TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

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

Thursday,
October 15, 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

A G E N D A

P R O C E E D I N G S

MR. CONINE: Good Morning.

AUDIENCE: Good morning.

MR. CONINE: How is everybody? Let get my coffee going here so we don′t have too much irritability working. Welcome to the October meeting of the Texas Department of Housing and Community Affairs Board. It′s good to see everybody here today, and I think the idea today is probably to go until noon or so, have an executive session, and then I think everybody is telling me it′s going to be a short meeting, I′ll see it when I believe it. But I′ve got an earlier flight today than normal, so we′ll see if we can get done early in the afternoon or mid afternoon, something like that.

The roll call. 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. Glad to see all the Board members today. We do have a quorum.

Most of you know we take public comment, both now at the beginning of the meeting and also during the specific agenda items if that's when someone would like to speak to the Board.

One other thing I wanted to do, I guess, before we get started with public comment, again we wanted to welcome Lowell Keig to the Board for his second meeting. Thank you for being here and participating. And we wanted to make the appointment of Lowell to the Audit Committee so that he can continue some of his good work over on the Audit Committee with Ms. Ray as chair of the Audit Committee. They met last night, as we will get a report from them later on today. And again, look forward to your services, Lowell, with that group. Thank you very much.

With that, we'll start the public comment. Remember the time limit rule is in effect and so forth. Robin Miller.

MR. MILLER: Good morning, members of the Board, Mr. Gerber. I'll keep this very short and won't even sit. I'm Robin Miller with First Southwest Company. I was unable to be here at last month's meeting when you appointed your underwriting team -- I was taking my son off to his freshman year in college -- and I just wanted to say thank you. We appreciate you naming us to your team and assure you that we'll be a great participant and anything we can do to help your team, we'll be glad to be there.

MR. CONINE: Thank you, Robin, appreciate it. Thank you very much.

Water Moreau -- I thought I would hear from him today, as I glanced through my Board agenda.

MR. MOREAU: My name is Walter Moreau, the director of Foundation Communities. Thank you for the opportunity to speak again. I know you're wondering what I'm going to say that's new. I'm here to ask for your commitment of credits for the M Station project, and what's new is that our timing is really urgent. We've been working on it for ten months, we're very passionate about the project for a lot of reasons, and our land contract expires tomorrow. The only extension we've got is for closing.

I brought the map of the location again because I think it's an amazing opportunity that we've got in Austin to find such a site that's within a mile or so of UT and downtown, across from the train station, a great walkable school, we're going to build an on-site childcare center, we're next to a greenbelt, the new Children's Museum workshop. This is actually the first new family project in Austin in five years. It's hard to find the right site and it's hard to find neighborhood support.

The other reason that it's urgent is that we've already raised about $4 million for the project and the funding is going to start coming apart. We've got $2 million from the city, we won a highly competitive Federal Home Loan Bank grant for a million five, we have an investor that's ready to go so we don't need TCAP or Exchange, we can just do this the old-fashioned way, but none of them will make a final commitment, they want to see that award letter that we've got the credits. So this is the Board meeting where on item

2(c) there's the action where you can make forward commitments.

We're at the top of the wait list so we really appreciate being on the priority wait list, and it's probably only a matter of time if some '09 credits are returned and we can be funded, but there's no guarantee when that will happen. One option might be a forward commitment that reverts to '09 credits if they are available, or the other way around, '09 credits if available by a certain date that then revert to a forward commitment. We just need something certain today so that we can make all the pieces of this project come together.

We're excited about this because of it's lead green standard, because of the on-site childcare, but the thing that is most compelling for us, as a mission-driven group, is we're adding 15, 10 percent of the units for homeless families in our Transitional Children's Home Initiative Program. We have 61 apartments in that program now, the waiting list is months, we get three, four, five phone calls a day for that program. That's why we do this work, and I have brought other speakers before, the mayor, neighborhood leaders, the green architect, our investor, but I thought if we had one more speaker, I wanted it to be somebody who has graduated from that Children's Home Initiative Program, so I invited Faye Goggins to speak today, and she's your next speaker, I think.

MR. CONINE: She is. Faye, how are you?

MR. GOGGINS: I'm doing fine. Good morning, everyone.

Never have I felt more passionate to talk about my story than I do today. I stand before a great group of people that can be so influential in helping families in need. These families share the same hardship that I did about two years ago. It was during that time I lost my job, I lost my home, and by the time I relocated to Austin, I was desperate to find a better life for me and my three boys.

I was homeless about two months when I came to Foundation Communities looking for affordable housing. It was during that time they immediately signed me up with the Children's Home Initiative Program. I was placed in a community that was centrally located in Austin, near the bus routes, near the schools, near markets and hospitals at the Sierra Ridge Apartments and I'm still there since then.

With the help of case managers, my family was introduced to a wide range of opportunities. I participated in a series of classes by the money management courses that reassured my goals for my new financial future. My three children also reached some of their goals through several programs through the Children's Home Initiative. They have a school should there, like a clubhouse where they have summer camp, after-school activities, tutoring, computer time, swimming lessons, so many more activities.

The center even facilitates weekly meetings by the Campfire Organization, and that's where my 16-year-old son, Jelal had excelled the most. Within one year of being in the program, he excelled to being vice president of Campfire of Austin and traveled to California and Washington, D.C. to represent Austin's youth. This past summer he completed a two-week course of leadership at the University of Texas. In the past two years his confidence and his grades have soared. He stands as an example not only for our community but his two younger brothers that look up to him so much. I credit the program of Foundation Communities for all their success. Their homes are safe, clean, well-kept and it's comforting.

Ladies and gentlemen, when you consider the M Station project, please remember my story. Be assured that with Foundation Communities strong neighborhoods are created, it's maintained for a secure future of Austin, Texas.

And before I conclude, I just wanted to show you a little visual testament to how successful my son has been. He's never achieved honor roll average before coming to Austin and going through the program, and I just got his report card this week and once again he has like a 92 average. I don't know if you can see it.

MR. CONINE: Can I borrow that?

(General laughter.)

MS. GOGGINS: Certainly, sir. Thank you so much for hearing my story.

MR. CONINE: Thank you. Any questions of either witness?

(No response.)

MR. CONINE: Thank you, sir. Linda DeLeon.

MS. DeLEON: Good morning. My name is Linda DeLeon. I'm going to read a letter -- I'm on the city council in Lubbock, Texas -- a letter that Floyd Price, my colleague who was supposed to be here but he has a medical procedure being done today.

MR. CONINE: Do you know this guy down here by chance? Seen him around town maybe?

MS. DeLEON: Yes.

MR. CONINE: Any post office pictures or anything like that?

(General laughter.)

MS. DeLEON: I think it's at the university poster.

DR. MUNOZ: You've seen me at Abuelo's.

MS. DeLEON: And Montalombo's.

So thank you for this opportunity. This is in reference to the Emory Senior Living Apartments in Lubbock, Texas.

"Dear Members of the TDHCA Board and Executive Director:

"It is my understanding that the TDHCA Board approved a Tax Credit Assistance Program plan which dedicates funds made available to Texas through the American Recovery and Reinvestment Act of 2009 to assist in the development of properties awarded low income housing tax credits in 2007, 2008 and 2009. I want to express my gratitude to the Board and the executive director and his staff for all of your hard work and diligent efforts in developing this model plan which will help to ensure that the housing needs of our low income families and seniors continues to be served during our current economic crisis.

"As the Board continues to make decisions on the best distribution of such funds, I respectfully request that the Board recognize that certain communities of our state are having more difficulty than others in producing quality affordable housing in these challenging times. Lubbock is one of those communities. It is not in a major metropolitan area of our state and does not have the resources afforded to these larger markets, and there appears to be little demand in our area for the tax credits awarded to affordable developments, further impacting the ability to address the housing needs of our most vulnerable citizens

Therefore, much thought should be given to ensuring that the federal money Texas has received through the Recovery Act is distributed in a manner that reaches planned housing developments in under-served and under-funded markets in Lubbock. Emory Senior Living Apartments, a proposed senior apartment community -- planned in my district and Floyd's -- was awarded housing tax credits this year. I would very much like to see this development go forward.

"Quincy White, the executive director of the North and East Lubbock CDC and past executive director of the Lubbock Housing Authority, Tina Betts, president of the Parkway Cherry Point Neighborhood Association, and I supported this development through the application process this year and worked very closely with the developers to ensure that the proposed apartment community would fit the needs of the seniors in my district. This effort became even more critical when we were turned down for Section 202 Elderly Housing Grant through HUD to construct such housing in east Lubbock last year.

"Without federal stimulus dollars being made available to Emory, the project will most likely not go forward and that would be a huge disappointment and loss to our seniors in each Lubbock and to the City of Lubbock as a whole, since such developments produce much needed economic activity and job creation. It would also mean that the City of Lubbock would lose the opportunity for the third year in a row to build quality affordable housing through the competitive Housing Tax Credit Program.

"Please make sure that our area of the state is fairly treated in the distribution of federal stimulus dollars, such that our Emory Senior development can go forward.

"I appreciate your time and understanding of our needs in West Texas and for all your volunteer work serving the housing needs of the citizens of the State of Texas."

This letter is signed by Councilman Floyd Price, myself and also Todd Klein that actually represents your lower socioeconomic areas of Lubbock, Texas. Are there any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you being here, appreciate it, Councilwoman.

I guess I've got one question maybe of Tom or Robbye, whichever one. What's the status of that particular project? It's on the go list for credits for '09 and just tell us where it is.

MR. GOURIS: Tom Gouris, deputy executive director for Housing Programs. It's in Region 1, Urban, and we had a TCAP in Round 1 that used all the funds for that region, so depending on some action that you'll take later today, a clarification action, there is not likely to be funds for TCAP. They are, I believe, in second place in the allocation this year and it's an urban deal and so there's going to be some Exchange funds and they've applied for Exchange funds as well, but because they're the second deal and we can only exchange 40 percent of this year's allocation, it's not likely that they're going to get Exchange on it.

MR. CONINE: Okay, thank you very much.

Granger McDonald.

MR. McDONALD: Thank you, Mr. Chairman. I'll make this brief and save the adversarial discussion for later. It's my pleasure, as incoming president of the Texas Association of Home Builders, to invite the Board and the staff to the industry forum being held October 31 in Dallas in conjunction with the Sunbelt Builders show. Part of panelists will be the chairman, Mr. Conine, as well as two economists from the National Association of Home Builders, and some other people from around the country who will be discussing the state of the union of the multifamily industry as we know it today. And we'd love to have all of you come, if you can. It's between 11:00 and 2:00.

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

(No response.)

MR. CONINE: Michael Gaertner, Sr. Is he in the room, Michael Gaertner? Steve Moore. Hang on for next time. Go ahead, Steve, I'll let you come next.

MR. MOORE: Good morning, Chairman and Board members. I'm Steve Moore, owner of Premier Apartments in Houston, application number 09919.

We have done numerous resident surveys in many apartments that we manage, and low crime, personal safety is three times more important than anything else. After purchasing Premier Apartments, we did what it takes to achieve a crime level at Premier which is three times lower than the surrounding neighborhood. Why don't other owners do the same? Because potential renters do not which properties are safest.

I'm encouraging the City of Houston to publish their crime statistics in a renter-usable format to fix this problem. I hope that you, the Board, will commission and publish surveys of residents' priorities at apartments built with your funding. Thank you for your time.

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

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes, sir.

MR. GERBER: I would just interject, you know, we're always concerned about crime at properties, and Theresa Morales, who is our mulitfamily bond administrator, is working on an initiative that we hope to roll out over the course of the next year. We've been working with folks at the Greenspoint Management District in Houston and with others at the Texas Apartment Association to look at ways that we can collectively work and partner to reduce crime at properties. It's always an issue that I know management and owners are concerned about and the Department is concerned about, and so I just wanted to make folks aware that that's something that we're going to be working on over the course of next year, and if folks would like to join that discussion -- like you, Steve -- we would certainly welcome that, and Theresa is going to be taking the lead.

MR. CONINE: Great, good to hear. Okay, Mr. Gaertner.

MR. GAERTNER: Good morning, ladies and gentlemen. My name is Michael Gaertner, I'm from Galveston, Texas. I have served in the past as chairman of the chamber of commerce in Galveston, I'm still a member; I've served on the board of our economic development organization, I'm still a member; I've been the vice president of commercial redevelopment for our historical foundation -- if you're not from Galveston, you wouldn't realize how important that is, but it's a big deal in Galveston; and had been very active in the community until the twins were born ten years ago, and I started to reinsert myself in the community with my wife's encouragement and blessing, now that the twins are a little bit older. I served on Galveston's long term recovery committee in the housing subcommittee.

We're very concerned in Galveston about housing. We had to evacuate last September, pretty much everybody left the island. We had a population of nearly 60,000 people; I would guess about 15,000 of those people are not back yet -- everywhere you go. I mean, at the twins' soccer practice, we've got two families that can't come back to the island, there's nowhere to live. At school, some of the kids' parents, a very nice Italian family, they're living with their sister. This is not a good thing, you've got a whole houseful of Italians, somebody is going to get hurt sooner or later. We've got to get these people into an apartment.

(General laughter.)

MR. GAERTNER: It's the OR nurses, it's the teachers, it's the artists at the print shop, everywhere you go there are people who cannot live in their home, there's no place for them. So I'm here today to support Champion Homes Bay Walk and Champion Homes Marina. We desperately need these projects to be renovated, to be put back into service, to have families that are from Galveston that live in Galveston whose hearts are in Galveston back on the island where they can contribute to our community. We have a company that is very interested in restoring these properties, bringing them up to code, renovating them. We want to encourage you to support these two projects.

I'll tell you just one quick little story about Galveston. FEMA comes in after a big disaster and they start a long term recovery committee, so they came down and they started ours. Usually they get 15-20 people, 300 people signed up for our long term recovery committee. It took about four hours to read the names into the city council record, and they were pretty taken aback, they had no idea how they were going to organized 300 people, but they did. The committee I wound up on was housing, as I mentioned earlier.

But Galvestonians are fiercely -- I don't know why but we are -- fiercely loyal to our community, we love it, we love ti passionately, and we want to bring these people back so they can be contributing members of our community. Thank you very much.

MR. CONINE: Thank you. Any questions?

(No response.)

MR. CONINE: Doug Matthews -- I've got two from you -- do you want to speak now or later or both?

MR. MATTHEWS: My name is Douglas Matthews and I sit before you as the former Galveston city manager from -- I worked for the City of Galveston from 1974 to 1995, I served eleven years as city manager, seven years as assistant city manager, and three years as grants coordinator. I come today in support of two Galveston housing applications and humbly ask you to fully fund both Bay Walk and Marina Landing apartment complexes on Galveston Island.

I would like to submit a letter of support from one of our city council members, Taurus Woods in District 1, in support of the project, and I'll get copies to you. Also, I talked with another city council member, Dr. Linda Covert, on yesterday and she has indicated her support that while she has not seen the detailed restoration plans for these two projects, she made it clear that she supports only quality, affordable housing for Galveston families displaced by Hurricane Ike, and I assured her that these two projects are of quality.

I also have an article that was in our Galveston daily newspaper on October 4, 2009, stating that Galveston's population has dropped 20 percent since Hurricane Ike. City officials are worried about having the minimum population of 50,000 in order to remain an entitlement city for federal grants, therefore, redeveloping or repairing damaged apartment complexes on Galveston Island is critically important for the return to pre-Ike population level of 60,000.

MR. CONINE: Could you tell me again what it currently is, what number you just used?

MR. MATTHEWS: Our official population in Galveston was 57,000 pre-Ike. The article in the paper, they're estimating that our population is 20 percent off. People are actually living in surrounding communities, La Marque, Texas City, and League City and Dickinson, and having to commute to work on the island.

MR. CONINE: So it's just under the 50-.

MR. MATTHEWS: Yes, and for an entitlement city, you have to be over 50,000 which would probably harm us to the tune of about $8 million a year in transportation dollars, in community development and housing dollars.

MR. CONINE: Yes, but you wouldn't have to deal with HUD. There is a plus everywhere. Just teasing, go ahead.

(General laughter.)

MR. MATTHEWS: Creating quality affordable housing on Galveston Island through funding of these two applications, Bay Walk and Marina Landing, will go a long way in solving the city's population dilemma. Thank you very much.

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

(No response.)

MR. CONINE: Mark Mayfield.

MR. MAYFIELD: Good morning. I appreciate the opportunity to speak with you. My name is Mark Mayfield, and I'm with the Texas Housing Foundation, a regional public housing authority that primarily works out of the City of Marble Falls and the southwest in the Hill Country.

I just wanted to speak a little bit toward application 09390, San Gabriel Crossing, a 76-unit, a 9 percent deal out in Liberty Hill, Texas. Originally that was an '07 deal and due to the circumstances that we're all very aware of, it was turned back and it is now an '09 deal with an asterisk. I like the asterisk part, that's the only way I can ever compare myself to Roger Marris.

(General laughter.)

MR. MAYFIELD: But it does have the asterisk. And anyway, it is a real deal, I do know we really don't know how things are going to pan out as of yet. We have got an enormous amount of time and effort and money that's been expended on this development. We are permit ready, shovel ready, we're ready, whatever term that you want to give to us, but we really want to know if there's just any way -- I guess the question would be that due to the asterisk and the circumstances that have gone along with that, if there could ever be possibly a priority for these developments. There was, I believe, seven that were turned back in '07, four had reapplied and we are one of those four out in Liberty Hill.

So just want to throw that out and hopefully there could be a new priority to the asterisk. We would certainly appreciate it. Thank you all very much, appreciate your work.

MR. CONINE: Any questions of Mr. Mayfield?

(No response.)

MR. CONINE: Thank you. Hope you can hit as good as Roger Marris did.

Deanne Desjardin -- hopefully I didn't mess that up too bad; you can correct me when you get up here.

MS. DESJARDIN: Good morning. I am Deanne Desjardin with Catellus Development Group, and I'm here to support the Wildflower Terrace which is project number 09268. It's a senior mixed income community planned for Mueller which is the 700-acre redevelopment of Austin's former municipal airport which is very nearby in the heart of Austin.

Catellus is the master developer in a public-private partnership with the City of Austin to deliver the vision of Mueller that was crafted by the city, citizens and neighbors for more than 20 years. This vision for a compact and pedestrian-oriented mixed use community that would be a model for responsible urban development became a unique and ambitious plan that at completion envisions 10,000 people working at Mueller and 10,000 people living there in diverse neighborhoods.

The plan for Mueller was built on key community goals, including sustainability, all buildings built to green standards, economic development, revitalization, compatibility, diversity, and affordability. In fact, 25 percent of the housing in the entire project will be a variety of affordable home types interspersed throughout all the residential areas, virtually indistinguishable.

