw the awards from those 13 sub-recipients. Our intent is to take the money that went to each one of those sub-recipients and give it to the existing provider in serving their region. So for example, in El Paso, it's the City of Socorro that received an award of funds, as well as the El Paso Collaborative that received a small award of funds. The funds from those two organizations is going to transfer over to Project Bravo which is our existing weatherization provider in El Paso and in the El Paso region, and in a contract amendment, we're going to limit and restrict these funds to only be used in the jurisdiction that our non-profit or small city partner had intended to serve in the first place.

So we're trying to make lemonade out of a bad situation.

There are folks who are certainly hurt by it, especially the non-profit community saw this as a new business line for them to serve low income people, and we're collectively frustrated by it and we have had many meetings. Michael De Young, who is our director of Community Affairs, Brooke Boston and I have had numerous conference calls, we're going to be doing some hitting the road to talk to our non-profit partners who we've had to take the awards from, small cities who we've had to take the awards from, and to link them up with the existing weatherization provider to see where it's possible that they work together to try to ensure that everyone who may have been on the list to be served, that those transfer over and receive some priority, to the extent that's possible, to assist with case work or any other servicing of our existing weatherization providers that they have that opportunity.

It's not a strict requirement but we're going to try our level best to try to keep them in a role assisting with weatherization, and we're also going to, fortunately, reimburse them for the very limited amount of funds that they've spent coming to Austin and going to Houston for training that we've done on weatherization. They operated in good faith, these are small organizations, small cities, most have only spent a couple of thousand dollars, but we will reimburse them for those travel costs that they've incurred.

So with that, we would ask -- I've personally called all 13 to express our disappointment, and they all had varying degrees of anger and frustration to understanding, one or two felt relief because the Weatherization Program is a challenging program to administer. So with that, that is one of the items that is on here.

It's also important to note the other two things that I would mention is that several of the large cities have indicated that they would prefer not to participate directly in the program and have asked that their funds be transferred to their local network provider, so long as funds are expended within the city, and to the extent that those requests have occurred or continue to occur, contract amendments will be made and the plan amendment reflects those requests.

The last plan amendment relates to the three existing network providers whose awards were deferred to material non-compliance issues that you addressed earlier, and this requires a technical amendment to reflect their awards, and so that's included also in this plan.

Did I miss anything? Why don't you come up and mention the last two. Which two on my list?

MS. BOSTON: The third and the fourth amendment items. Brooke Boston. The third and the fourth items in the writeup just are the two additional things that will be in the plan amendment to the Department of Energy which is the entities that didn't apply, we're still going to go out for bid for those, unless we're able somehow in the next few weeks -- which we're still trying to figure out an alternative solution so we don't have to go out for bid. And then last, in September you had approved a whole series of budgetary changes, and so we just want to be sure you knew that we're putting those back in too, so the plan amendment is reflective of your actions from September and today.

MR. CONINE: Okay, there's four different items on this one particular agenda item. Everybody understand? Any other questions? Do I

hear a motion?

MR. KEIG: I have a question.

MR. CONINE: Oh, you have a question. I'm sorry.

MR. KEIG: Maybe for Brooke.

MR. CONINE: Sure.

MR. KEIG: Could you outline the items of non-compliance for those entities under item number 2?

MS. BOSTON: Patricia Murphy will come up for you.

MS. MURPHY: Patricia Murphy, chief of Compliance and Asset Oversight. And you're asking about?

MR. GERBER: What are the non-compliance issues that the three community actions that we approved on an earlier item, that they had? All were centered on housing, and go agency by agency.

MS. MURPHY: Sure. Greater East Texas Community Action Agency has two apartment complexes. East Main Apartments has the following uncorrected non-compliance: household income above the limit upon initial occupancy; major and minor violations of the uniform physical condition standards; and the last four years the annual owner's compliance reports have not been submitted. Railroad Street Rentals is their HOME property and they have the following uncorrected non-compliance: major violations of the uniform physical condition standards; the last four years the annual owner's compliance reports have not been submitted; gross rents are over the limit; and failure to maintain documentation.

Community Action Corporation of South Texas has two housing tax credit properties. One of them has no uncorrected issues. The other

property, Cameron Village, has household income above the limit upon initial occupancy and no evidence of supportive services uncorrected.

Community Services of South Texas has four HOME properties. Villa de Reposo in San Luis has no uncorrected issues; Villa de Reposo in Pearsall has no uncorrected issues. Villa de Reposo in Encinal has the following issues uncorrected: household income above the limit upon initial occupancy; owner failed to execute required lease provisions; and failure to provide an affirmative marketing plan.

MR. GERBER: And on all cases we're working to meet the standard and the spirit of the four tweaks to the rules of acting in good faith, in the State's interest, and all three are working to try to address their issues. We struggled, these have been ongoing things to deal with but in the last several months they certainly have stepped up their game to work with us.

What's the total value of what's in non-compliance, what's at risk with HUD in terms of millions of dollars because of the non-compliance, a couple of million?

MS. MURPHY: That's a tough question. I would say a couple of million sounds about right.

MR. GERBER: A little over two million, and the thing that we struggle with is that HUD doesn't want their money back, HUD wants the affordability of the units and these units to be maintained in a particular way, and so what we're trying to do is in some instances we've had agencies that didn't understand some of the flexibilities that are allowable within the program surrounding income limits and that if they can't serve someone at a particular income limit, maybe they can serve someone else at a slightly different income

limit that is compliant. So we're working through that issue.

On the maintenance issues, that becomes an issue of funding, and those agencies that have the maintenance challenges those are working through trying to find alternative sources of financing because we're not able to finance them. We've had some community action agency partners, another one that I mentioned, the community action agency in Giddings where their executive director stood up and took out a loan for \$40,000 to fix the two houses that I think she had in non-compliance. It's certainly a strategy to look at but it is hard for these non-profit organizations to take on debt, especially since most are dealing with an amount larger than just the \$40,000.

And that's why we'll also be following these three to see how their progress is and reporting back to you all.

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

MR. GERBER: With that, Mr. Chairman, we'd ask the Board's approval of the motion approving item 4(a).

MS. BINGHAM: So moved.

MS. RAY: Second.

MR. CONINE: Motion by Ms. Bingham, second by Ms. Ray for the approval of item 4(a) as staff recommends. Any further discussion?

(No response.)

MR. CONINE: All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, it's very appropriate that State Representative Jose Menendez has just walked in the door because we're going to item 4(b) which is a presentation, discussion and possible approval of the Homeless Housing and Services Program award recommendations for the City of Austin, the City of Arlington, and for Haven for Hope in San Antonio. And I mention Representative Menendez because no one really worked as hard as he did, along with the Speaker, to include \$20 million in general revenue, the first time any general revenue at all has been dedicated to serving the needs of the homeless in our state. And so we are pleased to be bringing three of the ultimately eight city applications that will be seeking your approval on, bringing those forward to you today.

\$6.3 million is being recommended for the City of Arlington, City of Austin and for Haven for Hope, again, on behalf of the City of San Antonio. This is part of that \$20 million program that was created. Again, it's the eight largest cities in Texas that are eligible for the funds and we expect the five remaining cities will submit their funding proposals in time for funding at the December Board meeting.

But we are very excited about these funds because they can be used really for a wide range of services, from case work to meeting critical needs to and including construction. In the case of San Antonio where they're building probably the premier integrated social services homeless program in the country, these funds, the \$3.1 million that we're providing to San Antonio and to Haven for Hope will make a real meaningful difference to completing

that project, so we're excited about that. And we would ask your approval of awards and for the Department to enter into contracts with the City of Arlington, the City of Austin, and Haven for Hope. And I don't know if Representative Menendez would like to say anything about Haven and the progress that we're making there.