In a competitive process to find a developer for our planned senior project, we selected DMA Development. We have high confidence in their experience and the quality of their developments, and we identified a site for that community that is in the midst of both rental and for sale residential. The site has immediate access to bus service and is on the route that's earmarked for Austin's future downtown trolley or circulator service. Wildflower Terrace will also be adjacent to a greenbelt and trails, part of Mueller's 140 acres of open space. They'll be connected by more than five miles of walking trails.

Mueller is nearly 30 percent complete, it's been very well received, it's home to about 2,000 residents already, and those residents have established a vital sense of community that's involved in multi-generational, it embraces a mix of incomes, cultures and ethnicity. Mueller is committed to this affordable housing as a goal and to this tax credit project. the residents and stakeholders support it, it's an important milestone for affordable housing in this project and in Austin.

We ask that the Board provide a forward commitment for Wildflower Terrace at Mueller in Austin. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Jim Guidry.

MR. GUIDRY: Good morning. I just found out about this meeting at two o'clock yesterday afternoon and I drove in from Houston-Galveston County area to represent my community. I live in a small area just to the east of Moody Gardens and to the south of a property that the Board will recognize as Marina Landing Apartments.

Hurricane Ike visited our shores on September 12 and 13 of 2008. The Marina Landing Apartments in the City of Galveston was, like many other properties along the Texas Gulf Coast, severely damaged by Hurricane Ike. Two units were damaged beyond repair. All 13 homes at Offitts Point Circle which adjoins the property, sustained damage from rising water and from wind. Now 13 months later, our homes are repaired or near completion, the Marina Landing Apartment complex is as it was the day that Ike passed -- no, actually it's in worse condition today than it was after Ike. This is due to neglect by the owners, the insurance company that supposedly covered the complex, and neglect by the city, state and federal government.

The families with properties adjoining Marina Landing Apartments have asked me to bring to this Board's attention the issues we face because of our government's failure to act in an appropriate manner.

Debris and projectiles have, and on more than one occasion, flown off the Marina Landing Apartments during the frequent windstorms that occur on the Texas Gulf Coast. I had a large section of one of the buildings in question blow off and land in my front yard, a piece about the size of this table. This has happened after the hurricane. If somebody had been standing in that spot, they'd be dead.

Small fragments of FEMA blue tarp -- that we all recognize on the Gulf Coast -- play havoc with my swimming pool because I'm right up next to one of these buildings and the building management put the tarps over to cover up the holes, and for the last 13 months nobody has been on site, these tarps are now just pieces of shredded confetti. Rats, snakes, packs of stray dogs all call Marina Landing Apartments home today. Property values have significantly been impacted by this eyesore.

I've been attempting to sell my house on the island for the last six months. In a market where 5,000 homes were red-tagged for demolition and quality homes are at a premium on the island, however, my agent, Pamela Gabriel -- who could not make it this morning -- has lost three sales of this home and all three buyers said, or potential buyers said they wouldn't buy it because of the condition of Marina Landing Apartments.

Galveston survives on the tourists that flock to our island during the summer months. One of the major venues of Galveston Island is Moody Gardens. Moody Gardens eastern border is Marina Landing Apartments. Marina Landing Apartments, as can be seen from the satellite photos that I brought to the Board, has a deepwater harbor, again across from Moody Gardens.

Our request to the committee is very simple: provide the necessary funds to demolish the two apartment units unroofed by Ike and allow the complete rehabilitation of what probably is one of the most valuable pieces of property on Galveston Island.

I have for the Board photographs to show pictures of the complex that were taken two weeks after Ike -- that's when we were allowed back on the island -- and then I have photographs that were taken literally yesterday of the same location, and what you'll see is huge chunks taken out of two structures, and then you come back 13 months later and you see the same big bites taken out by the storm but they're bigger bites because the rest of it has blown off since then but you see the shredded FEMA tarps.

The people are sick of this, they want something done, either tear them down, rebuild, but do something, but 13 months is ridiculous. Thank you.

MR. CONINE: Any questions of the witness? She'll pass those out to us, I'm sure. Any questions?

(No response.)

MR. CONINE: Thank you for your testimony.

That concludes the public comment I have for the beginning of the meeting. Did you want to say something?

MR. GERBER: No, sir, I'm good.

MR. CONINE: The rest of them that I have, have to deal with a specific agenda item as we go through them, so we'll move on to the agenda. The first item we have is the consent agenda. Board members, do you see all those items listed on the consent agenda?

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes.

MR. GERBER: Staff would recommend pulling item 1(l) off the agenda, I know there's some public comment on that.

MR. CONINE: Okay, 1(l). Any other Board members want to request anything else? If not, I'll entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to approve the consent agenda with the exception of item 1(l).

MR. CONINE: Motion to approve the consent agenda, pulling 1(l) off the item. 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.

Now to item 1(l). Which staff person has that, Matt Pogor?

MR. GERBER: Cameron Dorsey is going to come forward.

MR. CONINE: Cameron, how are you today?

MR. DORSEY: I'm good. Shay is out sick so I'm the lucky person.

MR. CONINE: So you're pinch-hitting for Roger Marris. Is that right?

MR. DORSEY: That's right.

Board members, item 1(l) is the Meadow Park Village Apartments. This is a 36-unit multifamily development in Lockhart. The property is a Section 8 mark-to-market transaction proposing rehabilitation. The award for Meadow Park Village was originally presented in April and was tabled due to the applicant's concerns that the interest rate of 5 percent could not be supported by the property's operation, and that a zero percent rate with some loan forgiveness was necessary. The Department and the Board expressed concerns that the applicant's expenses of $6,051 per unit were substantially higher than the market supported -- than comparable properties in this market supported.

At the May 21 Board meeting, the applicant was awarded $500,000 from the Housing Trust Fund Multifamily Rental Production Program NOFA based on the original underwriting recommendation of a 5 percent interest rate with a 16-year amortization and loan term. The Board asked that the agenda item be brought back for modification if HUD had an issue with these loan terms.

On June 30, 2009, the Department received a letter from HUD stating that they were unable to approve this level of debt service that was approved by the Board due to insufficient cash flow to support the Department's terms. The contract associated with the award was never signed by the contract administrator.

Staff has proposed an alternative structure of a 2 percent interest rate and a 30-year amortization with a 26-year term, but these terms produce a debt coverage ratio of 1.77 which is well above the Department's threshold of 1.35. The interest rate of 5 percent could be supported by the property's operations if the property operated at a lower expense level.

And just for some background, these HUD properties, the budget is approved by HUD, generally speaking, and so that's why they suggested they needed to go back to HUD for approval. We still feel that this is a very, very high level of expenses, and given these limited state resources, staff has recommended this 5 percent interest rate because we felt like HUD should be throwing some skin in the game here too. So staff recommends that the Board make no changes to the loan terms that were awarded on May 21.

MR. CONINE: Could you clarify for me -- before we have the public comment, could you clarify for me why HUD and our underwriting staff are so far apart? This kind of seems a little unusual.

MR. DORSEY: Sure. It is to some extent unusual, although on a lot of this HUD mark-to-market properties we do see a higher level of expenses, and these properties go through the mark-to-market program often because over time these Section 8 rents get supported by higher and higher operating expenses and at some point HUD takes a look at the property, restructures the debt to be in line with how the property is actually operating so they can lower some of the ongoing subsidy they provide via the Section 8 program.

MR. CONINE: But this property has been around for a long time.

MR. DORSEY: It has, and I think the applicant has suggested that they're providing a higher level of supportive services, et cetera, however, if this property is in need of the rehab that is being suggested, because these are state funds and a very limited resource that are used for a variety of activities, from staff's perspective, the property should be operating in line with what other properties operate in this market.

MR. CONINE: Can you tell me which expense items that are so controversial, shall we say?

MR. DORSEY: Sure.

MR. CONINE: I mean, the property is either last year paid a certain amount of expenses, and if they're high, they're high.

MR. DORSEY: Right, and we're using historical operating expenses to derive our --

MR. CONINE: We being our underwriting?

MR. DORSEY: Yes. The Department is using historical operating expenses to derive operating expenses of about $4,800 per year.

MR. CONINE: So we're at what's being paid on the property and HUD's extrapolated to something higher. Is that what you're telling us?

MR. DORSEY: Yes. And we feel that our expenses are supported by the historical operations of the property.

MR. CONINE: Yes, that's common sense.

MR. GOURIS: I'm Tom Gouris, former director of Real Estate Analysis and now deputy executive director for Housing Programs.

And I was just looking at this real quick, and if you look at the comparative analysis in your Board package, you can see that repairs and maintenance that they propose is $36,000, almost $37,000 a year, whereas, at $600 a unit, we're recommending $22,000 a year.

MR. CONINE: So has HUD not given the property credit for the Housing Trust award which will make the repairs which will bring those expenses down? Is that what's happening?

MR. GOURIS: That's what's likely happening. We've tried to contact HUD directly and we've not been able to engage --

MR. CONINE: Nobody answered up there?

(General laughter.)

MR. GOURIS: -- engaged in a dialogue that we thought was helpful. So we haven't been able to get -- I thin what happens with these transactions is that the owners of these transactions push and move HUD to get to a certain level of expense acceptance.

MR. CONINE: So if we push back to HUD the downside to the applicant is that HUD won't approve the restructure so the thing will just sit like it is.

MR. GOURIS: I think that we need to push back so that the applicant pushes back to HUD and pushes back to themselves and recognizes that --

MR. CONINE: We've already pushed once. Right? Or is this the second time? It's a nice little poker game we're playing with HUD.

MR. GOURIS: Of course, the difficulty in doing this in an open, transparent session is that this kind of direct involvement is difficult.

MR. CONINE: You're telling me our underwriting basis is based on what the property has operated at in the past.

MR. GOURIS: And in addition to what other levels of reasonable operations there are. But yes, in general, you can see the actuals are listed there and we've gone line by line and looked at them.

MR. CONINE: Okay. Any other questions of staff before I bring up the other public comment?

(No response.)

MR. CONINE: Okay. Cynthia Bast.

MS. BAST: (Speaking from audience.) Mr. Conine, I will defer my time to Mr. Piette.

MR. CONINE: To who?

MS. BAST: Mr. Piette.

MR. CONINE: Okay, Gilbert Piette. You have five minutes, if you'd like.

MR. PIETTE: Thank you. My name is Gil Piette. I'm the executive director of Housing and Community Services, and before I start I need to thank a few people.

MR. CONINE: Where?

MR. PIETTE: I'm sorry.

MR. CONINE: Where?

MR. PIETTE: San Antonio.

MR. CONINE: Oh, okay, great.

MR. PIETTE: I need to thank a few people. I couldn't be here last meeting, this was on the agenda, and my wife collapsed in H.E.B. in Brownsville. Ms. Escareno's hospital got her back on her feet and we got her to San Antonio, but the day of the meeting she was going in for heart surgery so I couldn't be here, so thanks for bouncing it to this meeting. Our kids are taking her to the doctor today; they came down from Austin so I could come up here. So thank you.

The reason why I wanted to take this off of the consent agenda and talk to you, I do think we need to talk to HUD, and I heard the comments that they tried. I've spoken to Mr. Bachman, and he's certainly willing to enter into dialogue, from what I've been told.

A little bit about the property. It's a bigger issue than just the Meadow Park property that we made the application for. Meeting after meeting I hear from TDHCA -- and I believe you -- that you really want to help 30 percent properties and you really want to help rural. This is a property that's providing 83 percent of its units to people at or below 30 percent of area median income. And when I took over HCS, the then executive director told me that across the board we were providing about 75 percent of our housing to people at or below 30 percent.

We checked before coming to the meeting today because Meadow Park went through an M-to-M, we have seven other properties that went through an M-to-M that are rural, and they provide -- if you allow for vacancy, they're providing 81 percent of their units to people at or below 30 percent of area median income. Why are expenses so high? Well, if you're dealing with people at or below 30 percent, the expenses are higher. It's a little rougher on the property.

Just an anecdotal thing. We had a lady, elderly lady that we brought in who had been living basically in a shack with a wooden floor, and she would wash it out with a garden hose. She did the same thing with our apartment. We replaced sheetrock, wiring, you name it.

I think TDHCA has acknowledged that we are spending the money according to the budget that HUD has given us. We went to HUD, we asked them if they would approve the 5 percent, they said we can't. We got a call later saying: Go back to HUD, float 2 percent and these terms and we need a quick turnaround. We went and we talked to them, and then the answer we got was: Well, now we plugged it in and it still doesn't work.

I don't have that much time to be going to meetings for proposals that we could have known beforehand wouldn't work, but the thing that concerns me more is that if we say that it doesn't work for Meadow Park, we're saying that it doesn't work for a whole class of properties across the state that are serving people at or below 30 percent of area median income.

And I'm not cynical, I know you people are really trying to help 30 percent, but I'm not sure the model that is being used here works. They say one of your best arguments is appeal to a higher authority, and I don't have one, but I do have Jeff Crozier who has gotten up at almost every meeting and said, you know, your models don't work for rural, and I think this is a classic example, especially if you're trying to reach out to people at extremely low income.

So I don't know if you can approve the loan at 2 percent, I know HUD said they would accept that, but my greater concern is that if this just flies through and we don't talk to HUD, we have an entire class of properties out there that are going to be precluded from benefitting from this program, and it's properties that you say are a priority.

Mr. Lucas can give you more of the details on the expenses and whatnot, but that's my primary concern, we need to talk to HUD. You're both trying to help but we've come to loggerheads on this and it's going to impact an entire class of properties. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

Mr. Lucas, Raymond Lucas.

MR. LUCAS: Board members, I'm Raymond Lucas, I'm here in regards to 08335, Meadow Park Village.

This is a project that, again, as Mr. Piette had explained, serves mostly 30 percent income folks. The property went through an M-to-M, the mark to market program, we looked at this property for about 15 months in processing the level of expenses and operation that the property would have, and they derived the expenses that are now being experienced by the property.

I know Mr. Dorsey made a comment that the underwriting of the TDHCA was based off of the experience of the property, and that is actually not correct because the property has experienced the level of expenses that the HUD model has, and I believe it's in your Board package supports that. There's actually two underwriting models in there from TDHCA and one has some typographical errors, but the second one has the level of expenses that are actually being experienced by the property.

You asked about the condition of the property, the things that are going to be done. The property is providing a match in part to cover the normal rehabilitation items like parking lot and cabinet replacement. The property, when it was originally built, was supposed to have washer/dryer hookups. HUD about every two years contacts the owner and says, Why aren't there washer/dryer hookups? And the new owner now, a non-profit, says, Well, at the time you built the property, you authorized them not to complete the washer/dryer hookups that were in the plans and specs. And so the property is built to have washer/dryer hookups and we're merely trying to accomplish what the property should have.

Hard wired smoke detectors, the property has battery operated smoke detectors; modernization, microwaves, dishwashers, garbage disposals, ceiling fans, bath exhaust fans, and then ADA units 5 percent.

So I guess if you take staff's recommendation, this property will continue to operate, 30 percent units will continue to operate without these type of amenities that your Department typically provides to housing that you're involved in, and again, as Mr. Piette said, these individuals will be deprived of that benefit. It's really too bad.

Who's going to benefit from either the staff's proposal or the applicant's request? The only people that stand to really benefit are the residents. There's no big developer fees, there's no big pot of money that anybody is going to make, so it's just a matter whether the residents are going to get the improvements that are called for in the applicant's application. Any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Okay. How big is this HOME award, Cameron?

MR. DORSEY: I believe it's $500,000.

MR. CONINE: And how many units are we talking about?

MR. DORSEY: Thirty-six.

MR. GERBER: It's Trust Fund.

MR. DORSEY: I'm sorry. It's Housing Trust Fund.

MR. CONINE: Yes, Housing Trust Fund. I'm sorry, I messed that up.

I guess I'm a little uneasy about this item coming back to the Board before staff's had a chance to talk to HUD. I would have thought that step would have been taken first, and let that be a lesson for the next one and the next one and the next one. Let's make sure that happens before it comes back because it puts us in a position that we can push back to HUD with, sounds like to me, very reasonable underwriting expenses, but if turn around and hold our guns and give you no flexibility, then you may win the battle; if we turn around and give you flexibility, then HUD may take advantage of that in the negotiations.

I wish that conversation would have happened to have that particular feedback. We don't know, staff doesn't know whether they'll take the 2 percent deal or not, I don't even think you guys have underwritten it at 2 percent at this point, so we need to make sure that happens in the future.

MR. LUCAS: (Speaking from audience.) HUD does have a letter in there that says they'll accept the 2 percent underwriting.

MR. CONINE: Okay, thank you, Mr. Lucas.

I mean, I know that HOME funds are precious -- or Housing Trust funds are precious and we need to utilize them in the best way possible.

Any other questions of staff at this point? My gut is to stay where we are and go back to HUD and see what happens. If they are absolutely stonewalling you at that point, then it comes back to the Board and we can make a decision, but without that input of absolutely no way, or at least from your perspective no way, and let you have a chance to justify your reasoning as to why you think it should underwrite at X. It's a typical underwriter battle but I certainly think you need that opportunity.

MS. RAY: Mr. Conine.

MR. CONINE: Ms. Ray.

MS. RAY: Could I ask a question of clarification.

MR. CONINE: Sure.

MS. RAY: From what I understand, it says that HUD would accept a 2 percent interest rate at 30-year amortization with a 26-year term, but that's going to put the underwriting at 1.77, well above the 1.35.

MR. DORSEY: That's right.

MS. RAY: And I guess my question would be how -- my concern are the little old people that are living in Caldwell County in these houses and I'm concerned about the little old people in Caldwell County. I know the 1.35 is a rule that we set and is not bound by statute, how hard-pressed are we to make an adjustment from the 1.35 to the 1.77 in a rural county with elderly people. Can we make an adjustment and what message would that send to the rest of the development community in similar circumstances in a rural county with an elderly population?

MR. GERBER: Ms. Ray, I would just interject. I think we're especially concerned in a rural county because we do always worry about the ability of that property to sustain itself over the long term, and it's harder, we know, in these rural properties. Tom, do you want to offer some refinement to that?

MR. GOURIS: That certainly is a concern and it's throughout the rural process that we have we have exceptions and contingencies for rural properties and ways that we can make adjustments to adjust for expenses to accommodate such things and put everybody on kind of a fair playing field, and that's what we've tried to do with this transaction and all transactions and that's where we use that guidepost of the debt coverage ratio as being something you can then compare apples and oranges and everybody looks the same because we've already made the adjustments in expenses or in other areas.

Of course, the Board has the ability to allow for a higher debt coverage ratio in certain circumstances, and there may be cases where that makes some sense if the transaction has not been just refreshed but is just being repaired for hurricane purposes and maybe already above that 1.35 debt coverage ratio, for example, and can't get any additional new financing. This is not that case, though, this is a restructuring transaction that's happening right now, and it would, I think, send a difficult precedent for staff to follow to extend the 1.35 in this instance.