MR. MENENDEZ: Thank you, Michael. Thank you, Mr Conine and the Board members for the opportunity to speak to you this morning. I would have been here earlier this morning, but unfortunately, my wife has had some health concerns that kept from getting here sooner.

But first of all, Michael, I want to thank you and I want to thank your staff, particularly Mr. Lyttle, for your efforts on working with me and the City of San Antonio, Mr. Greehey and his staff at Haven for Hope on this agenda item 4(b). This initiative marks a major first step for the state in creating a funding mechanism to address the growing homeless problem affecting tens of thousands of our citizens.

And for those of you who are not familiar with Haven for Hope, it is the result of the most remarkable public, private and faith-based driven efforts I have ever seen. Taking a transformational approach to addressing the homeless, this program has quickly become a national model and has helped to set the stage for similar programs in other metropolitan areas of Texas.

Mr. Gerber and Mr. Lyttle worked very hard with us to craft the appropriations rider language, and thanks to the committed effort on the part of Mr. Greehey and his staff and the full support of the Speaker, the Lieutenant Governor and the Governor's Office, we were able to get these

funds into the budget. I just want to thank the Board and the staff of the agency for your support and this very efficient mechanism that they developed for this approval today.

I also would like to discuss something that I wish I would have been here earlier.

MR. CONINE: Before you go to that, let's go ahead and vote on this, the Haven for Hope issue and the other two in there. Any other questions of State Representative Menendez on item 4(b)? If not, I'll entertain a motion to approve.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to approve item 4(b).

MR. CONINE: Motion to approve. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. I'm going to turn it back over to you.

MR. MENENDEZ: Thank you, Mr. Chairman. And for the record I'd like to state my name, Jose Menendez, State Representative

District 124. I almost feel a little badly after you just made this wonderful motion to approve this, but I want to raise my concerns in a spirit of cooperation.

In the letter that was just handed out to you is a letter that I sent to Mr. Gerber on October 20 and to the Board, it deals with agenda item number 2(c) for today regarding the QAP. And like I said earlier, due to some health concerns, I was not able to be on a conference call when Mr. Gerber and my chief of staff spoke to the fact that the staff is recommending the deletion of item number 3 in my letter concerning the requirement to provide a neighborhood organization membership list as a part of support material for quantifiable community participation, and I really do appreciate the staff seeing how difficult that could be for some neighborhoods to come up with a list like that when many of the meetings I go to you sort of just sign in when you get there and if you see the list and they pass it around sometimes to all the tables, it would be somewhat of a burden on a neighborhood group to do that.

But I still remain concerned, however, that my understanding, as late as recently as this week, the staff continued to support a revised version of items number 1, 2 and 4 in the letter, and these issues remained troublesome because while I appreciate the intention -- and I believe the intention of the staff is to prevent any questionable practices -- I believe that we should deal with these isolated instances of abuse on a case-by-case basis, if someone is abusing the QCP part of the QAP.

And the reason being because in light of the current economic climate, it has become so hard, just almost impossible with the credit crisis and everything going on and NIMBYism, to put new affordable housing on the

ground, and my concern is that these proposed revisions will create additional obstacles to meet the growing needs of low income working families for safe, quality, affordable housing. And that's my concern that these changes are not mandated in statute and I think they go beyond the intent of the legislature when the QCP was adopted several years ago.

So while I believe that they're intended to prevent anyone who may be trying to game the system, I'm not sure if the additional hurdles and the burden they bring to the process will actually outweigh what they try to avoid. And I'm happy to discuss items 1, 2 and 4 with you, if you'd like. I don't think that the legislature had intended to go to this degree this far, I think there are some items there that make sense, but you know, some of these neighborhood organizations, they're all volunteers and small and they meeting once a month, and many of them don't meet in the summer months, the last meeting is May, they take off until August and they all go on vacation. And so we're adding hurdles in a climate where it's already hard enough for us to address the growing needs of affordable housing in Texas.

And so those are my two cents and I'd be happy to entertain any questions. And I know the intentions of the Board and the staff are very noble, I'm not sure if we're just not going a little too far.

MR. GERBER: Mr. Chairman?

MR. CONINE: Go ahead.

MR. GERBER: We certainly appreciate Representative Menendez's involvement in the issue and we've had a chance to have a good discussion with Don and certainly know the passion you bring to affordable housing. As we worked through the letter, just for the Board's interest, we did

take the Representative's recommendation on item 2 and that item is deleted?

MR. MENENDEZ: Was it 2 or 3?

MR. GERBER: Item 2 and 3.

MR. MENENDEZ: Oh, item 2 and 3.

MR. GERBER: Item 2 and 3 are both deleted. On item 4 what the Board was asked to do was to adopt some revised language that Barry Kahn had suggested and worked through with staff, we made some tweaks, and I'd ask staff to share that with the Representative.

MR. MENENDEZ: Would you just remind me on item 4, the new language that you were proposing, what it was?

MR. GERBER: The language that we proposed was: Accurately certify that all residents within the neighborhood organization's defined boundaries were offered membership in the organization. And we tweaked it, Tom will show it to you.

MR. GOURIS: Neighborhood organizations must take reasonable measures to provide that notice to persons eligible to join or participate in the neighborhood organization has that right. And then we provided some examples of what that might mean, so that someone would know what that would look like and that they'd have to comply with their own.

MR. MENENDEZ: And then the question comes is we're asking neighborhood organizations to follow this. Right?

MR. GOURIS: Yes, sir.

MR. MENENDEZ: And how do we enforce it if a neighborhood organization doesn't? I'm not trying to be cute, I guess my question is some of these things seem a little difficult, I'm trying to wrap my head around, okay,

when we try to draft legislation, well, who is going to enforce that. And that's my question because when I saw the first item, the one about giving every person who is eligible an opportunity, or if you say you need to make sure that anybody who is opposed to this you've talked to. Well, how do you know? And so anyway, I just want you to think about it.

I think that's great that we've made some efforts to make it a little more --

MR. GERBER: A little more user-friendly, a little clearer about where we're trying to get. The bottom line is we want neighborhood organizations -- it's a huge number of points, deals don't happen without them, and we've struggled, sort of the perennial struggle of what's a real neighborhood organization and what's not, and I think what we're really trying to get is for folks just to be clear that they're following their own bylaws. We've added a little texture to that that hopefully makes it a little less -- a little clarity and a little more texture as to what we're looking for to make it less burdensome. But you know, it's not ideal and it certainly always is an issue that the legislature takes up.

I think the intent of this, Representative, and then getting to item 1 as well, is that I think the thing we as staff has struggled with -- and I'll let the Board speak for themselves -- but as an agency is wanting to know from the development community sort of who is on the playing field, understanding that not everyone gets points for being on the playing field if you're a neighborhood organization unless you're certified by the state or by the county. But I think we want to know that if there's -- we're not asking anyone to do a ten square mile search for neighborhood organizations which it

was clarified in item 1, if you're aware of some folks who might have objections or be supportive, we'd like to hear from you.

The development community are really the ones out in the field, we don't have the staff for it, although we make an effort to go and see every site that we can to make sure that's appropriate, but they're out there in the communities and we want to count on them to be able to give us a real picture of the environment without overstepping the bounds of the statute. Because I think you all spent a lot of time, you especially, spent a tremendous amount of time crafting that language and we don't want it to be overly burdensome. At the same time, each year we get exceptions or someone feels like they weren't heard.