It may be something that we want to revisit the 1.35 altogether, but that level of debt coverage ratio is something that's relatively unique to an agency like ours that's trying to make sure we can spread that benefit to all the rural areas that need funds and spread that benefit to all the other deals that need funds too and make sure that we don't over-subsidize a particular transaction because it has an impressive story because all of these transactions have a story of their own that is of value and noteworthy.

MR. CONINE: Let me see if I can take a stab at a more layman's explanation. There's only one person that benefits from the 1.35 to the 1.77 and it's not the residents living there, it's generally the ownership entity or person who owns the project because it's just more cash flow to him. If we can pull it back down to 1.35 which is obviously a more tolerable level, then the underlying debt can be increased, the project can still be rehabbed but someone else is providing the debt and now the Housing Trust Fund. So that's where I view the benefit falls.

MR. GOURIS: Well said.

MR. CONINE: And if HUD bows their neck and you guys ultimately agree with HUD for some reason, it will come back to us the next meeting.

MR. GOURIS: Right.

MR. CONINE: We're not going to lose it, in other words.

MS. RAY: I'm comfortable with that explanation, Mr. Chairman.

MR. CONINE: Can I get a motion?

MR. GANN: I'll give you a motion to table till next month.

MR. CONINE: That works. Motion to table. Is there a second?

MS. RAY: I second his motion.

MR. CONINE: There's no discussion on a motion to table. 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, staff, for that dialogue.

Let's go ahead and go to 2(a) right quick. Item 2(a), Mike.

MR. GERBER: Item 2(a) are the Housing Tax Credit amendments. The first are Candletree Apartments. The owner is requesting the Board's acknowledgment of a discrepancy in the application concerning all the one-bedroom units containing only one bathroom and the development is built with only 326 parking spaces instead of 351. Staff is recommending the approval of the request.

MR. CONINE: I have one witness affirmation from Jeff Fulenchek on Candletree.

MR. FULENCHEK: (Speaking from audience.) Chairman Conine, I'm just here to answer any questions the Board may have.

MR. CONINE: Thank you very much. I don't think we have any unless the Board has any. Do I hear a motion?

MS. BINGHAM: Move staff's recommendation.

MR. CONINE: Motion to approve staff's recommendation. Do I hear a second?

MS. RAY: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, the next item is Sphinx at Alsbury. The owner is requesting the Board's approval to deliver the development with one less two-bedroom unit and one more one-bedroom unit. In addition, the owner has built 58 of the two-bedroom units with one and a half baths instead of the two bathrooms, and 34 of the three-bedroom units with two and a half bathrooms instead of three bathrooms. Staff is recommending the approval of this request.

MR. CONINE: No public comment on that one unless they're out of order, and I don't think they are

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

MR. CONINE: Move staff's recommendation. 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

MR. GERBER: The next item, Mr. Chairman, is Evergreen at Rockwall where the owner is requesting to increase the site by .2749 acres, and staff is recommending the approval of that request.

MR. CONINE: I do have Tamea Dula.

MS. DULA: (Speaking from audience.) I'm only here for questions.

MR. CONINE: Okay. Anybody got any questions?

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

MR. CONINE: Motion to approve staff's recommendation. 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.

MR. GERBER: The next item, Mr. Chairman, is Blackshear and this amendment request was heard at the September Board meeting and the Board approved the staff recommendation with the understanding that the owner would return with just cause. The owner is requesting to add eight additional lots to the scattered site development because it will limit the platting process, enhance revitalization and appeal of the neighborhood, and improve the ability to sell the homes after the credit period has expired. This amendment will provide for a less dense development, and based on the public support expressed at the last meeting, has significant local support.

However, a previous amendment would trigger other threshold violations with regard to an additional property that was not included in the original application. For example, evidence of site control, notice to the public and the third party environmental site inspection were not provided by the application deadline, they were not available for evaluation by staff, the public, or considered in the award. Thus, even if the additional lots were allowed to be included, they wold fail to meet the threshold documentation requirements.

In a prior meeting, the developer had suggested that the acceptance of this change now after failure to meet these deadlines would increase his proposed development harm since it is the next development in line for funding. Because the staff recommendation to approve the change would be inconsistent with the application's threshold requirements, staff cannot recommend this amendment. But we do acknowledge that the applicant's analysis appears to benefit the transaction and not significantly impact the cost of this development, and the QAP does provide the Board the ability to waive this rule if appropriate, and this may be an instance where a good cause can be determined by this Board.

MR. CONINE: I've got a couple of witness affirmation forms here. Stephanie Dugan and she's got time from Robert Salas, so five minutes.

MS. DUGAN: I appreciate this opportunity to address the Board. Unfortunately, I could not be here at the last meeting. I was actually teaching a housing finance class in Sioux Falls, South Dakota, so I'm happy to be back in Texas today.

My name is Stephanie Dugan, I work for the National Development Council. The National Development Council on this project is actually the developer, we're the general partner, and we are the managing member of the syndicator. That should make the project easier; unfortunately, it just means I have to wear a lot of hats in making this project come to fruition.

The Blackshear project is 20 single family houses, they're all three-bedroom, two-bath. What we're proposing is no change to the actual project, the number of units or the layout or the amenities of those units.

Just a little bit of history of how we got here. In 2007, the National Development Council was asked by the City of San Angelo to consider the development of this very small low income housing tax credit project. In 2008, this was the smallest project that actually was applied for in that round. Thanks to the tremendous support of the community, we had a vote of all city council members -- unanimous vote, support by the city council when we applied for credits for this project.

Along with the City of San Angelo, we worked with Galilee CDC, the local CHDO, they're our co-development in the project. Galilee and the city worked to provide us with the land necessary to develop the project. Originally we were looking at eleven parcels; these were all parcels acquired by the city through tax foreclosure. We elected not to develop on three of those parcels because they backed up on to an active railroad spur, so we eliminated those from the initial application, leaving us with eight lots which covered approximately four acres.

Subsequent to that, we had hoped to do a phase two in the project, either this year or next year. Since then we've determined it will be a number of years, if ever, that we are able to do a phase two on the project, so we are actually looking to use additional lots that have been set aside for the project by the city to expand the project to additional land, bringing the total acreage up to a little under 5.3 acres. That would allow us to place each single family unit on a single family lot. The city has already, at its own expense, gone through and re-platted those which primarily makes the project a better project for the community, for the residents and ultimately helps us achieve our goal of hopefully selling those units at the end of the compliance period to individual homeowners, stabilizing this neighborhood in San Angelo, Texas.

I would be pleased to answer any of your questions.

MR. CONINE: Any questions of the witness? Lowell?

MR. KEIG: No.

DR. MUNOZ: I have a question.

MR. CONINE: Sure. Dr. Munoz.

DR. MUNOZ: Have you had a chance to read the re-underwriting evaluation?

MS. DUGAN: No, sir.

DR. MUNOZ: Well, is the issue that the additional 1.3 acres was not under the control at the time of application?

MS. DUGAN: That is correct.

DR. MUNOZ: All right. But the original four acres were.

MS. DUGAN: Yes, sir.

MR. CONINE: Are all the other pieces of this particular project kind of put in place except for this?

MS. DUGAN: Yes, sir. We have secured an investor for this project which I'm pleased to say is a local bank that has never done a tax credit investment in its history.

MR. CONINE: So they're going to buy the credits?

MS. DUGAN: Yes, sir.

MR. CONINE: And they're going to do the construction financing as well?

MS. DUGAN: Yes, sir.

MR. CONINE: Interesting.

MS. RAY: They want it bad, don't they.

MR. KEIG: Move to approve.

MR. CONINE: I heard a motion to approve by Mr. Keig.

DR. MUNOZ: Second.

MR. CONINE: 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: And I don't know whether you were here when we discussed this last time when all the residents were here, but we were talking about dinner at Lowicki's, I think.

MR. SALAS: The steak dinner is still on the table, sir. If you come down, look me up.

MS. DUGAN: We'll celebrate the Texas Tech win over Nebraska.

(General laughter.)

MR. IRVINE: Mr. Chairman. Tim Irvine, secretary. If the Board is going to grant this one, they need to state on the record what the just cause for the waiver of requirements is.

MR. CONINE: I'll go back to the maker of the motion.

MR. KEIG: Given what I would understand the intent of the control requirement is, the fact that the property was with the city I think is less of a concern than if it had been with a private owner, and for that reason, I think it presents an extenuating circumstance for the motion.

MR. CONINE: Thank you. The rest of the Board concur with that.

(Concurrence.)

MR. CONINE: Thank you. All right, moving on to the next one, Mike.

MR. GERBER: The next item, Mr. Chairman and Board members, is Village Park. This amendment originated in April of this year. The owner requested approval from the Board to omit the installation of ceiling fans in all the bedrooms because it was a financial burden to the property and that the owner had not contemplated it in the rehabilitation of the development. The amendment was not recommended by staff because it was a threshold requirement for 2005 applications.

The Board directed the owner to work with the staff to find a satisfactory alternative and to bring the amendment back to the Board. The owner offered to substitute built-in microwave ovens to replace the vent hoods over the ranges. At the July meeting the Board approve staff's recommendation, however, the substitution of microwave ovens was not separately addressed, so we're just seeking a quick clarifying motion that that substitution is acceptable and appropriate and just simply ratifying that substitution.

MR. CONINE: I've got no witness affirmation forms. Do I hear a motion from the Board?

MS. BINGHAM: Can we just move staff's recommendation, sir, or do I need to make the motion to clarify that the microwaves are acceptable in lieu of the ceiling fans?

MR. CONINE: That's what the motion needs to be.

MS. BINGHAM: So moved.

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 none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

We are going to take a ten-minute break and be right back.

(Whereupon, a brief recess was taken.)

MR. CONINE: Okay, Mike, moving on to item 2(b).

MR. GERBER: 2(b), Mr. Chairman, is hopefully the approval of a policy clarification regarding the Exchange Program and the 10 percent test and the placed in service deadlines. Tom, do you want to walk through that one?

MR. GOURIS: Chairman Conine and Board members. The Exchange awards are currently scheduled to close by the end of the year and facilitate construction completion by year end 2010. Though Treasury has recently extended the deadline for disbursement potentially until 2011, complete disbursement. In order to expedite the completion of these developments and to use the stimulus funds, the Exchange policy adopted by this Board earlier this summer maintained that the existing tax credit deadline for developments applying for and awarded Exchange funds should apply, even though, in theory, the way that we have done the Exchange Program was to go ahead and require them to return 100 percent of their tax credits and receive, in essence, a new Exchange award.

We're kind of walking a thin line, if you will, because there are other state statutory requirements that need to be met if they truly get a new award, and as a way of alleviating that and focusing on those deals that are going to get done that have tax credit awards, we'll try and maintain the existing tax credit award as much as possible. But we recognize that the 10 percent test and the commencement of substantial construction test are coming upon us very quickly and that some of these transactions need the exchange to actually be able to complete those tests. So we're recommending a six-month extension of those, as well as placed in service dates, a six-month extension of those as well.

The only ones we're not recommending those extensions for are the '07 transactions that haven't, as we understand it, moved forward with any kind of closing because they had until the end of this year to actually place in service, and at this point, a six-month extension is not likely to benefit them. If they should come up and say it does benefit them, that's fine, we can go ahead and extend it six months. I think what they're going to be looking for is a total reset date and a total reset would be much more akin to giving everyone a new allocation which then could trigger the $2 million test and the one-mile test and the other tests for allocation. So we're trying to ride that fine line, give folks an extension by policy, for exchange deals only, of six months.

MR. CONINE: I have some public comment on this particular agenda item. Let me ask one thing before we get to that.

MR. GOURIS: Yes.

MR. CONINE: Where are we at in the documents for the Exchange Program?

MR. GOURIS: We are still working through them. There are a couple of difficulties with them in that --

MR. CONINE: Just a couple?

(General laughter.)

MR. GOURIS: A couple of big issues that we have been trying to resolve. One is at the Board's direction to us to try to have some ability to participate in any net profits and any residual funds that might be available to the Department. That stands somewhat in conflict with the guidance that we believe we've received from Treasury which limits our ability to do that in a direct manner. As far as participating as a partner in the transaction, they have suggested that states would be limited to a de minimis amount of a 1 percent partnership interest. And similarly, they have allowed for a loan other than a deferred forgivable loan.

MR. CONINE: Don't tell me how to build the watch, just when will we have the documents.

MR. GOURIS: Sorry. Good question. I think we've worked through and we've got a solution that we're going to put out there as a draft, either tomorrow or early next week, to start soliciting some feedback.

MR. CONINE: And the TCAP documents are already done.

MR. GOURIS: TCAP's written agreement already went out and we're asking folks if they have any more comment to finalize that comment by tomorrow. That comment that we can take in, we will. We want both documents to be uniformly used and not renegotiated with each transaction, and that's why we're releasing them kind of as a draft.

MR. CONINE: Have you gotten many comments on the TCAP documents?

MR. GOURIS: We did initially, we made some adjustments to it, and the document that's out there right now has not received much additional comment.

MR. CONINE: I'm sorry to digress.

MR. GERBER: The middle of next week?

MR. GOURIS: The middle of next week for Exchange, I would think would probably be most likely.

MR. CONINE: Okay, great.

The first witness affirmation form I have is from Raymond Lucas. Welcome again.

MR. LUCAS: Thank you. Ray Lucas. I'm here to talk about the Exchange item on the agenda. I'm involved in a transaction in San Antonio, Texas that's the Oak Manor Village Apartments, it's an '08 transaction, it's in the Exchange group, and I agree with the staff, I think the extensions that are being requested is a good thing. We have a 229-unit rehab which an extra six months would allow us not to speed through the rehab and maybe do something that we might regret later.

I do believe, though, that the two -- we do not have any 2007 transactions that would be eligible for the Exchange, but I do believe that some leniency on those transactions would be appropriate so that the ones haven't been completed can go ahead and get done with maybe an extended period of time also. And that's all I have to say.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Eric Opiela. It's like old home week. Where have you been hiding?

MR. OPIELA: Well, I just had a baby.

MR. CONINE: Congratulations. I hope it was your wife that had the baby. If you had it, you lost the weight real quick.

(General laughter.)

MR. OPIELA: I still have a little bit of belly.

Thank you so much for the opportunity to testify today. I'm Eric Opiela representing Aurrora Meadows which is one of the Exchange Program applicants.

This project -- and you'll hear more from the developer and the construction company also testifying -- is one of the '07 applications who is located in Maverick County. This is in Eagle Pass, this is an area that was impacted by two disasters, one in '07 and one in '08, that were FEMA declared, and as such, we made an application for a placement in service extension based upon those disasters back in July and are still awaiting a decision from TDHCA on that placement in service extension.

There's basically two areas for relief now because of this Exchange Program. One, the Exchange Program allows, under 1602 of the American Recovery and Reinvestment Act, it actually allows a new award and new deadlines to be set, and that's essentially what Mr. Gouris had said. However, this project is not going to be able to be placed in service by December 31 of this year because of the two situations that I previously described.

There is no requirement in 1602 that the original placed in service deadline be honored. In fact, just through looking at the Exchange Program requirements by other states, Indiana, Iowa, New Mexico and Oregon all extend these placement in service deadlines as a result of the Act. Part of the reason the Exchange Program was put in place was to allow projects that had received allocations to be able to be built, and that's the goal of this agency is to build housing.

This is a shovel ready project, this is a project that doesn't have any impediments other than just getting this Exchange award, and they are going to be asking the Board to grant not a six-month extension but an extension until December 31 of next year, so it's not a full two-year extension as you would do for a new award but just an extra year to be able to get the project built, and so when they receive the funds, they can begin construction. And the other projects from '07 are in that same situation where they haven't had the money to get the construction off the ground, but once it begins, they can get it built in a year.

And so what we are asking the Board to do is not do a six-month extension but do a twelve-month extension, not the full 24 that would prompt some sort of new award class but ask that they be placed in service by December 31 of 2010.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Could I get Mr. Gouris to respond to that, please?

MR. GOURIS: To respond to the one year instead of six months?

MR. CONINE: Yes.

MR. GOURIS: That's certainly at your discretion. We're not recommending it because allowing a year for everyone would slow things down and allowing a year for just these transactions is --

MR. CONINE: Well, but Tom, if something hasn't started yet, hasn't even started yet.

MR. GOURIS: It's a 2007 award.

MR. CONINE: Right.

MR. GOURIS: And they have not moved forward with construction and they had the opportunity to return the credits, a lot of folks did return credits to re-apply for credits. We've given lots of opportunities for them to return to the fold and get back into the process. They've hung on and now they want to step out and get Exchange in order to make their deal work which their deal didn't work in the market before this. I think it's real hard on '07 deals that haven't started. I think the Congress gave us the opportunity to help '07 deals that had moved forward that were in the midst of things when things fell out, but we have, fortunately, just a few that never got started, that really never moved forward, and you all attempted to fix that earlier, they didn't avail themselves of that. I'm struggling with that.

MR. CONINE: I've got your position, I've got staff's position.

Any other questions of either Tom or the witness here on this particular item?

(No response.)

MR. CONINE: Mike Sugrue.

MR. SUGRUE: (Speaking from audience.) I'll pass.

MR. CONINE: Donald Pace who has some donated time, so it's five minutes.

MR. PACE: My name is Donald Pace. Mr Chairman and Board, appreciate the opportunity to come here. I'm the general partner of Tammy's Point in Maverick County, Eagle Pass.

I want to go through a scenario step. When we say we haven't done anything -- Mr. Gouris said we haven't done anything, we are shovel ready to go. We've had three different LOI letters from syndicators saying anywhere from 90 cents down to the last one of 61 cents, and we've found an equity partner every time, but the biggest problem we've had is our construction costs, after the tornado happened in '07, our contractor couldn't find subcontractors, couldn't find materials that were suitable in the price range that met his contract.

Then after the second problem or the second disaster that we had, the same thing happened, our costs went back up, our contractor said he couldn't do it, we had to redo all of our pro formas, we had to redo all of our paperwork and go back to our syndicators and bring them back up to date. Their biggest problem was their investor didn't like the cost increases here and there, so two of them dropped out pretty quick. One of them dropped out for probably reasons that they wouldn't tell me, but I took it to be that the investor didn't like where the development was in Eagle Pass -- which really needs the housing.

The agency also recognized this back in 2008 and gave us an additional award of credits and a 10 percent boost in the construction costs. It's helped. We were able then to get an equity partner that we were at the closing table ready to go, and they backed out at the last minute.

In December we requested a placed in service extension and the only answer we got back was that you need to make a formal request and send a $2,500 fee, and that's what we did. And the only answer we got back was then we need a legal opinion from our attorney, and Eric -- he was just talking here -- he gave the legal opinion, and that's where it sat from July until today. We have not heard an answer back on the placed in service extension, yea or nay, one way or the other.