I agree with you on 2 and 3 that we went a little far in what we're reasonably expecting neighborhood organizations, but my hope is that we're going to give this a chance to work and maybe hear a little bit more from these organizations as well as from the developers about kind of who is out there, who really does care about a particular development, and seeing if that gives us a better sense of both the playing field and that those who are on the playing field are sort of living by their own bylaws to the extent that they have them.

MR. MENENDEZ: And I think that those motives are very -- the word is not accurate but appropriate, and my only hope is that I hope we don't come back a year from now -- and this is where I think we obviously need to include our judgment, sound judgment -- that we don't come back a year from now and that a development that may have been supported by everybody else was not excluded by some small little catch, some little thing, some gotcha

thing. That's my only concern, that a year from now we don't come back and you guys get put in a position, the Board gets put in a position, can you give us an appeal because everybody else loves this, including all of the leadership in the community, and for some little catch/gotcha, we didn't get it done, and that's all.

My whole intention is let's not put additional hurdles that don't provide additional value up to keep good housing from going up, that's all, and that's pretty simple. And I know you're in a tough position trying to balance between legislators who want more affordable housing and those who don't want that, and those communities who want it and those who don't, and I know you're in a tough spot, and I guess in the end, I appreciate the fact that this Board has taken a leadership position and you've taken a leadership position, and the fact is that the State of Texas needs to do more for the citizens that need quality, safe, affordable housing, regardless of what they look like, where they're from and what they do for a living.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: I have a question. I recall reviewing this language and now seeing it here in the letter from the State Representative, you know, whether that revision of irrespective or regardless, hearing the two of you discuss this, how would you prove that somebody was aware of a non-registered neighborhood organization? It seems like a very sort of onerous threshold for someone. If they didn't know about it, could the accusation be you did know about it, and then how would they defend their position to say no, we weren't aware of it?

MR. GERBER: And I'll let Tom touch on it, and that's why we

don't want folks --

DR. MUNOZ: And I appreciate the spirit of what this is trying to capture.

MR. GERBER: And that would certainly be how we interpret it. That was sort of getting to the crux of we don't want developers having to go out and scour a ten square mile area to go and find neighborhood organizations, but what we sometimes find happens is that you go through this process, they submit preapps in January, they submit their full apps in March, we're working through and some group of folks show up who had discussions all along but we didn't know about them because they weren't a qualified neighborhood organization, but they're certainly members of the public and entitled to express their view, they're not eligible for points, but it sure would have been nice to have had a sense of issues and concerns and be able to get that weigh-in, only if they know about them. If they don't know about them, we're not expecting anyone to report that to us.

MR. GOURIS: That's exactly right. We don't want a neighborhood group to be able to come back and say they shut us out, they told us we didn't count, they told us we didn't matter, they just told us we didn't have a voice, and we've heard that from neighborhood groups who have in the past not been able to -- or suggested that that was the attitude that a development team had. Of course we want them to be good partners, we want the development team and the neighborhoods to be good partners.

MR. KEIG: Mr. Chairman.

MR. CONINE: Mr. Keig.

MR. KEIG: As a point of parliamentary procedure, to even

have further discussion on this, I think we need a motion, a move to reconsider our vote on the QAP, to put this on the table to further discuss this issue.

MR. CONINE: I was allowing the courtesy of the State Representative to have general discussion with a particular issue that he wants to. If there's a mood to the Board to want to reconsider the QAP, fine, but for parliamentary procedure, I'm okay with letting him proceed. We're about to wind up, I think.

MR. MENENDEZ: And I just want to address that one point, and here's my concern on this particular issue. In 1994-95 -- I can't remember when -- I was appointed to the zoning commission in San Antonio, and there was one neighborhood association, the largest one in the city, 5,000 households, mandatory association, you'd go to a neighborhood meeting there and ten people would show up. They had an elected board and they had their own newspaper and their own little police force and no gates, open, Great Northwest, 5,000 households, 17,000 members. And my concern is this, any time there was a zoning case within three, four, five, ten miles away, if there was a case, they would show up. And if someone came in with an affordable housing application, it was not no, but hell no, and it was almost like they would try to impose their will on this whole thing.

That's my only concern, that I believe the legislature, when we drafted the QCP, the qualified community participation, it was intended for those neighborhood associations or groups who were directly impacted by something, and my concern is that we could potentially have a neighborhood association in any part of the state try to say we don't want that on the way

into our community, even though we're two, three, four miles away. And that's my only concern with this potential, it's potential for abuse. And the other potential for abuse that comes up, if you're developer A and you've done all your homework and you're developer B and there's no opposition to A, you might go drum up opposition to help you out. I mean, guys, you've been around enough, you've seen enough.

So I'm just saying we have got to be real careful on these little windows and cracks that we accidentally open. If someone says I never heard about this and I'm opposed to it, they can come and speak their mind and tell you. But I think the folks behind me are all so -- they're all having such a hard time just getting financing for their deals that none of them are going to try to do any funny stuff to jeopardize their deal if and when it gets to the Board. I think it's so hard right now for deals to get done.

MR. CONINE: Let me see if I can conclude by saying what I said earlier -- and sorry you weren't here to hear it -- but we've committed to a couple of things. One to have a big QAP policy think this spring so that we can come together and there's a lot of policy issues that the QAP probably needs to be reworked and made a little more user-friendly and not as thick and the whole concept of what we're trying to do to gain what everybody wants to do. And secondly, this department is up for Sunset legislation and we are bound to a certain extent by not only federal statutory requirements but state statutory requirements. And the one that you're hitting on right here is one that obviously has a lot of people having varying opinions on what should be done or not done. The fact is we can't do much relative to state statutes because we're bound by those, and if we could get the legislature consider

letting the Board have a little more flexibility in the future, then we could fix problems like this as opposed to being scared of fixing problems like this because of state statute. And I'm glad you're here experiencing it on a firsthand basis so you can tell your colleagues that we do have varying issues that come up that in some cases the Board can fix rather easily if it would occur.

Again, thank you for being here and sorry about your wife and hope everything works out okay.

MR. MENENDEZ: She's getting better. I appreciate that.

MR. CONINE: I think we probably fixed three out of your four and maybe four out of your four this morning, and certainly understand what you're saying and hear you.

MR. MENENDEZ: Let's just be careful on the one on the folks who may say I never heard about it. Because we're putting a lot on figuring out are they real or not and they get points, and we've got to be careful because in the end I think the mission of the agency is to allow more quality housing to go on the ground, so less hurdles, not more.

MR. CONINE: That's what we want.

MR. GERBER: That's right.

MR. MENENDEZ: Thank you very much.

MR. CONINE: Thank you.

MR. GERBER: Thank you. How did the boxing match go?

MR. MENENDEZ: If you'd like to get in the ring, we can go.

(General laughter.)

MR. GERBER: Once a month is plenty.

MR. MENENDEZ: I'll tell you what I told my children when they asked the question, I said, You know, I learned a good lesson and the lesson is that you should never let your ego lead you in your decision-making process. And so while according to the reports -- because I have to be honest with you, the result was at the end of the thing I was the most exhausted I've been in my whole life after doing anything -- they say I took the first round, the second round I took a beating, and in the third round I was out of gas. And so I lost a decision, I lost on points, and unfortunately, to someone who had been training for two or three years and I trained for about five weeks.

MR. GERBER: But you made a lot of good money for a good charity.

MR. MENENDEZ: We raised about \$300,000 and so it was a good cause. I'm not sure I'm going to go in the ring with anybody I don't know.

(General laughter.)

MR. CONINE: Thank you, Representative Menendez.

Can I get a motion to reconsider item 3(d) -- I think we're back ready to do that -- get it off the table.

MR. KEIG: So moved.

MR. GANN: Second.

MR. CONINE: Motion by Mr. Keig, second by Mr. Gann to bring item 3(d) back up off the table. All those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Now we're back to item 3(d).

Mr. Gouris.

MR. GOURIS: I think we've come to understand each other's position, I don't think we've come to an agreement on what the resolution is. The one key factor that they asked that I do repeat is that these awards being recommended today are conditioned upon finishing the underwriting, finishing the threshold review and ensuring that the things that were identified in the original applications were still consistent with where they are today.

MR. CONINE: Okay. Any further questions of the witness?

(No response.)

MR. CONINE: Seeing none, I'd entertain a motion on item 3(d).

MS. RAY: Mr Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation on item number 3(d) to authorize to return tax credit authority in the amount of \$69,893,116 to the U.S. Treasury, equivalent of 2007, 2008 and 2009 Exchange Program awards currently totaling \$556,286,563 subject to threshold review, and the approval of these awards subject to the return of additional Exchange funds.

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

MS. BINGHAM: Second.

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

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

We're going to go into executive session for 45 minutes and try to be back here at 1:30.

MR. GERBER: On behalf of the Chairman, on this day, November 9, 2009, at the regular meeting of the Governing Board of TDHCA held in Austin, Texas, the Board adjourned into a closed Executive Session as evidenced by the following:

An opening announcement by the presiding officer's designee that the Board will begin its Executive Session, today, November 9, 2009, at 12:45 p.m.

The subject matter of this Executive Session deliberations is as follows:

The Board may go into Executive Session:

1. The Board may go into Executive Session pursuant to Texas Government §551.074 for the purpose of discussion personnel matters, including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee. Review and possible pay raise increase for Executive Director Michael Gerber, and Director of Internal Audit Sandy Donoho.
2. Pursuant to Texas Government Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a

settlement offer, including:

- a. ICP v. TDHCA filed in federal district court,
- b. M.G. Valdez, Ltd v. TDHCA filed in District Court,

Hidalgo County, and

- c. The EEOC claim of Don Duru;

3. pursuant to Texas Government Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Texas Government Code Chapter 551; and

4. pursuant to Texas Government Code, §551.072 to deliberate the possible purchase, sale, exchange or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person.

(Whereupon, at 12:49 p.m., the meeting was recessed, to reconvene this same day, Monday, November 9, 2009, following conclusion of the Executive Session.)

AFTERNOON SESSION

MR. GERBER: Mr. Chairman, the Board has completed its Executive Session of TDHCA on November 9, 2009 at 1:50 p.m.

MR. CONINE: Thank you, and we're back in session. Ms. Bingham?

MS. BINGHAM: Actually, Mr. Chair, I think I'm going to defer to Ms. Ray since I'm no longer active status on Audit Committee. Thank you, sir.

MS. RAY: Mr. Chairman, as Chair of the Audit Committee, the Audit Committee has had an opportunity to do a performance evaluation on our internal auditor. Full disclosure for those that may not be aware, the internal auditor does not work for the executive director but is a direct employee of the Board, and I chair the Audit Committee. We've had an evaluation of her performance for the past year and the Audit Committee recommends to the full Board a salary increase of 5 percent.

MR. CONINE: Is that in the form of a motion?

MS. RAY: Yes.

MR. CONINE: Do I hear a second?

MR. GANN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. And thank you, again, Ms. Donoho, for your service and appreciate all your hard work.

(Applause.)

MR. CONINE: All right, item number 5, Mr. Gerber.

MR. GERBER: Mr. Chairman, item 5(a) is presentation, discussion and possible approval of a contract to sell real estate that's owned in Tyler, Texas. By doing this, you'd be authorizing me to enter into a sales contract to sell real estate that's owned in Tyler.

TDHCA foreclosed on a tract of land there in November in 2006 for nonpayment. The property was the collateral for two loans with principal balances, as of the foreclosure date, of \$237,000 and \$38,416. The two loans were made in December of 1998 to develop 42 single family homes for sale. At the October 2009 Board meeting, the Board adopted Resolution Number 10-003 and instructed the staff to make diligent efforts to sell these properties.

On October 14, 2009, TDHCA received an offer to purchase the property from Habitat for Humanity of Smith County. The closing is scheduled to occur in late February of 2010, the net proceeds are expected to be approximately \$66,000 and it will be used in addressing problems related to the disposition of other real estate and/or the resolution of non-performing real estate loans and assets. Patricia Murphy and her team have been working closely on this but we think the sale of this property to Habitat for Humanity, we think it's about as good a deal as we could have gotten, and so we thank Patricia for her help, and we'd ask for your motion to authorize me to enter into a sales contract with them.

MR. CONINE: Okay. Do I hear a motion?

MR. KEIG: So moved.

MR. CONINE: So moved by Mr. Keig.

MS. BINGHAM: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 6.

MR. GERBER: Mr. Chairman, unless I am mistaken, there are no items that are up for appeal, there's no items under 6(a), (b), (c) or (d), under 6(e) we had Bayou Bend Apartments, that has been withdrawn, and so we move on to item 7.

Item 7 is our Operating Budget and our Housing Finance Budget. The Department is asking if we can bring this item back to you in December. What we were proposing was a series of tweaks to our Operating Budget to reflect the lawsuit, to reflect the administration of ARRA funds. We believe that do need some additional staff to manage the workload and so we are looking at our existing FTE cap that we need and I think we want to refine that just a little bit and bring those two budget items for our Operating Budget and our Housing Finance Budget back to you a the December Board meeting.

MR. CONINE: December is going to be fun, I can tell already.

MR. GERBER: It is. So we will now move to item 8(a). Item 8(a) is the presentation, discussion and hopefully approval of the 2010-2014 State of Texas Consolidated Plan. As you all know, the Consolidated Plan is a planning document that's required by HUD and it lays out a plan for the next five years for funds that are received by the State of Texas from HUD. So for purposes of TDHCA, the plan as it pertains to us is the Emergency Shelter Grants Program and the Home Investment Partnerships Program. The Community Development Block Grant Program which is administered by the Texas Department of Rural Affairs is also included in here and the Housing Opportunities for Persons With AIDS, the HOPWA Program which is operated by the Department of State Health Services is also in this planning document. TDHCA coordinates the preparation of this consolidated plan, even though the other two programs that are addressed are administered by those other agencies.

This Consolidated Plan was approved by the Board on September 3, public comment was received through October 26, it's been addressed in the plan, however, it should be noted that the comment was really minimal or non-substantive and no changes to the plan have been made since the draft plan was approved by the Board.

We would request a motion to approve the 2010-2014 Consolidated Plan.

MR. CONINE: Do I hear a motion?

MR. GANN: I so move.

MS. RAY: Second.

MR. CONINE: Moved by Mr. Gann, seconded by Ms. Ray.

Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman and Board members, item 8(b) is presentation, discussion and possible approval of the 2010 Regional Allocation Formula Methodology. State law requires the department to use a regional allocation formula to allocate its HOME, Housing Trust Fund, and Housing Tax Credit funding statewide. The purpose of the statute is to make sure that these highly valued resources are spread across the state equitably. The Department implements the RAF by using data to measure the affordable housing need and available resources in 13 state service regions and for rural and urban areas within those regions, and to make sure our approach remains equitable as changes occur in the state, the formula is annually updated.