And the reasons we didn't return the credits at the time when we had the amnesty, we had a syndicator that was ready to go to the closing table, we already had a pre-development, everything is done, our plans are done, permits are ready to be picked up, but we had no way of doing it when everybody dropped off the table from us, so we didn't have the chance to go back and get any money anywhere to start the construction. We had a commitment from Stearns Bank to do our construction loan and our perm loans.

Once we sent the legal opinion in July, then in August we applied for the Exchange funds. We got deficiencies back but nowhere did they say: Guys, why are you wasting your time, we have not gave you a placed in service extension. They hadn't even talked about it. So we assumed no news was good news, so we followed through, we got our deficiencies taken care of, and then that's it. I've done everything possible to make this development ready for affordable housing in Eagle Pass who really, really needs the housing.

We have letters from the mayor of the City of Eagle Pass, we've had the judge of the county, all on our side saying yes, this is the problems we've had, the construction problem was the biggest thing because no available subcontractors, no available materials.

Because of the periods I just covered, I would like to request the Board to grant us an extension to December 31, 2010 for our placed in service date. Also, our substantial construction start, we'd like to request that be until May 30, 2010. We will provide Eagle Pass with 76 homes, a clubhouse and a place for those people that fall under your jurisdiction of the State Statute 2306, providing the citizens of Texas with affordable housing. That's what we are going to do if you will grant us this placed in service. We are ready to go just as soon as we are awarded Exchange funds. Thank you for your time.

MR. CONINE: Mr. Pace, I understand the extension of time on the placed in service. The substantial construction is currently what with this under the staff recommendation?

MR. PACE: I think it's May, I think what they're doing is May. I'm not sure. Is that right?

MR. CONINE: But with the staff recommendation, do the '07 deals get any relief under this?

MR. GOURIS: No. That wasn't -- they would have whatever relief they already have. The '07 deals that are already moving forward; primarily the others other than these four --

MR. CONINE: Staff is only recommending the '08 deals get pushed.

MR. GOURIS: And those '07s that are moving forward because they can move forward.

MR. CONINE: But the staff is recommending a six-month extension of the '07s that can move forward on substantial construction?

MR. GOURIS: If they've already moved forward with that if they need it. I don't think any of those that are moving forward need that.

MR. CONINE: Okay, I've got you, I think I understand.

MR. PACE: And we've already done the 10 percent test.

MR. CONINE: Any other questions of the witness?

MR. GOURIS: Could I throw a couple of things out that we have found out about the transaction? We're not sure who the ultimate GP is going to be in this. We received a call yesterday from the non-profit partner in this transaction concerned about where their role was and they understand that the rest of the partnership is trying to sell the partnership to try to make this deal work. There's a bunch of stuff going on there, so I'm not sure how ready to go this deal is, and that's sort of some undercurrent that's going on.

The other point to make is that the original -- they mentioned two disaster declarations -- the first disaster declaration was made prior to the award being made, and the disaster declaration itself and extension thereof isn't on the agenda today, what's on the agenda today is just an extension across the board for all Exchange applications. The disaster declaration issue is something we're still struggling with. In fact, we met with them yesterday to try to clarify what their position was with regard to the disaster extension; they were going to provide us some more information to support their contention, but that's a separate and distinct issue.

MR. IRVINE: This is Tim Irvine, secretary, speaking.

With regard to the disaster matter, staff did, as Tom indicated, meet with Mr. Opiela and his clients yesterday afternoon. They will be providing a revised opinion and seeking staff's ruling regarding the application of the revenue ruling to this particular transaction. I think that this discussion is certain germane in that it gives the Board a flavor for how facts and circumstances relate to a particular '07 matter, but really the revenue ruling, the disaster, all of that is extraneous to the particular posted item which is the general policy discussion.

MR. CONINE: I'm looking at the Exchange Program application log that was furnished, and I don't even see this project on there.

MR. PACE: It's on there. It's Tammy's Point.

MR. CONINE: What region is it?

MR. PACE: Eleven. It will have Aurrora Meadows or Tammy's Point.

MR. CONINE: Oh, you've got two different names, you've got an alias or something.

MR. PACE: Well, no. One of the partners wanted to change the name of the development, not the partnership, just the development.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. PACE: Thank you very much.

MR. CONINE: Thank you. How many of the '07 transactions that didn't reapply in '09 have not started construction? Are there any others in this group other than this one?

MR. GOURIS: There are four that we know of with some certainty: this one and Villas on Raiford were new construction transactions; and then there are two rehabs and they're listed in your Board book also, Las Palmas and West End Baptist.

MR. CONINE: So if I finish the witness affirmation forms, all of them will probably pop up.

MR. GOURIS: I would expect.

MR. CONINE: R.J. Collins.

MR. COLLINS: Mr. Chairman and members of the Board, my name is R.J. Collins and I'm here to speak on the Tammy's Point/Aurrora Meadows development, 07178, 08905.

MR. CONINE: Or Aurrora Meadows, whichever one.

MR. COLLINS: Whichever one. Its name is Tammy's Point, the project is Aurrora.

My company, Charter Contractors, has been a member of this development team on this development since 2007, the original application. And what Mr. Pace referenced in construction costs has happened and did happen, and you recognized that in 2008 and increased the credits, and we went back and we still couldn't make it work with some of the syndicators.

This project, as of last Thursday, we have a budget, we're in budget, we're ready to pull the permit, we're ready to submit a contract, we've bid the job out, they have a permanent loan and a construction loan ready to close. Originally one of the syndicators charted a construction cost schedule that would deliver the property in seven months. We feel very comfortable that we can deliver the property in nine to ten months completed, and I'm here to request that you allow this property to be moved forward in Eagle Pass because it really needs the housing. Thanks.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. David Marquez.

MR. MARQUEZ: Hello. My name is David Marquez. I'm representing the 307 projects, Urban Progress, Las Palmas Apartments, LULAC Hacienda, LULAC Group of Corpus Christi, and West End Baptist which is also in the west part of San Antonio.

I kind of feel like Lehman Brothers here, you know. Somebody throw me a lifeline here, and we seem to be left out in the cold of the '07s, so I'm here to make my appeal. Of course, Eric and Donald have already said what needed to be said in terms of the actual why we are here today, but I want you to kind of go back for a little bit.

Somebody mentioned Roger Marris and Mickey Mantle back when I was growing up as a kid, and Las Palmas is 43 years old, it's on the west side of San Antonio. I want you to think about 43 years ago, a Hispanic group going up to HUD to try to find housing. In those they didn't even label us as Hispanics, I don't know what we were, Chicanos, Mexican-Americans, whatever. But anyway, Urban Progress went and actually was able to obtain funding from HUD for 100 units. The same thing for West End Baptist, can you imagine being an African-American church, 43 years ago or 40 years ago trying to find HUD funding for 50 units on the west side of San Antonio.

All I'm saying is that these guys have fought the fight, they have been providing affordable housing for 40 years, LULAC has been providing housing for 45 years there in the City of Corpus. I'm asking this Board not to award an extension but to reward these guys for providing affordable housing for 40-something years. Thank you.

MR. CONINE: Any questions of the witness?

MS. RAY: I have one question for the witness.

MR. CONINE: Ms. Ray.

MS. RAY: Mr. Marquez, I appreciate your request. Could you give me your position on the length of the extension that you would feel comfortable with, just as a comparison?

MR. MARQUEZ: Right now on West End, we have plans ready to submit, we're only waiting for your vote today -- to submit to the City of San Antonio. Las Palmas already has their permit to pick up, LULAC Hacienda already has their permit to pick up. And Las Palmas, we have already relocated the first phase of 33 units which the Board gave us approval to do, so we're ready to start abatement on those 33 now. I think the year extension which Eric mentioned earlier will get us there. If that answers your question, it's a long way around it.

MS. RAY: Thank you, that answers my question.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you. Min Pak.

MR. PAK: I think I have time allotted.

MR. CONINE: And he does have time allotted.

MR. PAK: Good morning. My name is Min Pak. My father, Chan Pak, is one of the developers of Villas on Raiford, application ID 07303 and 08096.

My father is very committed to this project. My father has a long history of community service. My father was an elected leader of the Korean community in Dallas; my father has also worked for Congresswoman Eddie Bernice Johnson as a community and minority spokesperson. And through my father's community and his experiences, he knows the value that affordable housing provides to the community.

The Villas on Raiford project applied for tax credits in 2007, we were awarded tax credits in late 2007, the housing tax credit commitment notice was signed by TDHCA on December 5, 2007. The remaining tax credits in the 2007 ceiling did not meet the award amount so a portion of the award was allocated in 2007 and the majority of the award was allocated in 2008.

We first worked with Sun America which is a branch of AIG to get the financing done. The same week, Sun America pulled out of the Villas on Raiford project is the same week that the U.S. Government bailed out AIG. We have tried many ways to get the financing accomplished and we found it to be very difficult, like all the other projects who have applied for the tax exchange.

My father, my mother, our consultant, Terri Anderson, and many other people have worked very diligently to keep this project alive, an enormous amount of time, money and effort has been spent. Everyone involved in the Villas on Raiford believes this is a great project. It is very disheartening to think that our hard work and effort could be in vain.

When the American Recovery and Reinvestment Act of 2009 was announced, we were very grateful that the government and TDHCA were working together to provide a solution to developers, but currently we're saddened that the deadlines of the QAP and the American Recovery and Reinvestment Act of 2009 are different. I feel safe in saying that the QAP deadlines never envisioned the economic crisis or the American Recovery and Reinvestment Act. When U.S. Treasury extended the deadline to 2011, it seems clear the U.S. Treasury intended for all projects to have adequate time to meet the deadlines. Also, the U.S. Treasury's unofficial statement saying that it could be a new reward and reset the deadlines so they also want all projects to be included. I hope that TDHCA, like the U.S. Treasury, would support all projects.

I humbly ask the Board to extend the QAP deadlines for one year. We currently were working on that deadline because that was the previous U.S. Treasury deadline to have it done by 2010. I feel the same dilemmas that prevented the 2008 projects from finding financing are the same obstacles the Villas on Raiford faced. I feel it would be unjust to support the 2008 projects and not support the Villas on Raiford because we received our award in late 2007 and not in 2008.

The Villas on Raiford will be a senior apartment complex. If the Villas on Raiford complex does not come to fruition, the senior community will lose an affordable and quality place to live. Everyone here has a goal to provide affordable housing to the various communities in Texas, and I urge the Board to use their power so the Villa on Raiford can reach this goal in the City of Carrollton. Thank you for your time.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: We've got everything else in order here on this particular project? We've heard about this one several times.

MR. PAK: Yes, I'm sure. I'm pretty sure Terri Anderson has done her job.

MR. CONINE: Terri Anderson.

MS. ANDERSON: Good morning, Chairman, members of the Board and Mr. Gerber. I appreciate your time. I'm Terri Anderson, Anderson Capital, LLC.

As Mr. Min Pak has indicated, Villas on Raiford has been around for a significant amount of time. We did have a 2007 allocation that represented 35 percent of the tax credits with the balance of the tax credits coming from 2008. Because we received our award at the end of December, we actually were moving into the beginning of our economic recession as we know it.

Min did mention that we were closing with AIG/Sun America. It is very ironic that our scheduled closing date that we have a closing memo for was September 15, and as we all know, they were bailed out to the tune of $80 billion on September 16. After their bailout they did deposit $3-1/2 million into our title company and subsequently proceeded to not close over a 2-1/2 to 3 week period. We were assured that they would, obviously we did not. So as the development stands, we were hit immediately when the strong recession came into play, the day before the $80 billion bailout came to fruition, we were scheduled to close and were unable to do so.

Villas on Raiford is ready to pull permits, we have our financing in order, and the development is ready to proceed, and we would respectfully request a one-year extension. The development is located in a high opportunity area that would meet all of the definitions and requirements of the QAP.

In addition to that, I know that there was mention of not taking advantage of the amnesty. This property, actually Mr. Pak took down the land and has a pre-development loan on the land, he has currently spent $3-1/2 million to date which exceeds his 10 percent test for his costs and his expenditures, and we were really unable to give back credits considering we had effectively $1.8 million in debt on the property that was predicated upon the tax credits.

So we respect staff's recommendation, however, given the actual set of circumstances, Mr. Pak has done everything in his power to maintain a viable development and proceed and move forward, and we would definitely appreciate your consideration for Villas on Raiford. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: This project is in Carrollton. Is that right?

MS. ANDERSON: Yes, sir, it's in Carrollton, Texas, located on old Denton Road.

MR. CONINE: I'm trying to think if there's a good steakhouse close to there.

MS. ANDERSON: I'm sure there are a few.

(General laughter.)

MR. CONINE: Okay, that ends the witness affirmations on item 2(b). I guess we open it up for questions or motions or whatever the case may be.

DR. MUNOZ: Tom, I have a few questions.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: One of the concerns you allude to in your narrative is that the requested extension of time might suggest some other difficulties with the project, and yet I hear these folks saying that everything else is in place.

MR. GOURIS: And you would expect them to say?

(General laughter.)

DR. MUNOZ: The truth.

MR. GOURIS: Well, I think that everything is in place but for a significant chunk of the financing, and that's been the case for two years, off and on for two years.

MR. CONINE: But the chicken and the egg is there's no way a deal can go forward and commence construction without the equity piece being in place, and that's been the obvious significant problem, and it seems reasonable to me that given the circumstances, if we've got four or five '07 transactions that are in that bucket, we need to marry them up with the same '08 extensions that we're granting and give them till the end of the year. I just see that as a piece of reasonableness that the Board, I think, has the ability to do.

MR. GOURIS: And I'm sorry, I didn't mean to be -- it's nearly impossible for us to really distinguish between the two, and we can look at the record of where they've been and what things have transpired and get a sense for it, but it's very difficult for us to really disaggregate that and say that they really are ready to go. Having their permits pulled is a good clue as to how close they really are, having their property acquired is a good clue, but in essence, I'm sure that every developer believes when they have a project working that they're ready to go forward with it -- I would.

MR. CONINE: Is there a motion or questions?

MS. RAY: My question is --

MR. CONINE: Sure, Ms. Ray.

MS. RAY: -- I'd like to hear some -- I know you explained it once and maybe I wasn't listening closely enough -- just the staff's position six months versus a year extension. Because 100 percent of the people that presented are seeking a year's extension and staff is holding firm with six months. I guess I need to understand the dichotomy and why six months is a better number than a year.

MR. GOURIS: Well, a year puts us up against some new federal deadlines that we are cautious about. We want to make sure things are moving forward quickly. These '07s and '08s are all we're talking about and these are transactions that should be on the road to moving forward, so a six-month extension would get us through the 10 percent test and get through the commencement of construction and give a fair amount of time to get these deals closed and moving forward to do that.

The placed in service extension, we were hesitant to even extend that but believe that that should be something that goes along with the whole trail moving back six months. Again, the impetus for the program was to take these deals that are ready to move forward and keep them moving forward as quick as possible, so we don't want these to drag out even further.

The other problem that it causes is that having a deal that goes into another year then impinges new transactions from coming forward in those same areas because there's lease-up and other issues that drag forward, so an area could be shut out because the existing deal hasn't stabilized yet, and therefore, a new deal might not be able to move in there. So the impetus for all of this is to try to move them forward, and I know all these guys want to move forward as quickly as possible too, so we're just trying to help that along by creating a deadline that is effective but doesn't let it drag it on any further.

MS. RAY: I understand. Thank you very much for the clarification.

DR. MUNOZ: Tom, what are the federal deadlines that you're concerned about that we would run up against, and I'll ask are they absolutely certain to be applied or are they speculative?

MR. GOURIS: The Exchange deadline for us was originally that 100 percent had to be disbursed by the end of next year, and that's moved to be giving us a little more flexibility that we have to have 30 percent of the deals underway or completed -- I'm sorry -- they have to be at 30 percent completion by that deadline by the end of next year. And so we were trying to keep everybody moving along toward that deadline, and sometimes, unfortunately, when somebody has a year's time to do something, or even six months' time to do something, we wait till toward the end of that time period, and we want to make sure that we don't have trouble with those transactions a year from now, so we're, again, trying to move things along -- it's a disbursement issue.

MR. GANN: Tom, I'm just concerned that six months is going to be problematic for us. Things just can't get done in that particular market in six months, and twelve months doesn't give them a chance to do all the things they need to do. I think these people are going to be charging with these things since they've been waiting two or three years anyway. I really strongly suggest that going forward with twelve months is probably the most reasonable.

MR. CONINE: Tom, let me ask you this, nowhere in here is there a, quote, closing deadline, is there?

MR. GOURIS: The original policy called for us to close by the end of this year. We're going to be bringing back documents, a policy change to adjust that as we see where we are.

MR. CONINE: But wouldn't your concerns be satisfied if you had a closing deadline sometime in the first quarter of 2010 that if the deal was going to crap out, it's going to crap out because it didn't close. The practical experience of a bank or a construction lender and an equity provider -- which is now us -- is that we're not going to give them a penny, neither of those are going to give them a penny if we know we're setting unreachable targets for commencement of construction and substantial completion.

So why don't we set a closing deadline that would alleviate some of the Department's issues of dragging out, dragging out, dragging out rather than just having the 10 percent test being the first bump in the road.

MR. GOURIS: Well, we still have to do something about the existing deadlines. We have to extend them somehow because they have a deadline now that we have to hold them to.

MR. CONINE: Which is currently the end of the year, the calendar year?

MR. GOURIS: For the '07s that didn't get a placed in service extension, they have to place in service by the end of the year; for an '08 transaction --

MR. CONINE: I'm talking about closing, we've got deals that haven't closed.

MR. GOURIS: I know, but I'm talking about --

MR. CONINE: I'm on a different subject, I just want to talk about closing.

MR. GOURIS: I'm with you.

MR. CONINE: Where you've got us ready to go because we're now the equity player, and that may take a while -- haven't even seen documents yet --

(General laughter.)

MR. CONINE: -- and you've got a lender ready to go, so it seems to me to be reasonable to say by the end of February all these deals need to be closed, and if they're not, then what's going to bubble to the surface is a capacity that there's something about the deal -- your fears about something else about the deals must be wrong so it's not going to close, so then those credits would come back, and Congress may do something with exchange for next year, we don't know. There's a lot of things that may be in play by that time, but we can kind of be more hard and fast with a closing deadline than we can with 10 percent test, substantial construction commencement or placed in service.

MR. GOURIS: I agree, I'm just saying that those deadlines already exist and so we have to do something with them as well. If you set a closing deadline for all of these transactions, you also need to take care of the existing deadlines.

MR. CONINE: Yes, I know that, I've got that.

MS. RAY: We've got that.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Mr. Irvine.

MR. IRVINE: I just wanted to suggest that this might be an appropriate to defer action until after executive session so that we could discuss some of the legal nuances with counsel.

MR. CONINE: That's reasonable.