It should be noted that the Board is approving the formula methodology and not specific allocation amounts. Staff is recommending updating the formula with recent award data following any Board action impacting 2009 awards during today's meeting. Board action impacting 2009 awards could result in some shifting allocation amounts but staff is recommending updating the formula with available data until November 20,

permitting the Department to submit the RAF with the Housing Tax Credit Applications Submissions Procedures Manual that is going to be submitted to the Governor for his signature with the QAP by December 1.

The RAF methodology, it should be noted, was made available for public comment, as were all the rules and the Con Plan and other documents. No public comments were received relating to the RAF. We do periodically hear from some regions that there's a belief that they are under-served. We have worked with representatives of those regions to see if we could find a way to better improve the Regional Allocation Formula, and unfortunately, in no instance have we found that money shifts the way the intended party wanted the money to shift. So in most instances, when we do shift money by tweaking parts of the formula, we find that really it's about enough money to do one deal one way or the other. So the shifts tend to be quite minor but there's always an effort to make sure that we're using the best data to most accurately capture the need in our communities.

And again, there's no public comment on this and so we think we've got it right and we would ask your approval of the 2010 RAF.

MR. CONINE: Do I hear a motion?

MS. RAY: So moved, Mr. Chairman.

MR. CONINE: Moved by Ms. Ray. Is there a second?

MR. GANN: I'll second.

MR. CONINE: Mr. Gann seconds. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, item 8(c) is presentation, discussion and possible approval of the 2010 Affordable Housing Needs Score, or AHNS, as we refer to it.

The 2010 AHNS scoring criteria was developed by the Department to help direct competitive applications for funds to the geographic areas that have the most need using objective need-based criteria. The AHNS score is used to evaluate HOME, Housing Tax Credit, and Housing Trust Fund applications. The formula for the calculations of the score is submitted annually for public comment, and the final methodology and resulting scores are published on the TDHCA website.

Like the other documents, this draft was made available to the public for comment from September through October 26. Only one comment was received which is included in the Board writeup and this comment did not require any changes to the formula, and we'd ask for a motion to approve the 2010 AHNS.

DR. MUNOZ: So moved.

MS. RAY: Second.

MR. CONINE: Motion by Dr. Munoz, second by Ms. Ray. Any further discussion?

(No response.)

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

aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, I'm not sure if you and members of the Board had an opportunity to meet the new head of our Housing Resource Center. Elizabeth Yevich is here -- and Elizabeth, if you'd stand -- and Naomi Trejo, who also works in the Housing Resource Center, have done yeoman's work on these documents, they're complex in many instances. These two staffers and others on their team are new to these documents and this has been about as smooth of a year as we've had in working through them, so I appreciate your help and service to the Department. Good job.

MR. CONINE: Thank you very much.

MR. GERBER: Mr. Chairman, item 9 are the Bond Finance items. 9(a) is presentation, discussion and possible approval of Resolution Number 10-005 authorizing the extension of the certificate purchase period for Single Family Mortgage Revenue Bonds, 2007 Series B.

Before we go to the Bond Finance items, I'd like to ask if we could perhaps go to an overview that our financial advisor, Michael Baumrin, is going to present to the Department, and then that might flow more naturally into the items under item 9.

MR. CONINE: Okay.

MR. GERBER: Come on forward, Michael. What we're talking about is a new Treasury program name made available to housing finance

agencies and getting an overview of the market and then focusing in on the specific program which Michael will do in conjunction with Matt Pogor and Bill Dally. Matt, why don't you come on forward as well, and others who might participate in the discussion. Michael, welcome.

MR. BAUMRIN: Thank you.

MR. BAUMRIN: And I should mention many of you on the Board have worked with Gary Machak from RBC Capital Markets. Gary has moved on to greener pastures, and Michael is our financial advisor, and so we welcome him, you'll see his face, I'm sure, at other Board meetings.

MR. BAUMRIN: Thank you very much, Mr. Gerber, Mr. Chairman, members of the Board. I'm very pleased to be here and appreciate the opportunity to do so. I know it's been a long day so maybe I'll try to solve the country's economic problems in about three minutes. How does that sound?

(General talking and laughter.)

MR. BAUMRIN: There is a handout, and what I'd like to touch on briefly is three things: one is just sort of what's going to drive the economy, we think, in 2010; how that leads to our interest rate and economic forecast; and then just touch briefly on what's going on in the municipal bond business which will lead into certain things that Matt wants to talk about.

On page 1, the three activities that are going to drive the market are, number one, housing starts and housing markets. This Board and its staff have been working diligently to try to address that issue, we all know that the housing markets have been difficult, housing activity is down almost 30 percent from its peak when you look at new home sales and housing starts

in late '05, and while we've see the trough down -- it's reached its trough and we are beginning to see a little bit of a rebound in the housing markets. That's primarily in the existing home sales, spurred on by the federal government's intervention in the Treasury buying mortgages, the low first-time homebuyer tax credits, et cetera. The new home starts begin to continue to sort of bounce around their lows based upon trying to get inventory cleared out, et cetera.

The number two thing that's going to affect the economy over the next year is obviously the labor market. Both economists and policymakers all know there's no such thing as a jobless recovery and none of us believe that a sustained level of unemployment above 10 percent is going to lead to a long term recovery. Unfortunately, the unemployment rate went through 10 percent this month, it's the highest level in 26 years. If you notice, though, that the initial jobless claims have finally begun abating off of their high level, and over time, initial jobless claims are a fairly strong leading indicator of a turnaround, one way or the other, in the employment market.

We do know for sure that the Federal Reserve Bank will not change its interest rate policy until they see light on the horizon related to the job outlook. Fed will not start raising rates as long as the job outlook continues to be a negative and getting worse.

And then, of course, the last major issue related to the economy is the federal government itself. Uncle Sam has clearly opened up its pockets on all fronts to help the economy. Fed fund rates are at the lowest they've ever been, they're at zero percent, they can't really get any lower. The Federal Treasury and the Federal Reserve have also intervened in the

markets, doubling their balance sheet, purchasing over a trillion dollars of securities to provide additional what they call quantitative easing, and then the Congress and the Executive have passed budgets with significant deficits, stimulus, et cetera to help prime the pump.

So we think that clearly that federal intervention has been key, and the question will be when and how do we unwind. Treasury Secretary Geithner has been specific in stating that we don't believe the economy is strong enough to begin unwinding, so we expect to see a very accommodative Fed through both the interest rates and through it's market quantitative easing, and clearly, we're projecting budget deficits into 2010 and 2011 -- hard to say -- \$1.3 trillion in each of those years. So that's coming from stimulus spending and tax revenues significantly lower than anticipated.

As a result, our rate forecast sort of shows that, we don't expect the Fed funds rate to go up -- on page 2 -- until the fourth quarter of 2010 at the earliest. We don't believe this policy, although many people will seem to, it will be inflationary, we think asset prices remained under pressure, real estate, commercial real estate, et cetera, so we don't believe that this will be a significantly inflationary move. Treasury bonds, long term Treasury bonds will move up but not significantly relative to the Fed funds rate, and we do believe we've turned the corner in terms of GDP. Our periods of GDP, gross domestic product, growth, negative growth has probably ended and we are turning around into a positive but reasonably anemically positive GDP growth of around 2.6 to 2.8 percent through 2010. And then how the Fed exits their market position will clearly have a dramatic impact on interest rates over time.

Just briefly drilling down to the municipal bond market, the municipal bond market has actually fairly much turned a corner. Municipal pricing is back in line where it used to be, and in fact, hit new lows in terms of interest rate last October, a ten-year MMD which is a measure of the interest rates hit an all-time low. So municipal rates have been fairly good, fairly strong, and also a lot of that has to do with the Build America Bonds, the taxable bonds that are out there that have been taking supply out of the marketplace.

On the last page, though, I would say that the housing bond market, near and dear to all of our hearts, has not really performed as well. Housing bonds still remain expensive relative to conventional mortgages and relative to municipal bonds in general, reflecting investor concern in a lot of different areas. So, for example, when we began to think that the housing market was improving, long term housing bonds dropped to around 4.75, but last week recent sales were above 5 percent which would not generate mortgage rates for state FHAs that would be competitive and attractive which has led the industry -- and TDHCA has been a leader in this -- to really lobby the federal government to provide assistance to the market, and that's by buying at lower rates their housing bonds, and that will be needed, going forward, to create a competitive mortgage product for the marketplace.

MR. GERBER: And just to correct, since it's a violation of state law, we never lobby, educate.

MR. BAUMRIN: I'm sorry.

MR. GERBER: We educate the federal government.

MR. CONINE: Michael, a couple of questions. On the last

chart here where you've got these various states' issuances over the last few months, does dollar volume or size, have you seen it affect the rate at all?

MR. BAUMRIN: Absolutely, sir. A good example of that would be a small Maryland CDA deal with a double A rating got done at, I think, 4.55 or 4.60 on the long bond. That is a double A rated, they have a reasonable amount of what the market is concerned about, counter-party risk, PMI insurance risk, but as a small issue in a high tax state with a lot of shortage of bonds, it had a great participation. Other states triple A, larger issues, the local buying public isn't as directed, higher rates. Right now there's so few housing bonds out there, it's very local, it's a local market, so size and local tax structures have been almost determinative of the rate.

MR. CONINE: Second question is back on your rate forecast chart, you're showing a ten-year Treasury at somewhere between 3.25 and 3.75 through the end of next year. And my concern is when the Fed quits buying agency paper after March that the spreads against ten-year is going to significantly increase just because who else is going to buy \$1.3 trillion worth of paper next year. Can you comment on that?

MR. BAUMRIN: Yes, sure. We all are concerned about the Federal Treasury has bought about I think the number is close to a trillion dollars of mortgages and MBS securities, and I think the number is around \$500 million of long term Treasury bonds. Market participants are absolutely concerned on two phases of that: one, when they stop buying, and then two, if they actually start selling. And we think that the mortgage market will be pretty affected and that conventional mortgage rates should probably go up 50 to 75 basis points when they stop buying, and they've said they're going to

stop buying towards the end of the first quarter of next year. I think that's a policy decision that will be addressed in the future.

As it relates to Treasury bonds, they haven't been as aggressive in that corner of the market and we think there's a strong demand for that market, and that market really does reflect sort of a more future credit risk, significant more credit risk and a perception of inflation, and that's why we're thinking that there is asset deflation issues still out there in the economy related to commercial real estate, in particular, that people are worried about. I would say that while we're looking at ten years from at 3.50 now and it's going up to 3.75, we think mortgage rates should go up to 50 to 75, at least.

MR. CONINE: So as we contemplate what we need to do next year, it would appear to me that we ought to front load the year as opposed to the steady dribble of issuances that is going to be a much higher cost, given what we think is going to happen in the latter half of next year, and make us more competitive, assuming the front-loading, there's not a whole lot of negative arbitrage going on.

MR. BAUMRIN: Right, and the big issue is there's a tremendous amount of negative arbitrage attributable, and you can't recover that, that's a huge out-of-pocket expense. And you know, I say this in a funny way, everybody thinks rates are going up and when everybody thinks rates are going in one direction, there's a decent chance they are. There's also an equally decent chance that everybody has got it wrong.

And matt will talk about the federal program, there's the ability to lock up a good portion of that based on the Treasury rate and not the mortgage rate, and that's, I think, going to be a real benefit.

MR. CONINE: Any other questions of the witness?

MS. BINGHAM: Thank you very much.

DR. MUNOZ: Can we get a technical definition of arbitrage going backwards?

MR. BAUMRIN: Negative arbitrage?

(General laughter.)

MR. GERBER: Michael is going to stay close by and we're going to go again to item 9(a) which is discussion and approval of, hopefully, Resolution Number 10-005 which would authorize the extension of the certificate purchase period for the Single Family Mortgage Revenue Bonds, 2007 Series B -- this was Program 70. Staff believes that with 5 percent down payment assistance and with Board approval to extend the certificate purchase period, the remaining \$20.6 million of funds in Program 70 will be utilized quickly by first-time homebuyers. Approximately \$19.5 million of unassisted funds and \$1.1 million of assisted funds remain in Program 70 after 26 months of originations. At the April 23, 2009 Board meeting, approval was given to provide up to 5 percent down payment assistance to the remaining allocation of Program 70 funds.

So staff is requesting approval of the extension of the certificate purchase period for Single Family Mortgage Revenue Bonds 2007 Series B because the certificate purchase period related to Program 70 is going to terminate on April 1, 2010. If the certificate purchase period were not extended, any unspent funds would be used for an unexpended bonds proceeds redemption.

So staff is recommending approval of the resolution that's in

the Board book and would ask for a motion to that effect.

MR. CONINE: Okay. Do I hear a motion?

MS. BINGHAM: So moved.

MR. GANN: Second.

MR. CONINE: Motion by Ms. Bingham, second by Mr. Gann.

Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, item 9(b) is presentation, discussion and possible approval of a resolution to allow the Department to participate in a new program that's being rolled out by the Obama Administration, and Matt is going to come forward and walk through some of it. I'd invite Michael to join in the discussion and Bill Dally as well, many members of our staff have been working on this but it's a unique circumstance where a great opportunity has been presented to state HFAs and to local HFAs for Single Family and for Multifamily. We're going to be able to particularly take advantage of the single family side, hopefully, with your approval.

But just to give you a sense of it, it was rolled out two weeks ago on a Wednesday, all day Thursday were webinars and conference calls.

By the following Tuesday, we basically had to tell the Treasury Department how much we were going to be in for. That was really absent seeing terms and conditions, so a lot has been moving very quickly, and Matt is going to give some perspective on the program, what it's intended to do, and how we hopefully take advantage of it on the Single Family side.

MR. POGOR: Thank you, Mike. Chairman, Board members.

As Mike was stating, as part of this comprehensive plan to stabilize the U.S. housing market, the Obama Administration, on October 19, announced a new initiative for state and local housing finance agencies that would help support low mortgage rates and expand resources for low and medium income borrowers to purchase or rent homes that are affordable over the long term.

The new initiative, the Housing Affordability and Stability Plan, has two parts, and that's where this Board item and the next Board item that we're going to cover those. The first Board item is item 9(b) which is the new initiative for new issued bond programs which would support new lending, and then the second part of the new initiative is a temporary credit and liquidity program that will help FHAs that need liquidity.

Resolution 10-006 requests the Board to approve the issuance of up to \$300 million in principal amount of the new money residential mortgage revenue bond to be placed with Fannie Mae and Freddie Mac under the new issued bond program. Under this program, a term bond will be issued in December with a temporary variable rate note that will reset up to three times in 2010 at which time the bond or a portion of the bond will be reissued, setting a mortgage rate approximately 100 basis points below current market.

In 2010, staff will come back to the Board to approve this new re-issuance that will establish mortgages and the mortgage guidelines and mortgage rates.