MR. IRVINE: If you wish.

MS. RAY: I think that's a good idea.

MR. CONINE: All right. Does someone want to make a motion to push this back until after lunch?

MS. BINGHAM: I so move to table this item.

MR. GANN: Second.

MR. CONINE: Motion by Ms. Bingham, second by Mr. Gann. No discussion. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

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

MR. GERBER: Item 2(c), Mr. Chairman are forward commitments, and I think there's substantial public interest in this topic.

MR. CONINE: Okay, here we go. Steve Ford.

MR. FORD: I've only got like two minutes or something?

MR. CONINE: You've got three.

MR. FORD: I'll be a little quicker than that. Mr. Chairman, members of the Board and Mr. Gerber. My name is Steve Ford, I am here representing Hampshire Court Apartments in Pasadena, Texas, the number-one wait-listed project in Region 6 -- that would be Houston.

We are ready to proceed with the project, we do not need HOME funds, CDBG money, Exchange funds, TCAP funds, we don't need any other money. We have our debt and equity commitments in place and we'd like to proceed with a forward commitment, if possible. It's my understanding that a number of deals in Region 6 have turned their credits back; it's also my understanding that some of these credits were GO Zone or Ike credits -- I don't know how that's handled.

Obviously there's a need in this region. We own about 4,500 units in the region and our current occupancies are about 95 percent. I think the occupancies in Region 6 that you read about in the paper are deceptive in that there's about 6,000 or 8,000 brand new A properties coming online inner city, and they are counting projects with 300 units where half or a third of the projects are still out of service because of the hurricane as being occupiable. So if you see a 13 percent vacancy rate in Houston, it certainly is not in the tax credit properties.

We've developed, overall, about 9,000 units since 1989 and have never given credits back or failed to close a transaction. If you have any questions, I'd be more than happy to answer them.

MR. CONINE: Mr. Ford, did you say you were number one on the list?

MR. FORD: Well, the way I read the list. Obviously there might be a number of ways to read it; we got all the way down to me.

(General laughter.)

MR. CONINE: Well, I see that it violates $2 million cap on everybody else above you except for one other, unless something is different on my list. There's one other that's up there, it looks like to me. I'm just asking the question.

MR. GOURIS: And that one violated the one-mile rule, the comment just didn't get in there, the one that doesn't have the violated.

MR. CONINE: So Mr. Ford's right?

MR. GOURIS: Well, he's right, he's the number one on the list that doesn't violate $2 million cap or the one-mile rule.

MR. FORD: There's any number of things I may violate, by the way.

(General laughter.)

MR. CONINE: Okay, that's all the questions I had. Any other questions of the witness?

(No response.)

MR. CONINE: Thank you. Diana McIver.

MS. McIVER: (Speaking from audience.) Can I go after?

MR. CONINE: Yes. David Potter. Tell us who you are. I've got four witness affirmation forms on the same project.

MR. POTTER: Good morning. I'm David Potter with City of Austin Neighborhood Housing and Community Development Office, and I'm here to read a letter into the record from Mayor Pro Tem Mike Martinez.

He starts off: "I first would like to apologize that I cannot be at your meeting in person. City Council meetings occur on Thursdays so my official duties preclude my attendance.

"On behalf of the Austin City Council, I'm writing to thank the Board for awarding tax credits for the rehabilitation of Malibu Apartments at your July meeting. The 476-unit development in north Austin will go a long way towards preserving scarce affordability.

"I also want to reiterate the Council's support for the two remaining Austin applications under consideration for forward commitments, M

Station and Wildflower Terrace. M Station is a 150-unit multifamily development and will be located across from the new MLK rail station. Wildflower Terrace is a 201-unit senior community and will be located within the Mueller Airport redevelopment area.

"In March the Austin City Council approved by unanimous vote a resolution supporting both of these projects. The City of Austin stands ready to provide local financial support to these two applications.

"On August 6, 2009, the Austin City Council, through its affiliate, the Austin Housing Finance Corporation, AHFC, approved funding for the M Station Development in anticipation of award from the waiting list created at the July Board meeting. If Wildflower Terrace is granted a forward commitment, AHFC will meet to award funding for this project.

"Given the challenges of today's credit markets, we have an unprecedented opportunity to secure three tax credit developments in Austin, one of the most expensive housing markets in Texas. In addition to the City's financial commitment, I understand these experienced developers have secured investment partners who are ready to make those developments a reality.

"The City's 2009 comprehensive housing market study shows that Austin needs approximately 1,000 low income units annually for the next decade to meet its rental housing gap. Granting a forward commitment of credits to Wildflower Terrace and M Station will ensure that communities of the highest quality and merit are built and that affordability within Austin's urban core is secured for our most vulnerable residents.

"Thank you for your consideration. Sincerely, Mike Martinez, Mayor Pro Tem, City of Austin."

MR. CONINE: Thank you, Mr. Potter. Any questions?

(No response.)

MR. CONINE: Mahesh next, maybe?

MR. AIYER: Good morning. Mahesh Aiyer, with Wells Fargo Community Lending and Investment.

We're here to provide support, encourage support for a forward commitment for Wildflower Terrace, 09268. We are evaluating this deal for both debt and equity. We've done a pretty extensive site visit and we've gone through the numbers pretty well in depth, and we think this one has a real strong chance of feasibility to get done, and so we'd encourage you, if there's an opportunity to give them a forward commitment, we'd be very supportive, we think we can get this one done.

MR. CONINE: Wells Fargo is going to make a loan?

(General laughter.)

MR. CONINE: Just teasing.

MR. AIYER: I will tell you I think we've closed more '08 deals than anybody else that's here.

MALE SPEAKER IN AUDIENCE: They closed a deal for me last month.

MR. CONINE: Good. Thanks for your testimony.

Diana McIver, I guess. I had to take my shot.

(General laughter.)

MS. McIVER: It's that Wells Fargo wagon. Diana McIver, DMA Development.

I'm here to request a forward commitment for Wildflower Terrace, 09268, 200 units of fabulous senior living at the redevelopment of the Mueller Airport here in Austin. I'm only going to take a minute. Basically, you have heard from the city, we've got city council support, we've got city money. You've heard in the past from our neighborhood and the gentleman who is here to represent the neighborhood today has had to leave for his real job, but you heard from them in July. We have the Mueller Advisory Commission support, we've got our Mueller neighborhood support, and we've got the adjacent J.J. Seabrook neighborhood who want to participate in our senior programming.

And we have potential investors, you heard from Wells Fargo. Austin is one of the few markets in the country that has very, very strong CRA need and so we don't need Exchange, we don't need TCAP, we can do it the old-fashioned way, we just need a commitment of tax credits, and that's what I'm here asking for.

We are fine with 2010 and we are fine rolling those back to 2009 when we discover at the end of the year that the State cannot use all of its tax credits the old-fashioned way. We are tied for the number one waiting list spot -- thank you, Steve -- in Region 7, we are tied with Foundation

Communities, M Station. Both of our scores are 211 points. We are the highest scored applications in the State of Texas that did not receive allocations.

So it's a quality project, I'm just sitting here begging for a forward commitment. Thank you.

MR. CONINE: Ms. McIver, I seem to recall hearing your testimony a couple of months ago and this Board making a request that you and Walter go out and handle this the Montessori way which is you kind of work out who gets what and then come back. I assume that that didn't happen?

MS. McIVER: Well, we rented our sumo wrestler suits for the September meeting but you didn't have forward commitments on the agenda.

(General laughter.)

MS. McIVER: And remember, one is family and one is senior. We're very multi-generational in this town.

MR. CONINE: Yes, I understand. Any other questions of the witness?

(No response.)

MR. CONINE: Thank you. Ike Monty, Cynthia Bast.

MS. BAST: You've got two forms for me.

MR. CONINE: Yes, there it is, they found it. Thank you.

MS. BAST: Good morning. I am Cynthia Bast of Locke Lord, representing Investment Builders in El Paso with this request for a forward commitment for Canyon Square Apartments, 09306. We did make a formal written request to the executive director for this forward commitment and you should have a copy of that letter in front of you.

At the allocation meeting in July, you heard from Steve Ortega, an El Paso city councilman, who traveled here to tell you about the tremendous need for affordable housing in El Paso. In fact, you've actually been hearing about the tremendous need for affordable housing in El Paso over the past year or so. El Paso has a high natural growth rate, accompanied by the United States Army base realignment which is bringing approximately 25,000 troops to El Paso in the next few years.

Studies have indicated that El Paso needs approximately 8,000 new units of rental housing in the next few years. Investment Builders has experienced this need firsthand. Its most recent tax credit development, Spanish Creek Town Homes -- which is in the same sub-market as Canyon Square, has a waiting list of over 1,000 families and potential residents.

So if awarded a forward commitment, Canyon Square is ready to help address this need. It has a commitment to buy the credits from Reliant Capital which you see attached to my letter. That letter from Reliant is dated October 7, so it's current, it's real, from a syndicator that is currently working to underwrite this developer on another transaction.

In addition, the development has a commitment for debt financing from First National Bank, the land seller has committed to seller financing, and this is accompanied by tax abatements and fee waivers that have been implemented by the City of El Paso to encourage multifamily development.

Although the development did not receive an award of credits at the July meeting, the developer has continued to pursue this transaction with the hope that credits would become available. Because the price per credit offered in that October 7 letter is lower than what was anticipated in the original tax credit application. The developer has worked to fill the gap. They applied for city HOME funds, they are on the city council agenda in just a few days with a recommendation of an award for city HOME funds. They've applied for funding also from the Federal Home Loan Bank in Dallas. So the developer is putting together all the pieces to ensure that this transaction is financially feasible and ready to go.

So, in short, we have a tremendous need in El Paso, it is a time-sensitive need. According to Mr. Ortega's testimony in July, Canyon Square does have the support of the community and its leadership. Moreover, this is not a tax credit application with a low score that was not otherwise competitive in the region. In fact, it is the only new application that was submitted in 2009 for El Paso. So it was anticipated that Region 13 would not have any credits because of prior forward commitments and some additional credit awards that were made, but because Investment Builders wants to serve El Paso, it went ahead and filed the application with the hope that there would be an opportunity to go forward.

We know that a forward commitment will deplete some of the credits in Region 13 for next year, but I ask you what's more important: competition or the housing? With the acute demand that we have in El Paso, we respectfully request that you award a forward commitment to Canyon Square and we believe that there are compelling reasons to do so.

MR. CONINE: Mr. Monty.

MR. MONTY: Chairman and Board. Thanks. Cynthia has a better way of articulating all the facts. It seems like in this business nothing is ever easy to articulate, so in my layman's terms, I've got a syndicator. As I mentioned to you before, our industry is probably in the worst time that it's ever been so you really have to be forward-thinking -- applied to the Federal Home Loan Bank which I know you're a board member and I'm a former board member -- you have to get all your tools in the toolbox to get these deals done. We got seller financing and we got a commitment from the city. So from our point of view, we're doing everything.

We understand that it's a precious resource but given our past history, we think that if you chose to give us the forward commitment, we'd get the housing on the ground. I know a lot of other cities need the housing but El Paso really does have the need and it's no secret that there's a tremendous need.

I've got the syndicator letter here which I think you already have a copy. I also have the Federal Home Loan Bank Board, and my documentation from the city, and just trying to be kind a forward-thinker but I really need that forward commitment. So thanks.

MR. CONINE: Thank you. Any questions of either witness?

(No response.)

MR. CONINE: Sit still, Ms. Bast. Granger McDonald and Cynthia Bast. I didn't know if you wanted her or not, but both on the same subject.

MR. McDONALD: Ladies first, please.

MS. BAST: Again, you should have a copy of a letter that was passed out to you this morning. It was just delivered to Mr. Gerber yesterday, and Mr. McDonald has asked me to read it into the record.

"We represent Wolcott Development and G.G. McDonald Companies in connection with the Mustang Heights Apartments in Sweetwater. This letter is to request a forward commitment of low income housing tax credits for the development.

"Mustang Heights in Sweetwater proposes a new construction of 80 affordable residential units. It did not receive an allocation of low income housing tax credits at the July 30, 2009 Board meeting, however, at the meeting the Board established a waiting list for tax credits in accordance with Section 49.10(b) of the Qualified Application Plan. Pursuant to its authority to apply discretionary factors in establishing a waiting list, the Board determined that when tax credits were returned, they would be allocated first to the following four developments: Number 1, Peachtree Seniors in Balch Springs; Number 2, Mustang Heights Apartments in Sweetwater; Number 3, Belmont Senior Village in Leander; and Number 4, M Station in Austin.

"After commitment notices were issued to applicants who received awards on July 30, tax credits were returned to TDHCA. Our client has learned recently that when tax credits were returned, they were awarded first to Peachtree Seniors and second to Belmont Senior Village. Mustang Heights Apartments -- which should have received the second priority -- was passed over. This action by staff is contrary to the Board's direction about the waiting list and contrary to the QAP which states that if at any time prior to the end of the application round, one or more commitment notices expire, or a sufficient amount of state housing credit ceiling becomes available, the Board shall issue a commitment notice to applications on the waiting list subject to the amount of returned credits.

"Thus, the staff had an obligation to issue returned credits to applications on the waiting list in a timely manner and consistent with the Board's establishment of priorities.

"The damages to our client by staff's decision to disregard the priority of the waiting list are exacerbated by federal law, declaring that developments may not access the subsidy of the Tax Credit Assistance Program unless they received a tax credit award between October 1, 2006 and September 30, 2009.

"TDHCA had tax credits available for the waiting list in September 2009, however, because it did not award the tax credits to Mustang Heights, consistent with its position on the waiting list prior to September 30, the development is ineligible for the TCAP subsidy now.

"Staff defends its action in skipping over Mustang Heights for the very reason that Belmont Senior Village indicated an intent to apply for TCAP and Mustang Heights did not. There is nothing in the QAP or the Board's directive to give staff the authority to re-prioritize the waiting list based on this criteria.

"While our client acknowledges that staff did call and ask about its intent to use TCAP funds and our client indicated a preference for the 1602 Exchange Program, our client certainly did not understand the implications of stating this intent and did not expect the staff to use that information to operate outside of the Board's clear directive.

"Wolcott Development and G.G. McDonald Companies and their affiliates are highly disappointed by this situation and seek redress. Our client feels it would be unfair for this issue to impact the other applicants on the waiting list or the other applications for TCAP or 1602 Exchange, and would prefer not to pursue alternatives that would have such an impact. Therefore, we believe the best recourse to resolve the matter would be for the Board to issue a forward commitment of 2010 tax credits to Mustang Heights Apartments. This will honor the Board's intent for the development to receive tax credit award if possible, and will allow the development to proceed with pursuing funding. We would appreciate the Board's consideration of a forward commitment."

Thank you.

MR. CONINE: Mr. McDonald.

MR. McDONALD: Very briefly. Thank you, Mr. Chairman. A little history on this. This project was awarded '08 credits. We turned those credits back in during the amnesty period -- or we wouldn't even be having these discussions -- before anybody even knew exchange was even available, that was before exchange was even contemplated by the United States Congress. We did that because we thought it was the honorable thing to do and because of that, this Board put us in the number 2 spot on the wait list in July.

We can go into a he-said/she-said, that's not going to get us anywhere and there's no reason to do that. The fact is that we were passed by the third place finisher, and we were the second place finisher, and we were foreclosed from the option of using TCAP in the future. We would like a forward commitment so that we would have the time to pursue either HOME funds and another alternative that we have that would give us the time to do that and provide this housing for Sweetwater, Texas which is the number one wind farm capital of the world and housing out there is exceptionally short.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. R.J. Collins.

MR. COLLINS: By myself.

MR. CONINE: It's a lonely job sometimes.

MR. COLLINS: That's part of the history of the development industry.

Mr. Chairman and members of the Board, my name is R.J. Collins. I reside here in Austin, Texas, and I'm here to speak to you today, and I kind of feel like, after listening to all the requests for forward commitments, that I maybe shouldn't be here, but I have a property in Waco, 09121, that we started phase one in 2004 and finished it in 2005, and it immediately became 100 percent occupied and it has stayed above 98 percent since.

At the time we contemplated phase one, we purchased enough land to build a phase two because one of the things that we felt very strongly about was that the inter-generational workings of having seniors and families in the same location from a inter-generational standpoint and from social services programs, the kids seem to work well with the seniors and the seniors seem to work well with the kids.

Presently at Red Oak in Waco we have 19 seniors as part of the 80 units. We have applied for 36 units on the second phase, and being very candid with you, that's the fourth time we've applied, having to go through Waco and it's hard to get enough points to get to there. We would like a forward commitment for 2010 on that 36 units.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Richard Washington.

MR. WASHINGTON: Mr. Chair, Board, I'm glad to be here again for the second time asking for a forward commitment for Darson Marie

Terrace in San Antonio, Texas. I'm Richard Washington with Retirement Housing Foundation, the sponsor. We're located in Long Beach, California, and over the last ten years or so we have been developing housing here in Texas, mainly 202s, and this is the first tax credit project that we've attempted. In 2008 you awarded that attempt with a commitment which we had to turn back because we weren't ready. We did not have a very key element -- or rather two key elements to make our deal work: one, the tax credit commitment from a syndicator, and two, gap money.

I sit before you, like many of the others, you've heard this story before, but I have to say it for myself and for this project, we are standing ready to move forward. We have the money from the City of San Antonio, we also have letters of interest from a syndicator, as well as the debt side of the deal. But we're lacking the one thing, the tax credits.

I believe that in the last listing that I saw, we were number three, but I understand that one 2008 allocatee returned their credits, so we may be number two in the standings at this point, and wanted to position ourselves for our ability to be able to start if not this year, certainly early next year. I invite your favorable consideration to this. Thank you.

MR. CONINE: Any questions of the witness? Looks like to me you're number one on the list, but far be it for me to know.

MR. WASHINGTON: Well, I like your number.

MR. CONINE: Bet you would. Thank you for your testimony.

MR. WASHINGTON: Thank you.

MR. CONINE: Bill Fisher -- where did he go? And Mark Viator. There's Mark, here comes Bill.

MR. VIATOR: Commissioner Conine, Board, Mr. Gerber, it's an honor to be here, and I too must tell you that I've had a baby.

MR. CONINE: Congratulations.

MR. VIATOR: Thank you. This meeting is so important, I brought her with me today. She's been very quiet, she has not cried one time, and I did fail to say that she's 29 years old, is married and sitting behind me and has worked with Disaster and CDBG funds. And since she has been born, I have gained 59 pounds.

(General laughter.)

MR. VIATOR: It is a privilege being here today. I'd like to ask you for a forward commitment for Champion Homes Marina Landing.

You've heard much concerning Galveston, the impact to families who have not been able to return, the potential estimated 20 percent decrease in the population impacting potentially their status as an entitlement city. In addition to that, an article in the Galveston Daily News on September 6 stated that renters are hit hard by increases stating that actually that some of the rents for three-bedroom, $1,100 per month a year ago are now worth $1,383, right at 25 percent, and in this article it states also that over all the city it's been more like 15 percent increase. So there's a great need for additional rental housing.

I know that the 2010 census is coming up and this Board is very concerned about the impact to business, to the city and family impact. And as chairman of the Recovery Coalition of South East Texas, or the former chairman, I know that you're concerned concerning rapid response and affordable housing for those in need.

Today you heard testimony concerning the serious concern from homeowners and neighbors next to this property and a very important area near Moody Gardens, and so I'm asking for you to not only consider a forward commitment for this hurricane-impacted community, but I'm also asking you to consider -- and it's another agenda item later but I'll just state it now -- approval of CDBG funds to leverage those funds to be able to help make this project happen. I thank you for your time.

MR. CONINE: Thank you, Mark. Any further questions?

(No response.)

MR. CONINE: Bill.

MR. FISHER: Good afternoon, Board members. Bill Fisher, Odyssey Residential.

I'm here really on behalf of the folks I work with in Galveston. They would like to see Marina Landing fixed. I was given an allocation for the project across the street, Bay Walk, which we're trying to make work now with CDBG funds which would make that project viable. They'd really like to see Marina Landing done, so the only way to do it at this point is to ask for a forward commitment.

I want to make sure -- because I think I'm listed in the book as being over the cap. We're not asking to be allocated funding that would be over the state statutory cap, but the reality is we'd only be over a cap based upon a policy that the Board adopted. Our position is we were given hurricane credits for Bay Walk which are not part of the state ceiling. You made them part of that thing by policy, so here's a chance for the Board to act waiving a policy that doesn't affect the statute and fund both projects.

I've got the lawyer here to fill you in those details. If you gave us a forward commitment, we would certainly ask that that allocation be conditioned on us not being in violation of the cap. But to be specific, again, we got hurricane credits which are not part of the annual state's allocation ceiling, they're specially allocated under a different statute. When the Board adopted their policies back, they chose to combine them for the purposes of the cap which makes it a policy issue, in our opinion, and if you saw fit to help the neighbors and the city with Marina Landing, we're ready, willing and able to move forward with that project and we ask that you take action to give them a forward commitment subject to that caveat. I'll be happy to answer any questions.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. John Shackelford.

MR. SHACKELFORD: Thank you, Mr. Chairman, members of the Board, Mr. Gerber. John Shackelford, Shackelford, Melton, McKinley. We represent Chicory Court 7 and Chicory Court 1 on these two projects.

I think Mr. Fisher explained it pretty well. My interpretation of what was done on the Hurricane Ike credits are that they are under two different buckets of money that don't count against the state ceiling. This Board did take the action of putting them all under one cap, in that it is a policy issue that under the QAP this Board has the authority to waive that $2 million cap requirement in this instance, and I would ask that the Board take such action in this instance.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

That ends the witness affirmation forms on this particular agenda item. We're going to go into recess for an executive session. Right now I would like the staff to deliver one piece of information and that would be with all the moving around of '09 credit allocations for this year's round affecting the waiting list, I'd like to know where we are in each particular region of current projects that are still alive and in the hopper, just the dollar amount totals in each region so the Board can see, if they issue a forward commitment, how that might affect that particular region, not only for next year but also in case it rolls back into this year.

MR. GOURIS: There's a list with your Board package, I believe, that shows those. The question back to you is including those that violate $2 million or one mile things. Those are all listed there, so the total total is there.

MR. CONINE: All I've got is the total waiting list in each region. What I don't have is what's been already received in awards versus what was established in the regional allocation formula, so I kind of need to see whether we're over or under in that particular region that's what I'm trying to get to.

MR. GOURIS: Got it.

MR. CONINE: Okay?

MR. GOURIS: Yes.

MR. CONINE: And if you have the ability to split urban and rural, fine; if you don't, that's okay.

Anything else, any other questions, Board members? We're going to go E1.024 again. Is that where we're going?

MR. GERBER: E1.024. And Mr. Chairman, if I could just interject. We've got a couple of special visitors here, Brian Ellis with the Governor's Office, Robert Hamilton from Lieutenant Governor Dewhurst's office is joining us, Julie Frank, the committee director for Senate IGR is here, and Tatiana Oria who is from the House Committee on Urban Affairs. They're good to stick with us each month and we appreciate it.

MR. CONINE: We'll endeavor to be back at 1:15, but who knows.

MR. GERBER: On this day, October 15, 2009, at the regular meeting of the Governing Board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned to a closed

Executive Session as evidenced by the following:

The Board made an announcement by the presiding officer's designee that it will begin its Executive Session today, October 15, 2009 at 12:25.

The subject matter of this Executive Session is as follows:

a) The Board may go into Executive Session (Close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

b) The Board may go into Executive Session pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.

c) Consultation with attorney pursuant to §551.071(1) and (2), Texas Government Code including:

1. With respect to pending litigation styled ICP v. TDHCA, et al filed in federal district court

2. With respect to pending litigation styled M.G. Valdez v. TDHCA filed in District Court, Hidalgo, Texas

3. With respect to EEOC claim from Don Duru

4. With respect to any other pending litigation filed since the last Board meeting

5. Potential sale of agency owned real estate and/or sales of loans, pursuant to §551.072, Texas Government Code.

(Whereupon, at 12:24 p.m., the meeting was recessed, to reconvene this same day, Thursday, October 15, 2009, following conclusion of the Executive Session and lunch recess.)

A F T E R N O O N S E S S I O N

(Time Noted: 1:55 p.m.)

MR. CONINE: So much for 1:15.

MR. GERBER: Mr. Chairman, the Board completed its Executive Session of the TDHCA Board on October 15, 2009 at 1:45 p.m.

MR. CONINE: Thank you.

We were on item 2(c), is that where we were?

MR. GERBER: Yes, sir.

MR. CONINE: And Tom was going to get us some numbers, and you're still working on those now, aren't you. So why don't we table 2(c) for a while and go back to 2(b), how about that. Does that work for everybody? And give Tom a little more time. Do I hear a motion?

MR. IRVINE: Mr. Chairman, I can't make a motion but if I might just offer a comment.

MR. CONINE: Okay.

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

Based on discussion of these issues under this particular item, we believe that effectively, these particular credits that are being exchanged were already allocated, respectively, under the '07, '08 and '09

MR. CONINE: Wait, you've already gone to 2(b) and I haven't gotten off 2(c) yet.

MR. IRVINE: I'm sorry.

MR. CONINE: Hang on just a minute. Can I get a motion to put 2(c) on the table until we finish 2(b).

MR. GANN: I'll make a motion.

MR. CONINE: Thank you, Mr. Gann. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. 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. Now we're back to 2(b), Mr. Irvine.

MR. IRVINE: I apologize. I, of all people, should know parliamentary procedure.

MR. CONINE: I know more of it than I want to know.

(General laughter.)

MR. IRVINE: Anyway, as I said, these particular credits that are being exchanged have already been allocated under the '07, '08 and '09 QAPs and at those times of the individual allocations, the $2 million aggregate limit cap and the one mile rule were applied. Essentially because of the unique circumstances of ARRA, the stimulus bill, and the operation of Exchange, what will really be happening is that these credits will be characterized solely for the federal purposes of compliance with the Internal Revenue Code and the ARRA Exchange requirements and the policy requirements applicable to Exchange, they'll be characterized as '09 credits and the deadlines that relate to those '09 credits and to the exchange would then apply.

DR. MUNOZ: Those deadlines being?

MR. IRVINE: Tom, would you care to come up and recite those exact deadlines?

MR. CONINE: Ten percent, substantial commencement of construction and placed in service. What are those dates for '09, just for the Board's articulation.

MR. GOURIS: For '09 that would be -- the first two would be toward the end of next year, 10 percent test is twelve months from the carryover date which essentially the written agreement would become the carryover date and so it would be twelve months from then which would be December of 2010, and the commencement of substantial construction would also be at that time, December of 2010.

MR. CONINE: Okay. But for purposes of these particular projects, I think, of the '07 and '08 vintage, I think we would want to accelerate those dates because they're shovel ready as we've heard, substantially, substantially, substantially, and I also expressed an interest in having a closing deadline so that we could get on or off the proverbial pot on these transactions. So I would propose that we create a closing deadline of March 31, 2010 and a commencement of construction deadline of May 31, 2010, and a substantial completion or placed in service of December 31, 2010.

Does it need to be 31st or 1st? December 31, 2010 for placed in service. And that should give both us, as the Department on the Exchange money, and the construction lender enough comfort that there's enough time to get these projects built between today and the end of next year.

MR. GOURIS: I think we're hearing some murmurings in the background which might be because, if I heard you right, you said the placed in service by December 31, 2010 which is actually now not providing the six-month extension that we were recommending to provide in the writeup.

MR. CONINE: For the '08s?

MR. GOURIS: For the '08s it would actually shorten their time.

MR. CONINE: You make my life difficult.

MR. GOURIS: I'm sorry, sir, I don't mean to do that.

MR. CONINE: That works for '07s but doesn't really work for '08s.

MR. GOURIS: Yes. Which is why we got to the six months.

MR. CONINE: Although they're kind of all in the same bucket anyway, they can't get going out of the starting block until they get our Exchange dollars. Some of the bigger projects would suffer under that, if it's a 200-unit or over, or 175-unit or over.

MR. GOURIS: Right.

MR. CONINE: Why don't I amend my own statement to say why don't we place in service by March 31 of 2011 for both, and if they can't get it done by then, it ain't going to happen. Okay?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move the action that was communicated between staff and the chairman with the placed in service date of March 2011.

MR. CONINE: Closing date of March 2010.

MS. RAY: Closing date of March 2010.

MR. CONINE: Commencement of construction by May 31. There's a motion on the floor. Do I hear a second?

MS. BINGHAM: Second.

MR. CONINE: I hear a second. 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 I wanted to point out to the Board just to make sure the Board saw this particular chart that we got that is the application log for the '07s and '08s. If you'll look at where all the Xs are kind of over to the right-hand column, you'll see how many of these projects took advantage of our 30 percent and below offer, and the fact that Mr. Henneberger is not here, I hate to see him not here --

MR. GERBER: He is here.

MR. CONINE: Oh, he is here. When did you sneak in back there? But I wanted you guys to look at there's eleven under the 77 cent column, there's 16 under the 81 cent column, and there's 18 under the 85 cent column. And I know money had to be a motivating factor there, but I just want it for the record that that idea evidently worked, and we can kind of use that for future transactions.

Okay, now we're back to item 2(c), I think, if Tom is ready. If you're not ready, we can wait. Let's go to item 3 until you get ready.

MR. GERBER: Mr. Chairman, item 3(a) is a presentation, discussion and possible approval of policy clarifications regarding the regional allocation of the remainder of the Tax Credit Assistance Program funds and the inclusion of an additional draw at 75 percent completion. In the process of implementing the Board policy on the TCAP program, staff has been questioned with regard to the method of regional allocation of the remaining roughly $71 million in TCAP that's available for 2009 tax credit awardees.

Earlier this summer, the Board approved a TCAP policy that prioritized funding 2007 and 2008 awardees and identified by region the amount of funds available. There were 28 developments from 2007 and 2008 that are now expected to receive funds under the policy, however, distribution of these funds is such that seven of the 26 sub-regions are over-funded and thus providing no available funds for 2009 transactions in those regions. Staff believes that this was the intent of the original policy in prioritizing the earlier deals over 2009 applications, but before a final proposal to allocate the remainder of the funds is made, wishes to clarify the Board's intent on this issue.

The other alternative would be to redistribute the remaining funds among all the regions but this may result in some regions potentially receiving a more disproportionate share of the funds available to the state.

Separately, staff has also determined that it would be helpful to all parties, including the Department, to have an additional draw opportunity at the 75 percent completion stage of the development. Due to the limited administrative funds available to the Department to manage the program, staff had initially proposed limiting the number of draws to just three, those being at 25 percent, 50 percent and then 100 percent of completion, but staff believes that in order to better monitor and report on the federal requirement deadline for expending 75 percent of the funds available to the Department, that this additional draw opportunity is necessary.

Anything you want to add, Tom?

MR. GOURIS: No.

MR. CONINE: I've got some public witness affirmation forms here. Donna Rickenbaker. Did I get it right? I apologize for butchering it.

MS. RICKENBAKER: It's not the popcorn man either. It's Donna Rickenbaker, I'm with Marquis Consultants. I'm here to speak on behalf of Emory Senior Living Apartments. Obviously you all have already heard from the city, they very much support this development, so I won't go down that road again, but I do want to speak to the Board about the Round 2 TCAP funding options and their effects on Emory.

First I'd like to visit with you all just a little bit about what's happening up in Region 1. In 2007, one development was funded in the urban category, it was a rehab up in Amarillo; in 2008 there were no urban developments -- as a matter of fact, tax credits did go out of Region 1 that were not allocated up there; and in 2009, the rehab that was allocated in '07 submitted in '09 and then you have our development which is a new construction in Lubbock that was submitted and was allocated as well. So in a three-year period you've had a total of 208 units of which 106 are rehab that if they close will be the only units in a three-year period up in that region. So obviously, I think everybody knows we were hoping to get on the ground.

So I'm here before you all just to respectfully request that you take a look at that region in connection with the TCAP allocation in Round 2, and with respect to the two options before you, I hope that with respect to either option that you choose to select or modification of one of those options, perhaps if there is a state collapse after Round 2s are done regionally that the Board could potentially give priority to these under-funded regions such as Region 1 in order to get these much needed units on the ground.

With that said, I also want the Board to know that we have worked very hard to get this development funded outside of these federal stimulus dollars. We were actually very close with a regional bank; unfortunately, as the credit markets continue to dive, so did their desire to come on board. We are still actively working to push this deal along without these dollars, but just wanted to let you all know that we are seeking funding the old-fashioned way to get this project developed.

MR. CONINE: Any questions for the witness?

(No response.)

MR. CONINE: Thank you. Michael Hartman.

MR. HARTMAN: Good afternoon, Mr. Chairman, members of the Board, Mr. Gerber. My name is Michael Hartman, I'm with Roundstone Development out of Dallas, and I would like to talk to you today about Option A versus Option B on the second round of TCAP, and our request would be that you would go with Option B.

The QAP and the RAF are applied independently on a year-by-year basis. TCAP, in our opinion, to be consistent should be allocated on a year-by-year basis. If I'm understanding Option A, what we're doing is taking the 2008 regional allocation formula and applying it not only to 2008 but also applying it to 2009. I think that would negate the tax credit awards that you've already given for 2009 based upon a 2009 RAF. Many of the 2009 deals, even since March, the tax credit prices have gone down and so they are applying for TCAP and are going to need it to go ahead, and so therefore, if you follow a different regional allocation formula, it could negate the formula that you used to award the 2009 tax credits.

Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Deborah Guerrero.

MS. GUERRERO: Good afternoon, Mr. Chairman, Board members, Mr. Gerber. Thank you very much, and I really appreciate the opportunity to speak today on behalf of Option A and to really thank the staff and I encourage you to go with staff's recommendation.

The only flaw with Mr. Hartman's rationale just now in terms of the regional allocation formula and year-to-year is that he's talking about them applying just to 9 percent transactions, and in this case, both 9 percent transactions and 4 percent transactions are eligible for TCAP. And the way that staff has stayed consistent in terms of the regional allocation by sub-region will allow the maximum distribution throughout the state to all parts of the state.

And so we really appreciate the opportunity to get stimulus funds to all the sub-regions and appreciate your support of the staff's recommendation, and I appreciate it so much, I withdrew my appeal so it could be a shorter meeting. Thank you.

MR. CONINE: Thank you. Brad Foursland.

MR. FOURSLAND: Good afternoon. Chairman Conine, members of the Board and Mr. Gerber. I guess I'm going to sound like a broken record after the last two, but I also would like to ask the Board to seriously consider Option B. Our rationale is the '09 deals really never had the opportunity to compete head to head with the '07-08 deals on a scoring basis. And so we've got a deal, Evergreen at Vista Ridge, 09172, in Region 3, there's $3 million left in that region, barely enough to fund one deal, and you've got seven other sub-regions that will not have any allocation either. So by Option B it allocates evenly the money over all the regions and gives the opportunity for an '09 deal to get funded in each of those.

The other thing I would ask, in the spirit of trying to keep things moving through the process, is for the '07-08 deals, if it would be possible to put a deadline on them, say December 1, to either produce a tax credit commitment or turn in their TCAP commitment so that you would have the ability to move on down the list. Thank you very much.

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

(No response.)

MR. CONINE: Hunter Botts.

MR. BOTTS: Good afternoon, Mr. Chairman, members of the Board, Mr. Gerber. My name is Hunter Botts, I'm with the National Equity Fund, we're a syndicator to purchase the low income housing tax credits.

I am also here to speak in favor of Option B for the methodology selection, the reason being we have a number of different investors, as most syndicators do. We have one particular investor this year that has actually targeted some of the smaller communities that are in some of the other regions, primarily Regions 1, 8 and 12, and they've got about $80 million combined in equity and debt that they are willing to invest in these regions, but the '09 deals that we're looking at need TCAP funding to make those deals be feasible, and there are no TCAP funds left available for those regions if Option A is selected, and so that $80 million will end up getting invested in California, New York, Nevada because if they can't place it here in Texas, they ultimately will place it somewhere else.

And so I would ask the Board to please consider selecting Option B so that some of those TCAP funds can be spread out to some of the '09 deals that did not get an opportunity to compete with the '07 and '08 deals in the first round.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, sir. Louis Williams.

MR. WILLIAMS: Chairman, members of the Board, Mr. Gerber, good afternoon. My name is Louis Williams and I represent Abilene Senior Village which is number 09175 and we're in Urban Region 2. And out of fairness, please go with Option A that the staff recommends.

As you know, there has been no usage of TCAP funds out of Region 2 and we're the only '09 project in Urban Region 2, and there's been a syndicator express an interest -- in fact, he just got up and left -- in our project, and without Option A, we're just basically going to be dead in the water. So basically, the bottom line is if you pick Option B, you're effectively going to field dress my project in Urban Region 2, and that's the bottom line to it.

MR. CONINE: He must like somebody else on his list.

MR. WILLIAMS: Apparently because I just talked to him.

MR. CONINE: Did you hook up out in the hall at all?

MR. WILLIAMS: But basically, guys, like I said, there has been no usage, either '07 or '08, and the way it's looking, there may not be any '09 usage in Urban Region 2. Thank you very much.

MR. CONINE: Thank you.

That's the last witness affirmation form on this particular agenda item. Out of curiosity and maybe I can -- no, because I don't have the TCAP list in front of me -- how many of the '07-08 deals would you say took advantage of some TCAP money?

MR. GOURIS: Twenty-eight.

MR. CONINE: Twenty-eight out of 50-something -- or no, it would be 100, I guess.