Staff is requesting to allocate \$300 million for this new issue bond program that will be issued as a term bond which will not require any volume cap at this time. In 2010, staff will come back to the Board with a new resolution to draw down volume cap for an issuance of a term bond in the form of a tax-exempt bond. At that time, staff will be able to issue an additional \$200 million of authority of volume cap as serial bonds as TDHCA will have a total of \$500 million in new mortgage loans at a very attractive rate for first-time homebuyers. With Board approval today, TDHCA will be able to help over 4,237 Texans achieve home ownership in 2010.

Staff is also seeking approval today of the underwriting team for Program 76. At the September 3, 2009 Board meeting, the Board approved our next set of senior underwriters and staff is requesting that J.P. Morgan be assigned senior underwriters for Program 76. Staff is recommending approval of Resolution 10-006, item 9(b).

MR. CONINE: Any questions for Matt at this time?

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes.

MR. GERBER: Would it be possible to ask Michael to come back up for just a moment to sort of give a sense of perspective of why this -- just from a housing finance agency standpoint, what's exciting about this proposal and what we're taking advantage of.

MR. BAUMRIN: Sure, I'd be happy to, and I think it goes right to dollars and cents, what the federal government under this program is

offering to do, that through the offices of Fannie Mae and Freddie Mac, the Treasury will purchase TDHCA's bonds, the long term bond of the structure, at rates that are way below market level rates. Currently, as I mentioned, last week Minnesota Housing did a bond issue at a 5.10 percent of the long term bond issue, and they are offering a rate that's spread to the ten-year treasury. In today's market that rate would be around a 4.10, so the savings are significant in terms of the interest rate.

And they are providing that facility for just one year and they're in the process now -- since, you can imagine, with all the excitement about it, many people have asked for a lot of authority -- and the Treasury is sorting through how much of this they actually want to buy. But it's a dollar and cent benefit and it would create a mortgage rate that would be probably 60 to 70 basis points lower than the mortgage rate just by having a regular bond issue which we know right now is not competitive with the general market given the fact that the Treasury is buying so many mortgages in the convention.

MR. GERBER: So we're moving a healthy amount of money at 6.25 percent with down payment assistance and closing costs, with that 4 percent we could conceivably get a rate that's in the very high 4s, low 5s?

MR. BAUMRIN: No, high 4s, low 5s, that would be around 5.25.

MR. CONINE: Unassisted.

MR. BAUMRIN: Yes, that's an unassisted program. The down payment assistance is somewhat of a challenging piece of this program. That's one of the feedbacks they have gotten, I don't know if they're going to solve it but that's a problem.

MR. GANN: I had a question. What's the time frame on that hitting the marketplace?

MR. BAUMRIN: Under the HERA they need to actually buy these bonds before year end, so they've created a structure where over the course of 2010 -- and they're going to buy them in a short term variable rate mode -- and then over the course of 2010, the Department will have three opportunities to fix those bonds at a fixed rate, and those bonds would represent 60 percent of the proceeds you would raise and when you roll them out and fix them, you would need to add on 40 percent of a publicly offered deal, so you'll have three chances to raise funds during the course of 2010, the last deal has to be closed by December 31.

MR. CONINE: So in essence, we'll have a blend of 60 percent of these 4 percent bonds to be blended in with 40 percent of whatever we can get, say 5 percent, and that will yield some rate that should be advantageous in the marketplace. So our single family guys, given the Treasury is going to do this quantity of program, are going to be busy next year.

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes.

MR. GERBER: Just to make sure we're clear, the costs from Treasury to us for the program are fairly minimal. Do you want to just touch on that?

MR. POGOR: The Treasury, from the structure we're doing right now with \$300 million, \$300,000 is really what the Treasury is asking us to step up to the plate with, so they are understanding that we are sincere about going to do this program this year, so that's the costs we would have to

face. As well as with fees associated with structuring this, we have to do this financial official statement, so that costs us, as well, to get that structured, have lawyers to create, so there are some costs associated with this.

MR. GERBER: All the usual fees that we pay for a bond structure, but beyond that, it would be this additional \$300,000.

MR. POGOR: The \$300,000 in addition that we normally don't have.

MR. GERBER: Right, and were the Department, say we were only to use \$200 million of that additional authority, we would only be out \$100,000.

MR. POGOR: Correct.

MR. GERBER: So a fairly low opportunity cost

MR. POGOR: The indentures will be able to support that.

MR. CONINE: Our Treasury at work.

MS. BINGHAM: How do they think of these.

(General laughter.)

MR. POGOR: Our indentures are 104 parity which means there's some wealth built into it that we'll be able to take some of that money and help support this term structure that we have right now.

MR. GERBER: The thing that a lot of us spent a lot of time on the last couple of weeks, and others who are from the financial services community -- and Elizabeth Rippey is back there somewhere, I think -- is that to some extent there's an element of this sounds too good to be true, and are there any other risks that you guys are identifying that the Board should know about or be aware?

MR. POGOR: One of the good things about the program is that if we do not use any of this \$300 million, we can just kind of turn it back over and it's not going to cost us anything, we're not locked in, there's no unexpended proceeds call, it just goes back.

MR. CONINE: Okay. Any other questions? If not, I'll entertain a motion.

MS. BINGHAM: Move to approve.

MR. CONINE: Motion by Ms. Bingham to approve. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?  
(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Item 9(c), Mr. Chairman, is the presentation, discussion and possible approval of granting staff the authority to negotiate a liquidity agreement with Fannie Mae and Freddie Mac under this new Homeowner Affordability and Stability Plan. Matt, do you want to roll that one out as well?

MR. POGOR: Yes. Currently, TDHCA has seven variable rate structures supported by liquidity agreements provided by the Texas

Comptroller of Public Accounts. As our liquidity provider, the Comptroller is guaranteeing these. In case our variable rate bonds are not marketed for a period of time, they will purchase these variable rate bonds and hold them until there's a market available. The Comptroller is also providing liquidity for 90 days and extending it until TDHCA can find an additional liquidity provider. To help diversify our liquidity portfolio, staff is requesting authority negotiate a liquidity agreement with Fannie Mae and Freddie Mac under the Homeowner Affordability and Stability Plan. Currently, we have only one liquidity provider and staff would like to diversify our portfolio with two liquidity providers.

Staff will be working with our underwriter, J.P. Morgan, as they review cash flows to determine costs that participating HFAs will pay GUC and Treasury a fee designed to cover risks imposed upon HFAs. Staff will come back to the Board in December with an update on liquidity. Liquidity substitution must be complete and closed by December 31 and meet requirements by the Homeowner Affordability and Stability Plan under the temporary credit authority program. Staff is recommending approval of item 9(c).

MR. GERBER: Matt, do you want to give just a quick definition of liquidity facility and liquidity provider and why it's important to the Department.

MR. POGOR: A liquidity provider is what we have currently -- it is the Comptroller -- and they will step in and what they do is they're providing liquidity or a backstop for our variable rate debt. Normally if I have a fixed rate buyer, he owns our bonds, he's good to go, he's the owner. With a variable rate debt, these bonds are reset usually on a weekly basis, they're marketable

and the bondholders, since they are variable, can turn those in at any time they want to. If that happens and there's no market for those bonds, someone has got to step up to the plate and buy those bonds back, and that's what the liquidity provider does. They will step in and buy those bonds at the market, they would keep holding those bonds until you find another market that somebody wants to come in and purchase those bonds from them, so it's a backstop for our variable rate debt only.

MS. BINGHAM: Hey, Matt, and the benefit to having two and not just one?

MR. POGOR: It's more for the rating agencies. They like to have the portfolio diversified rather than just having one concentration liquidity provider, and that's why we're looking at trying to diversify. Depending on the structures and how the rating agencies look at this new proposal and the stress put on by Moody's and Standard and Poor's, we'll determine and that's what we'll come back next month in December and let you know where the strength is and weaknesses are in our portfolio and how much we can move out, how much we may have to keep in, or we move it all out.