MR. GOURIS: Originally we had 57 applicants, there are probably closer to 100 potential applicants.

MR. CONINE: Right, okay. That's what I need to know. Thank you very much.

That's all the witness affirmation forms on that item. Any more discussion by the Board or are you ready to make a motion?

MS. BINGHAM: Mr. Chair, I hear from testimony that we're kind of six one way and half a dozen another, so I know that whichever way we go, as usual, we'll please some folks and upset others, but I'd like to move staff's recommendation.

MS. RAY: I second the motion.

MR. CONINE: Motion and second to approve staff's recommendation. Do I have 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. Moving on to number 4.

MR. GERBER: Mr. Chairman, there are no appeals under item 4, so we'll go on to item 5.

MR. CONINE: Moving on to number 5.

MR. GERBER: Item 5(a), Mr. Chairman, are the Bootstrap rules. I'm sorry, there's none under 4(a), 4(b), 4(c) or 4(d), there are no appeals that have been filed, so we're going to move on to item 5 -- Mirabella was pulled. Thank you, Deborah.

MS. GUERRERO: No problem.

MR. GERBER: Item 5(a) is the presentation, discussion and possible approval of our Texas Bootstrap Loan Program rules. Homer Cabello is the head of our Office of Colonia Initiatives, and I'll ask him to come on forward and just briefly touch on the rules. There is one significant change in the staff recommendation, and that is that there is a provision that would have precluded us from using Housing Trust Fund money for which we can provide up to $45,000 and to marry that up with our HOME Program dollars, and that has put rural communities or non-participating jurisdictions at a disadvantage.

Our Bootstrap dollars have generally gone where there is our Housing Trust Fund money leveraged in participating jurisdictions or larger cities that have received a direct allocation from HUD of HOME funds. So by making this change, this will ensure a more level playing field and allow those in some of those hardest hit rural areas to also be served.

Homer, why don't you touch on a couple of the other points in this. And let me also note that we're going to ask for some ability to make some small technical corrections and tweaks at the end. We just want to make sure that things are just a little more clear in some of the rules with some word choices, but in general, Homer.

MR. CABELLO: Homer Cabello, director for the Office of Colonia Initiatives.

The majority of the changes have derived from Senate Bill 679 that was passed at the last legislative session. The loan limits have increased from $30,000 to $45,000. The sweat equity requirement under the Bootstrap Program -- which is a self-help construction program -- increased from 60 percent to 65 percent. The legislation also clarified how the sweat equity needed to be contributed. In the past it was the family that needed to provide the sweat equity, now it allows family, friends and volunteers such as the Habitat for Humanity -- it kind of cleared up that issue. And also, for individuals with special needs or elderly that cannot work on the homes, they can get volunteers or others to assist them on those changes. And those were pretty much the legislative issues that were corrected.

The most significant policy issue that we added was some underwriting criteria for qualifying a family for a loan. We pull credit reports on these families and a lot of times in some cases everything is delinquent, everything is in collections, everything is charge-offs, so we have added some language that they needed to be current in all their debts for the last twelve months. However, if they submit their application and they've been current on all their debts for the last four months, we will allow them into the program with a reasonable explanation as to why they were delinquent on their debts. A lot of times they've been laid off or work issues or other issues, and so we included that in the revised rules.

Finally those are pretty much the major changes that we have, and then as Mike mentioned, under Section 2.9, Senate Bill 679 clarified some language that the Department funds under the Bootstrap can be leveraged with other sources, so now it's being leveraged with other department sources except for the sources that are being utilized to fund the Bootstrap Program. For example, if the Bootstrap is funding with Housing Trust Fund dollars, it cannot be leveraged with other Housing Trust Fund dollars, but it could be leveraged with the HOME Program, First Time Homebuyers, or other programs that the Department has.

MR. GERBER: So we can match state dollars from the

Housing Trust Fund with federal dollars from the HOME Program.

MR. CABELLO: Correct.

MR. GERBER: But we don't want to allow there to be any additional state funds, so we can spread those out more broadly.

MR. CABELLO: Right. So that, in a nutshell, covers the major changes to the program rules.

MR. GERBER: And of course, major partners in this program are folks, obviously, along the U.S.-Mexico border, like Prieto Azteca and Habitat for Humanity chapters really all across the state, but in no small part along the border. And Homer, we do about how many Bootstrap homes each year?

MR. CABELLO: Well, ever since we changed to the reservation system, we were averaging less than 100 homes per year; under the reservation system, we've increased production, we're doing over 200 houses per year now. So it's a first-come/first-serve ready to proceed model, and the monies are divided between two-thirds and one-third. Legislation states that two-thirds of the funds must go to economically distressed counties and one-third for the balance of the state. And the one-third money flies out the door, those are your larger cities, your Dallas, your Austin. But we're going to be bringing back to the Board in a couple of months a capacity-building program for ht two-thirds set-aside to help move those monies a lot more quickly.

MR. GERBER: And just for the Board's information, the NOFA that you approved on the consent agenda and then these rules will help to resolve -- should resolve satisfactorily the remaining two items that are on the audit done by Sandy Donoho's division, so then we'll be clear on those. So we would ask for a motion to approve the Texas Bootstrap rules.

MR. KEIG: I move to approve with the corrections to the grammatical errors that I brought to staff's attention, and as far as I know, they made those.

MR. CONINE: Motion to approve by Mr. Keig. Do I hear a second?

MS. RAY: Second.

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

DR. MUNOZ: Chair.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: Let me just add, Homer, I really appreciate the thoughtfulness about the credit issue. As soon as I heard twelve months, I thought to myself, that's going to be really difficult for a lot of people who have to make choices between food or lights. And so I think the discretion and the flexibility to look at four months back and get them into the program and monitor that and exercise some judiciousness about whether they're meritorious for this kind of support is the right approach. You can't apply some models down into the Valley with this income with these families in these income brackets that you might otherwise apply in other parts of the state. So I think that that kind of insight is invaluable in helping families realize participation in the program.

MR. CABELLO: Thank you. Just a quick note, approximately 35 percent of all the loans we originate under the Bootstrap Program are to families at $17,500 or less, so we're helping extremely low income families with this self-help housing program.

MR. CONINE: Thank you, Homer. 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 6.

MR. GERBER: Mr. Chairman, item 6 is presentation, discussion and possible approval of Resolution No. 10-004 authorizing the Department to make an application to the Texas Bond Review Board for a reservation of 2009 single family private activity bond authority. In anticipation of a 2010 single family mortgage revenue bond issuance, we're requesting the Board to authorize a draw-down of $103 million in 2009 volume authority from the Texas Bond Review Board for our Single Family Mortgage Revenue Bond Program.

Staff at this time is not seeking, nor is the Board getting any approval to a bond program for 2010 with respect to the finance structure, target mortgage rates, timing and the size of the issuance, but staff will come back to the Board in 2010 with a final structure for your review and appeal.

TDHCA has $18 million in 2008 volume cap, $204 million in 2009 volume cap, $90 million in HR 3221 volume cap -- that's the HERA legislation passed last summer -- and in 2010 will acquire another $205 million in volume cap. And as you're aware today, staff is requesting $120 million of volume cap for that 2010 Mortgage Credit Certificate Program which will leave TDHCA with approximately $397 million of volume cap remaining for 2010.

Staff believes that with the pending announcement from the federal government to assist first-time homebuyers that $103 million in additional volume cap is going to be needed in 2010 and that this additional volume cap will allow TDHCA to issue a significant bond structure at a very attractive mortgage rate for our first-time homebuyers in Texas.

Again, lots of information to come back to you and this is just simply giving us the ability to go and do a draw-down of volume cap from the Texas Bond Review Board, and so we'd ask your approval of this resolution to that effect.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation for approval of Resolution No. 10-004.

MR. CONINE: Thank you very much, Ms Ray. Is there a second?

MR. GANN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 7.

MR. GERBER: Mr. Chairman, I would just note that we have three programs out right now helping first-time homebuyers. We have almost 1,200 applications or loans that we are processing for our $8,000 First-Time Homebuyer Tax Credit Program. The $5 million this Board set aside is fully subscribed to, and so that's exciting. We're going to help that number of families get the money that they need for down payment and closing costs on the front end, and so we're working through that volume of loans to make that happen before the December 1 deadline.

We also have our Mortgage Credit Certificate Program and we continue to see a strong interest in that program and there are mortgage credit certificates that remain available and we will look to, as this Board has just done, going and making sure that that program remains fully stocked and eligible and able to issue additional mortgage credit certificates into the future. We also have a program now with very competitive mortgage rates because they feature down payment assistance of 4 percent that are also available, and those dollars are moving at a good clip as well.

And so three programs to help homebuyers of lower income to access their American dream if they wish to, so that's exciting.

Moving to item 7(a), and I'll as Sara Newsom, our deputy ED for Disaster Recovery, to come forward. The first item is a discussion of a policy to enable the Department to provide assistance to homeowners based on notification to and consent from lien-holders. ACS, as you all know, is the administrator of the state-run Hurricane Rita Round 1 Program to repair or replace housing damaged by the storm, and when the cost to rehabilitate a home reaches a certain level, the home is replaced due to the extensive repairs. The home replaced is then demolished.

In May of 2009, this Board authorized staff to proceed on applications where staff was unable to receive an executed hold harmless agreement from a lien-holder on an otherwise eligible applicant. Lenders are not willing to indemnify and hold the Department harmless when their collateral is demolished. Most of the lenders have refused to execute the agreement. And as a more effective way to address this, the Department staff is now recommending a notification to the lien-holder allowing a reasonable opportunity to object as an acceptable and much more expeditious course of action.

So we'd ask the Board's approval of that. And Sara, anything you'd like to add on that point?

MS. NEWSOM: We have come up with a notification that's gone through the Legal Division and we're ready to proceed if that is what the Board wishes us to do.

MR. CONINE: Any discussion?

MR. KEIG: I didn't get a copy of the letter.

MS. NEWSOM: It was not provided in the Board book.

MR. KEIG: A question.

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

MR. KEIG: The action item says that we're talking about based upon notification and consent from the lien-holders, but the recommendation is talking about an opportunity to object. Which is it?

MS. NEWSOM: Well, instead of requiring them to sign off on an indemnification --

MR. KEIG: Yes, I understand that.

MS. NEWSOM: -- we're not going to do that.

MR. KEIG: The question is it an acceptance by the lien-holder or is it going to be a notice and opportunity to object?

MS. NEWSOM: It's a notice and an opportunity to object.

MR. KEIG: Do we have any legal issues there with the difference between the two that we need to discuss in executive session?

MR. IRVINE: We do not believe that there are any material exposures, legal or otherwise. When a lien-holder has collateral that's been destroyed, if they have a perfected lien on the real property and all improvements, their lien would certainly flow through to reach the improved property after we've provided the replacement home. Since we are committed and federally funded to ensure that the home is replaced, the collateral value will only be increased. We just don't believe that there's any significant risk of any sort in acting on that basis.

And therefore, we're recommending moving on the basis of notice and an opportunity to object as the more expeditious way. When you're dealing with very large lenders, especially where they're going through multiple layers of loan servicing, these things get lost in a bureaucratic maze and we just want to be able to provide disaster recovery relief as quickly as possible.

MR. KEIG: So to summarize, we don't need their consent.

MR. IRVINE: Correct.

MR. KEIG: All right. I'd move that we accept staff's recommendation to change our previous policy of indemnification hold harmless to a notification and opportunity to object from the lien-holders.

MR. CONINE: Motion made by Mr. Keig. Do I hear a second?

MS. BINGHAM: Second.

MR. CONINE: Second by Ms. Bingham. Is there 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 7(b).

MS. NEWSOM: Under the Rita Program we have a base price for the replacement housing. If the housing needs to be elevated, that base price is increased about $30,000 for the elevation. There's a cap of $30,000 for the elevation. In Sabine Pass we have a couple of houses that weren't replaced, they just need elevation and the cost to do that is coming in between $40- and $50,000. So we are asking the Board to allow an increase in the elevation cost. That $40- to $50,000 is pretty consistent with what we're seeing for Ike Round 1 in the evaluations that we're seeing the COG submit to us. So we're asking that the Board either raise the cap above the $30,000 or grant the executive director the authority to evaluate and grant an increase on a case-by-case basis, or again, we could bring to you guys each one above the $30,000 cap.

MR. CONINE: I have one witness affirmation form here, although I think it's in error. Bill Fisher, you wrote down 7(b). You meant 7(d), I bet.

Okay, no witness affirmation forms on this particular item. Any further discussion/questions? Ms. Ray.

MS. RAY: Mr. Chairman, I move to grant the TDHCA executive director the authority to evaluate and grant an increase on a case-by-case basis based on an executive team review.

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

MS. BINGHAM: Second.

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

MR. KEIG: Should we put a limit on that amount of $10-$20,000, or something like that?

MR. CONINE: What's been your experience, Sara, in seeing -- what kind of numbers are you seeing over the $30-?

MS. NEWSOM: We're seeing as much as $50-, but I haven't seen anything over $50-.

MR. CONINE: Five zero?

MS. RAY: Over the $30- or up to?

MS. NEWSOM: Oh, no, I'm sorry. $20,000 more.

MR. CONINE: Just $20- over.

MS. NEWSOM: $50,000 total.

MS. RAY: Mr. Keig --

MR. CONINE: I was getting ready to say we're building the Taj Mahal.

(General laughter.)

MS. RAY: -- do you agree a $20,000 limit in excess of the $30,000 would be sufficient clarification?

MR. KEIG: Yes.

MS. RAY: Then I accept that friendly amendment to my motion and change my motion to grant the TDHCA executive director the authority to evaluate and grant an increase on a case-by-case basis, based on executive review team, not to exceed $20,000 beyond the $30,000 limit.

MR. CONINE: Is there a second to that?

MS. BINGHAM: Second.

MR. CONINE: Ms. Bingham, thank you. 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: The motion carries.

MR. GERBER: Mr. Chairman, item 7(c) is an amendment to a contract under Round 1 that we had with the South East Texas Regional Planning Commission. They were awarded housing funds under Hurricane Rita Round 1 and they're requesting an amendment to extend their contract from October 31, 2009 to May 31, 2010 and to transfer some funds between budget categories. South East Texas Regional Planning Commission is planning that 309 will either have bids awarded, be under construction or be completed by October 31, 2009, including 81 households above their contracted amount to be served. That is a result of cost savings in the program.

We've also transferred unobligated CDBG Disaster Recovery funds to South East Texas Regional Planning Commission as they've identified additional households that could be served above the contractual number as a result of savings related to project costs. So we're requesting that we be allowed to extend their contract date.

They really are sort of serving as the catch basin for any remaining funds that have gone un-utilized in that Round 1 COG program. DET COG has already wrapped up their program, Houston-Galveston Area Council is the process of wrapping up theirs and will meet the deadline of the end of this year, and then South East Texas Regional Planning Commission, with these additional dollars, plus their cost savings have just a few more houses to go. So we think that they'll be done before May but so we don't have to come back for another amendment, we feel that May 31 is reasonable. So we'd ask for a motion to that effect, to extend the contract and to allow the transfers between budget categories.

Tim, anything yo want to add to it?

MR. IRVINE: No.

MR. CONINE: Any further discussion? Do I hear a motion?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Move for staff's recommendation. 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 of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 7(d).

MR. IRVINE: Mr. Chairman, Tim Irvine speaking.

With regard to item 7(d), staff would like to propose some changes to this general structure that I believe will be probably more direct and effective. With respect to the $58 million NOFA that was issued under Ike Round 1, we are recommending that those applications that conform to the requirements for the NOFA go ahead and be processed and awarded as appropriate. And that we determine the amount of the $58 million remaining and that we cancel that first NOFA and promptly issue a second notice, and in the second notice we would prioritize rehabilitation rather than construction of new property.

We would allow for the utilization, but not required, of repayable loan structures. We would provide that where insurance claims had been filed but the amount of the deductible exceeded the property damage claimed that the property would be treated as uninsured and that staff be directed to go ahead and get that second NOFA out as expeditiously as possible. And that, furthermore, anybody who had applied under the original NOFA would be deemed to have applied under the second NOFA and would be categorized in that appropriate prioritization order, of course, subject to staff requiring any supplemental information to address issues that might be raised in the second structure

And we would recommend proceeding on that basis rather than addressing this as proposed policy changes.

MR. CONINE: Okay, a little different twist than what's in our Board book. I have quite a few witness affirmation forms. I hope those of you in the audience who signed witness affirmation forms heard what he said. If you didn't, we can ask questions and so forth.

MS. BINGHAM: Mr. Chair, while you're getting ready to call the first one up, can I just ask Tim?

MR. CONINE: Sure.

MS. BINGHAM: How promptly do you think prompt is? What are we thinking in terms of the second notice, the new NOFA?

MR. IRVINE: Well, given my marching orders to get the TCAP and Exchange documents finalized and out for public comment by, I believe Monday was tossed around, I would anticipate we can have a draft of this NOFA by midweek next week and get it out, I'm hoping within a week or so.

DR. MUNOZ: Tim, you also said that those that applied for the original NOFA, they would be grandfathered.

MR. IRVINE: They would be deemed to have already applied and that way if somebody isn't zealously reading the Texas Register or whatever, they won't lose out on the effort that they've already put into this and they'll stayed queued up the same way they were, but of course, it would be drafted in such a way that the eligibility parameters would be appropriately expanded. And don't forget, we've also got I believe it's $174 million that will be following close on and we'll probably be bringing that to the Board at the November meeting with respect to the second allocation of Ike funds.

MR. CONINE: I didn't hear any mention of an increase in the cap or the maximum.

MR. IRVINE: Oh, I'm very sorry, Mr. Chairman. We would certainly recommend under this second piece of the restructured $58 million that the cap be increased. Staff would recommend a cap increase to at least $10 million.

MR. CONINE: Okay. With that, we will hear some public comment. Don Young.

MR. YOUNG: My name is Don Young. First I have a question on what I think I just heard.

MR. CONINE: Okay.

MR. YOUNG: Did I hear that it was going to go from a grant to a note?

MR. CONINE: Do you want to clarify staff's recommendation?

MR. IRVINE: I'll just stay up here. The recommendation was that in the second portion -- not in the first portion which remains unchanged -- in the second portion, the use of a loan structure would be available as needed but it would not be a requirement that they be structured as loan transactions.

MR. CONINE: Okay.

MR. YOUNG: I will look forward to reading it then.

MR. CONINE: Either/or.

MR. IRVINE: There are situations where for eligible basis reasons when somebody is leveraging CDBG funds with tax credit funds or other funds, their structure of the transaction becomes important.

MR. YOUNG: Okay, I'm understanding now.

I am going to be briefer than the note that is included in your Board book.

MR. CONINE: Good.

MR. YOUNG: Yes. My name is Don Young, I live in Keller, Texas, and I've been an affordable housing consultant in Texas since 2003. Today I'm speaking to you about the proposed termination of CDBG application 09804 for Balboa Apartments in Nassau Bay in Harris County. Each of you should have received an envelope containing documentation that I'm discussing with you today.

Our concern with this is it appears that staff is not properly informed regarding the concept of submitting a claim for reimbursement of a loss. This is highlighted in Table on page 745 of your Board book, and that is the focus of this brief presentation as it relates to the Balboa Apartments.

The reason for the proposed termination of this application is because the agency was not provided with a copy of the insurance claim that was submitted to the insurance companies or that the applicant did not submit a claim, bur the agency was provided of the claim denial. It appears that staff does not understand how the applicant can have the denial but not have submitted a claim. Therefore, staff asserts, the three applications on Table 3 on page 475 cannot prove that they were uninsured or under-insured because no claim was filed.

There's a reason for this. It's normal operating procedure within the insurance industry when an insurance company or broker receives a call stating there is damage being claimed, the insurance company sends an adjuster. The adjuster surveys the damage and reports the result to the insurer. The internal claims department of the insurer reviews the claims against the coverage and determines whether or not the damages submitted by the adjuster fall within the terms of the policy. The insurance company then issues a determination of what damages are covered and what the policy permits the claimant to be paid. In this instance, that is exactly what Balboa Apartments did.

We spent some time talking with a gentleman named Mr. Hal Arnold, who is executive general adjuster for Adjusters International, he's located in the company's Houston office. In his memo which is attached -- and I believe I have two hours but I won't use them -- he states that the Balboa Apartments deductible amount for the total insured value, wind coverage under the Arthur J. Gallagher policy is $401,172. The total insured value is shown by it's a conglomeration of building contents and business income claims, so the total insured value is $13,373,400.

But there's a little box beneath that that has some qualifications, additional coverage options, restrictions, endorsements, et cetera, and it tells what is included and so forth, and it refers to 3 percent total insured value for named storms. Hurricane Ike was a named storm, so therefore, instead of having a $25,000 deductible, it had a $401,172 deductible. The adjuster found that the claim for $5,000 in windstorm damage was less than the deductible and no claims were paid.

Communidad Corporation also made a claim for flood damages from Delta Lloyd's Insurance Company of Houston -- it's an authorized agent for the National Federal Flood Insurance Company. Delta Lloyd's sent an adjuster to the site. He opined that the damages to the apartment was not because of the storm, but because of sewer backup problems which he claimed are not covered by the policy. The claim was denied.

Each of these instances is what happens every day in the insurance industry. Our personal experience from this spring is identical to the above. In March in our community we had a hailstorm, USAA sent out an adjuster, he said you need a new roof, this is your deductible, this is what we'll pay you. Same procedure. And many or most of us who have been homeowners for several years in Texas are familiar with the process, and I doubt that any have ever filed a written claim with their insurer. Rather, we call the insurer or our broker.

On behalf of Communidad Corporation, Balboa Apartments, we respectfully request that TDHCA's Board deny approval of the proposed amendment as applies to Table 3 on page 745 of your Board book which is based upon the erroneous assumption that an insured person or entity must file a written claim when their property is damaged, and that is not possible to know whether or not the applicants were uninsured or under-insured if they did not file a claim. Most importantly, we request that the Board recognize application 09804, Balboa Apartments, as an under-insured development with the rules of the CDBG NOFA under whose rules the applications were submitted. Thank you.

MR. CONINE: Any questions of the witness?

MR. YOUNG: And I hate to insult your intelligence by giving Insurance Claims 101 to most of you who already know. Thank you.

MR. CONINE: Thank you. Jennifer Chester.

MS. CHESTER: Hello.

MR. CONINE: Hello.

MS. CHESTER: My request/suggestion/comment may actually be moot based upon everything that was just said a few minutes ago, but since I've never been good at doing quick math in my head, I'm going to go ahead and put it out there anyway.

I have spoken with a couple of you before. I used to work for Florida Housing Finance Corporation which is the equivalent of TDHCA for Florida, and one of the things that they often do -- which I believe is also done here in Texas -- is occasionally if they know that there is a secondary round of funding coming up -- which my understanding is there's a second round of CDBG money that's coming available -- they will give preference to applicants who applied in the first round, were deemed eligible, however, the funding sources ran out.

So I just wanted to throw that out there as a possible suggestion for CDBG Round 2. It sounds like now that there may be enough funds available for all the applicants.

MR. CONINE: From what I heard him say, I think he covered your issue.

MS. CHESTER: I think he did too, but just in case he didn't, I wanted to go ahead and throw it out there. Thank you very much.

MR. CONINE: Great. Thank you. Deborah Guerrero.

MS. GUERRERO: Thank you very much, Mr. Chairman. My name is Deborah Guerrero and I'm with the NRP Group. And I just wanted to speak in support of staff's recommendation on the policy changes and because it's about remembering why we're doing this, it's really to maximize and get as many units on the ground. I wanted to give you an example of why this particular change would actually help bring some units to the City of Beaumont.

We have been working with the Beaumont Housing Authority on a proposal for 252 units, and the City of Beaumont has actively been working with us. They did their own city assessment, damage assessment, and they found that a good majority of single family homes have been damaged to the point substantially damaged, and they identified substantially damaged as repairs that would cost over 60 percent of the value of those homes. And we have been working with TDHCA in trying to make sure that these single family homes were inserted into the equation of what we're trying to do which is to find alternative housing for those families that have been truly impacted.

Many of these families the city has identified as being moderate, very low and low income individuals, and so this change in policy will allow us to bring good, quality housing to the City of Beaumont. And so again, I ask for your support of staff's recommendation because it is about bringing those units to the city. Thank you.

MR. CONINE: Questions of the witness?

(No response.)

MR. CONINE: Thank you. Bill Fisher. You've got some allotted time.

MR. FISHER: I'll be quick. The only thing I'd ask you to do is include in this revised recommendation -- because I think it fixes the leveraging problem with housing tax credits -- that you authorize the executive director to grant extensions to the housing tax credit developments that are leveraging the CDBG because we won't be bale to meet the current time lines because we can't buy our properties until we have environmental clearance from CDBG funds, so if you would consider adding that to their proposed revised policy, I think that will fix my problem. Otherwise, I would need to ask for funding today.

MR. CONINE: Which deadline are you referring to now?

MR. FISHER: I have a November 2 deadline for meeting carryover and we generally are required to buy the properties at that time. I just want to make sure whatever tax credit deadline is coming up and we're combining CDBG, he can extend for us to allow those two to work together which I think is the intent of the revision.

MR. CONINE: Okay. I'll have to check that out with staff. You be thinking about that to see if there's an issue there. Thank you.

MR. FISHER: Thank you.

MR. CONINE: Robert Onion, you're donating your time to Bill?

MR. ONION: (Speaking from audience.) Yes, sir.

MR. CONINE: John Shackelford.

MR. SHACKELFORD: (Speaking from audience.) I don't think I need to speak now that we've heard him clarify that we can use CDBG funds [indiscernible].

MR. CONINE: They're over there huddling now as we speak. That's all the witness affirmation forms that I have on 7(d), I believe. Mr. Gouris.

MR. GOURIS: We don't believe to meet carryover he has to close on his property. He'll have to extend his property contract but he won't have to close on it, so I don't think there is a carryover deadline issue for him, and the other deadlines would be going into next year. So I'm not sure what deadline he's concerned about.

MR. CONINE: So there's no deadline, we're okay.

MR. GOURIS: Yes.

MR. CONINE: Okay.

MR. IRVINE: And just one other point of clarification -- we're huddling among ourselves here -- with regard to the increase of the cap to $10 million. If somebody had applied before under the previous limits of the $58 million NOFA, we would contact them, give them an opportunity to amend an increase so that they could avail themselves of the higher cap.

MR. CONINE: Okay. Thank you. Sara, do you have some staff recommendations for us?

MS. NEWSOM: One more.

MR. CONINE: Okay.

MS. NEWSOM: Under the $58 million NOFA, we have one recommendation for the Board's approval, and that is Tidwell Estates which is a property located in Houston, has 132 units, and it was damaged by Hurricane Ike, and we're recommending $277,676 in Disaster funds.

MR. CONINE: I don't see that in the writeup, I'm missing Tidwell Estates in 7(d). Is it somewhere else?

MS. NEWSOM: I'm sorry. This is 7(e).

MR. CONINE: You went to (e).

MS. RAY: We haven't voted on (d).

MS. NEWSOM: Oh, no, I'm sorry. I was finished with (d).

MR. CONINE: Just hang on. Nothing else on 7(d) at this point other than the different NOFA now that staff has recommended.

MR. KEIG: Do you have a response to Mr. Young's points about the insurance?

MS. NEWSOM: Under 7(d) we had some items that many of the applicants were not able to meet under the current NOFA. One of those recommendations was when there was -- the NOFA required all the applicants to either be under-insured or uninsured. Most of the applicants were insured and had a claim for damages and it was difficult to determine if they were under-insured. So what we recommended was those where the claim was less than the deductible that if they had filed a claim which would prove that the claim was under the deductible that we would consider that as under-insured, and Mr. Young's deal fell under that list of properties that that fell into.

MR. KEIG: That it was under-insured or it did not meet the requirement?

MS. NEWSOM: It did not meet the requirement of either under-insured or uninsured.

MR. KEIG: Because?

MS. NEWSOM: Because he had insurance.

MR. KEIG: What were the requirements for under-insured?

MR. IRVINE: I don't think we were sufficiently specific in this regard and I extend my apologies. Under the principles in Insurance 101, I think where somebody has a letter back from their insurer saying that this is the deductible amount and therefore your claim is denied, we should be able to proceed on that basis. I think that we were parsing this, we were expecting that they provide documentation in the form of a written claim under their insurance policy -- which they were obviously not able to do -- but they did establish through the response back from their adjuster that they had made a claim, and I think we can move on that basis.

MR. CONINE: Staff will go forward in a customary Texas insurance claim manner.

MR. IRVINE: We will try to be as practical as possible.

MR. CONINE: Thank you very much. Is there any other discussion on item 7(d)?

(No response.)

MR. CONINE: Do I hear a motion to approve or do something?

MS. BINGHAM: I'll give it a try.

MR. CONINE: Okay. Thank you, Ms. Bingham.

MS. BINGHAM: If Mr. Irvine and Sara will help me out some. I'm moving staff's recommendation that they just provided to us -- which is somewhat different than our original discussion -- to fill the current NOFA with the compliant applicants or the applicants that meet the requirements of the NOFA, and then very promptly issue a second notice NOFA with guidelines that address some of the policy needs but prioritizing the damaged properties, queuing up the same applicants that had already been applicants for NOFA, allowing the grant versus loan decision as appropriate, and increasing the cap to $10 million.

MR. IRVINE: That is correct, with the provision that people who had applied previously could come back and amend to avail themselves of the higher cap.

MS. BINGHAM: So moved.

MR. CONINE: Is there a second to that motion?

MS. RAY: Second the motion.

MR. CONINE: Thank you, 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 7(e).

MR. GERBER: Mr. Chairman, going to item 7(e), we're again just asking for your approval to approve $277,676 in CDBG funds for Tidwell Estates in Houston. We'd ask for a motion to do so.

DR. MUNOZ: So moved.

MR. CONINE: Tidwell Estates. Motion by Dr. Munoz. Second?

MS. BINGHAM: Second.

MR. CONINE: By Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor -- oh, whoa, I've got witness affirmation forms here. Excuse me. Chris Ackberry.

MR. ACKBERRY: (Speaking from audience.) No thanks.

MR. CONINE: No thank you. Barry Kahn.

MR. KAHN: Just here to answer questions.

MR. CONINE: Thank you, sir. Donald Sampley.

MR. SAMPLEY: Pass.

MR. CONINE: You are all great Americans.

(General laughter.)

MR. CONINE: Any further discussion on the motion?

(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. Gouris, are we even close to getting -- I guess I asked for a little too much, it sounds like. We're going to go back to agenda item 2(c) unless you need just a couple of minutes and I'll let Mike do the executive report.

MR. GOURIS: We're having difficult printing this out so I can walk you through it and I think that's probably the best way.

MR. CONINE: Okay, let's walk through it.

MR. GOURIS: So what happened with the allocation round in 2009 was we had $53 million of regularly allocated funds. That's what's showing up on this sheet that you have that says estimated ceiling to be allocated is $53 million.

MR. CONINE: What sheet are you referring to?

MR. GOURIS: This is the one that I handed out earlier, this big one.

MR. CONINE: The big one.

MR. GOURIS: Yes. It has all the current awards and returns and what's down the list. In addition to the $53 million of regular funds, there would be 15 percent on top of that that would be for at-risk deals and then another close to $30 million of Ike funds. So you'll see when you go down this list -- which is what we were trying to do is give you a summary list, add it all up, it would add up to more than $53 million, it would add up to almost $90 million.

MR. CONINE: Let me ask a quick question and maybe I can shorten this. Under the total credits available for each region, there's a number there.

MR. GOURIS: Right.

MR. CONINE: Is that the number for the $53 million?

MR. GOURIS: That's correct, that's where I was going.

MR. CONINE: And that will be rather equivalent to what 2010 will be like.

MR. GOURIS: That's correct.

MR. CONINE: So the rest of that stuff I don't care anything about right now, maybe some of the others do, but I don't care anything about it.

MR. GOURIS: So what we were trying to do for you all was to show you what was available and what we allocated and which regions we didn't allocate enough, but in essence we over-allocated every region so far. Because of at-risk and Ike we had the additional funds, mostly because of at-risk.

MR. CONINE: Well, that's not fair, you just mixed apples and oranges.

MR. GOURIS: That's why I was trying to walk you through it. The Ike funds were only over-allocated in Regions 5 and 6, so in Region 5 we have $451,000 in urban but we actually allocated $1 million 977, so we way over-allocated because we had the Ike dollars. Similarly, in Region 6 we had $10 million seven to allocate out of those $53 million and we actually $32 million because of the Ike funds.

MR. CONINE: Well, then I asked a question earlier -- and I apologize -- that complicated matters way too much.

MR. GOURIS: I'm sorry.

MR. CONINE: Because I was trying to get a feel for under the normal allocation which region had been shorted and which region had been over just to get a feel, that's all.

MR. GOURIS: Right.

MR. CONINE: Okay. Stop there, I think.

MR. GOURIS: Yes, sir.

(General laughter.)

MR. CONINE: Any other questions of staff for the purposes of forward commitments. I guess that's kind of where we are. If not, I guess we're ready to do a motion.

DR. MUNOZ: Mr. Chair.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: I'd like to recommend that we provide a forward commitment for at least, not necessarily limited to the following two projects:

the M Station in Austin and the Mustang Heights project.

MR. CONINE: Mustang Heights in Region 2, 09110, it looks like to me.

DR. MUNOZ: Rural, and the M Station in Austin.

MR. CONINE: And which one, M Street?

DR. MUNOZ: M Station in Austin.

MR. CONINE: M Station which is 09130. Anybody else have any?

(No response.)

MR. CONINE: I've got a couple, I think. Because of what happened in item 7(d) just a minute ago and because I don't know how that affects Galveston -- I have an interest in making sure we get Galveston taken care of -- so I'm going to propose that Champion Homes and Marina Landing be put on the list but with the understanding that if the CDBG fix a minute ago on 7(d) takes care of it, then we want the credits back. That's kind of where I'm headed with that one.

MR. GANN: Can we get his amendment amended?

MR. CONINE: Yes, we're adding to the list now.

MR. GANN: I was going to second that with those four included.

MR. CONINE: I'm not finished yet.

MR. GANN: Oh, you're not finished.

MR. CONINE: Let me look at one more number right quick. If anybody else has any issues, they can jump at it. I think both projects in Region 7, the M Station and the Wildflower Terrace are exemplary projects from what I can tell. The issue I have is that since they tied -- again, the old Montessori or YMCA way, you tie so both of them ought to get it -- the problem I have is -- and correct me if I'm wrong, Tom -- a normal allocation in Region 7 about $3 million eight, or it was $3 million eight this past year, and next year would be something along the same lines of being the same or maybe a little higher.

MR. GOURIS: For urban it was $2 million six.

MR. CONINE: For urban it was $2 million six, so we'll over-subscribe overnight.

MR. GOURIS: And the same thing would happen in Rural Region with Mustang and there are some other.

MR. CONINE: Okay, but I would propose we put Wildflower Terrace on the list as well, 09268.

MR. IRVINE: Mr. Chairman, might I just ask how we would apply the cap if the Champions deal doesn't work under the CDBG?

MR. CONINE: I don't understand the question.

MR. GOURIS: Champions at Marina Landing, if allocated in this allocation round out of these applications would violate the $2 million cap.

MR. CONINE: Well, again, I view this as 2010 currently.

MR. IRVINE: Okay, so it's in 2010.

MR. CONINE: Yes, and we haven't really talked about what

I'd call the bleed-back, if someone gets a forward and there's '09 credits available, do they want '09. In some cases they may not want '09 because of the lack of exchange possibilities and not knowing what the United States Congress is going to do, they may want to wait out 2010 for either that or other leveraging/layering reasons.

MR. GOURIS: Right.

MR. CONINE: I'd suggest maybe that the Department would, in this one extenuating circumstance and case, give those 2010 forward commitment recipients the choice of whether they want to blow back into '09 or stay where they are which is 2010. I think that's justified under the current situation.

MR. GOURIS: I agree.

MR. CONINE: I think I'm done. Anybody else have any others?

(No response.)

MR. CONINE: Do I hear a motion? It sounds like we've got four. Is that right, we've got four, Mike?

MR. GERBER: Yes, sir: Champion Homes, M Station, the deal in Sweetwater, and then Wildflower Terrace here in Austin.

MR. CONINE: Wait a minute. Did that take care of the fourth one on the preferential waiting list?

MR. GOURIS: Yes, M Station.

MR. CONINE: Okay, forgot about that. Any others?

(No response.)

MR. CONINE: Do I hear a motion to approve?

MS. RAY: So moved, Mr. Chairman.

MR. CONINE: Motion to approve made 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.

Mr. Gerber, your executive director's report.

MR. GERBER: You've got three items in the back of your Board book and that is an update first under Tab 1 of Hurricane Rita and Hurricane Ike funding, you've got a list under Tab 2 of housing tax credit ownership transfers, and under Tab 3 you've got a list of our outreach activities. Look forward to seeing everyone in November.

MR. CONINE: Any further items to come before the Board? We stand adjourned. Thank you.

(Whereupon, at 3:11 p.m., the meeting was concluded.)

C E R T I F I C A T E

IN RE: TDHCA Board Meeting

LOCATION: Austin, Texas

DATE: October 15, 2009

I do hereby certify that the foregoing pages, numbers 1 through 149, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

____________ 10/20/2009
(Transcriber) (Date)

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