MR. GERBER: And it's fair to say this is a significant issue for the Department especially because we saw both of our liquidity providers go belly up.

MR. POGOR: I remember coming back to you and both Dexia and Deffa were both downgraded, and because of that the credit rating agencies were putting additional restrictions and stress on us to get our cash flows back in shape. So since we were able to move to a new liquidity provider, they were being re-marketed.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Seeing none, I'd entertain a motion.

MS. BINGHAM: Move to approve staff's recommendation.

MR. CONINE: Motion to approve by Ms. Bingham. Do I hear a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: And Board members, we'll keep you posted as other details about this plan roll out.

Item 9(d) and 9(e) would deal with this administration plan for multifamily properties. The State of Texas is not going to be able to utilize this provision and most states aren't, in fact, and the reason is that in our state law the way bonding authority is handled is that it's specific to a deal. In this case, what Treasury has asked us to do is take out an allocation of funds and then let the deals ultimately come and draw down or take advantage of the program, and we're not going to be able to do that -- most states, in fact, aren't going to be. So we're not bringing an item, it was on the agenda

because we were working through that.

We hope that there will be other multifamily opportunities down the road but as it stands right now, we're not seeing them, but as other folks in the development community see them, we would certainly entertain discussions because we'd like to take advantage of the full range of possibilities that are out there.

So we'll now move on to item 10(a) which is the start of our Disaster Recovery items. Thank you, Matt; thank you, Michael. Item 10(a) is the presentation, discussion and possible approval of CDBG Disaster Recovery Program award recommendations that utilize that \$58 million affordable rental housing set-aside for hurricanes Ike and Dolly. There is one multifamily property that we're bringing forward today, Beacon Bay Townhomes. This will involve \$816,898 for 18 buildings comprising 76 units. We recommend that funding be provided in that amount. Ms. Newsom, are there any new details to that particular development? Then with that, we'd ask for a motion to approve just Beacon Bay Townhomes; Bayou Bend was dropped from this agenda item.

MR. CONINE: So I presume that Mr. Sampley is okay not speaking? Is he gone?

MR. GERBER: Yes.

MR. CONINE: All right.

MS. RAY: So moved, Mr. Chairman.

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

MS. BINGHAM: Second.

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

discussion? Wait a minute, I've got one more public comment on 10(a), Bill Fisher.

MR. FISHER: Good afternoon, Board members. Bill Fisher, Odyssey Financial. I'm not here to speak on Beacon Bay, 10(a) is Disaster Recovery. I have the two projects that you have funded for the community in Galveston. Neither one of them are feasible without CDBG funds, and we've had this \$58 million for quite some time and I think at the last Board meeting we were going to tweak the NOFA and try and move on with them, and you know, I'm running out of time to get my projects done and I wanted to make sure the Board was aware of that. My sellers have been under contract for a year now and the community is really looking for something to be done.

So I'm not sure what happened between the last meeting and today, I really expected to be on the agenda but I'm not, and so I just wanted to make sure that you knew that, but I can't move either project in Galveston forward without the CDBG funding.

MR. GERBER: And Board members, we've been tweaking the NOFA, a lot of intense work was done on it last week. I think, Sara, it's like a today or tomorrow kind of thing, we're close, you should see it very soon. And again, the intent is to move the priority from those who have priority in the \$58 million over to the new NOFA so that that's preserved pursuant to the Board's direction.

MR. CONINE: Another December Board meeting agenda item.

MR. FISHER: For the NOFA or for awards?

MR. CONINE: I assume the NOFA will be out.

MR. GERBER: Today or tomorrow.

MR. CONINE: We'll be able to get the awards done by then?

MR. GERBER: Probably not all but some.

MR. CONINE: Some but not all. Don't know whether you're going to be there or not, but I think you're making your request heard.

MR. FISHER: Please. Again, it's just the properties in Galveston are the most damaged, they go down every month we wait, I meet with the neighbors about every two weeks and told them to hold off this month coming.

MR. CONINE: You're probably one of those who has a 12/31 deadline.

MR. FISHER: Just so the Board knows, this is federal money so we have an environmental clearance to go, so even after you award money, there's a time line, so one thing I'm going to be asking staff is if they'll move my environmental clearance along here in the interim so that if there is an award in December, I might be able to do something by the end of the month, would be helpful.

MR. GERBER: We can certainly work with you.

MR. CONINE: You bet.

MR. FISHER: Thank you.

MR. CONINE: Thank you. Any other discussion on item 10(a)?

(No response.)

MR. CONINE: Seeing none, we've got a motion on the floor. All those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Item 10(b), Mr. Chairman, is the presentation, discussion and possible approval of a request for proposal for a contractor to administer the Alternative Housing Pilot Program. You're all familiar with the challenges that we've had with this program, and in order for us to move forward, it's going to be necessary for us to procure a new party to carry out the site work and installation of the units, focusing chiefly on a group site if one is possible in Houston. We're working with the City of Houston to secure a site that's acceptable to FEMA and hope to complete these installations, if we can, again, in the first half of 2010.

We've entered into a short term lease with the landlord of the warehouse where the units have been stored, but we are hopeful to be able to procure an alternative contractor to be able to get the work done. So we'd ask for your approval of the motion to issue the RFP to be able to procure that contractor.

MR. CONINE: Do I hear a motion?

MS. RAY: So moved, Mr. Chairman.

MR. CONINE: Motion by Ms. Ray. Seconded by?

DR. MUNOZ: Second.

MR. CONINE: Seconded by Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, there are several report items at the end of the agenda. I would just mention to you that the most up to date information on Disaster Recovery with the expenditure rate is listed under report item number 1. Just a important milestone that we hit last week that I made mention to all of you but just want to restate here today is that we have completed, as of today, 526 houses and there are another 560 that are under construction. So we're making strong headway in those programs and appreciate Sara's efforts to keep things moving forward as well as they are. Again, we're all working towards the goal of really a year from now being done with the Hurricane Rita money.

You'll also see in the back some information about monthly updates on ARRA Recovery Act program and also on outreach programs that we've got within the Department. We've been a little thin this last month because we have been focusing really intensively internally on getting all the stimulus funds out the door, but I think you'll see over the course of the next several weeks a more intensive effort on trying to move our first time homebuyer programs as well as trying to reach out to some new opportunities that have been given to us in rural Texas to get heightened awareness of our programs.

I'll be participating in a workshop in Nacogdoches that I think Mr. Gann is going to be attending as well, and there will be other opportunities as well in West Texas to try to get the word out about our programs and hopefully see things like our HOME Program even more strongly utilized in parts of Texas that have not taken advantage of that program.

With that, I think those are all the formal items I've got to come before the Board today. Thank you for your indulgence.

MR. CONINE: Any other comments by Board members at the present time?

(No response.)

MR. CONINE: I don't know whether it feels like it to you or not, Board members, but I'm pretty safe to say that we probably set a record today on the amount of physical cash that we put out the door for this particular agency. For that, staff is to be commended for all the work that they've done working with the development community to get that done, and I look forward to all the closings we're going to have before 12/31. We stand adjourned.

(Whereupon, at 2:43 p.m., the meeting was concluded.)

CERTIFICATE

IN RE: TDHCA Board Meeting

LOCATION: Austin, Texas

DATE: November 9, 2009

I do hereby certify that the foregoing pages, numbers 1 through 137, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Housing and Community Affairs.

11/16/2009  
(Transcriber) (Date)

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