TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room 1.028
Capitol Extension
1100 Congress Avenue
Austin, Texas

Wednesday,
November 10, 2010
9:10 a.m.

MEMBERS:

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

MICHAEL GERBER, Executive Director

P R O C E E D I N G S

MR. CONINE: Good morning everybody.

(A chorus of good mornings.)

MR. CONINE: Welcome to the November meeting of the Texas Department of Housing and Community Affairs Board meeting. It's good to see everybody. It's been a while since we were in Brownsville, I guess, in September, Leslie's lovely home town. Again, appreciate all your hospitality down there.

Everybody's healthy, everybody's having a good fall, and the weather's beautiful, and football teams aren't doing all that well.

(General laughter.)

MR. CONINE: So we can focus more on the housing industry rather than football these days.

We'll call roll right quick.

Leslie Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. CONINE: Kent Conine's here.

Tom Gann?

MR. GANN: Here.

MR. CONINE: Lowell Keig?

MR. KEIG: Here.

MR. CONINE: Juan Muñoz?

DR. MUÑOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Got a full boat.

As usual, we'll open the meeting with public comment. Any of you wishing to address the Board during the public comment period about football or whatever subject you may want to talk about, you're welcome to do so if you fill out a witness affirmation form. As you know, we also allow people to speak during particular agenda items, and so we have several signed up to do that today as well.

So we'll start off with Krista Gebbia, if I didn't butcher it up too bad.

MS. GEBBIA: Good morning.

MR. CONINE: Good morning.

MS. GEBBIA: I'm Krista Gebbia. I'm the Executive Director of Preservation Texas, and Preservation Texas is a statewide non-profit advocacy group. We work with communities around the state to help them promote healthy communities through preserving their historic buildings.

I have a letter for the record, which I would like to read. I'm also here on behalf of Preservation Dallas, and if it's all right, to read their letter as well.

MR. CONINE: Sure.

MS. GEBBIA: Okay. Thank you very much.

MR. CONINE: Just remember you've got three minutes, so.

MS. GEBBIA: Thank you.

We wish to express our support of this Board and your efforts to ensure that affordable housing credits work in concert with historic preservation to achieve vibrant downtowns across the state of Texas. Texas cities are experiencing a tremendous increase in growth, and many of our downtowns in smaller communities are searching for ways to attract new businesses and residents.

One thing they have in common are vacant or under-utilized historic buildings that are often prominently located on major intersections. The availability of additional incentives for the rehabilitation and adaptive reuse of historic buildings would encourage investment, which generates significant indirect and direct economic returns in the form of jobs and increased tax revenues at the local level. The rehabilitation of prominent historic buildings also encourages revitalization of adjacent areas.

We are currently assisting several communities in the revitalization of their downtown. Key historic buildings, such as the Herring Hotel in Amarillo, the Caples Building in El Paso, and the Statler Hilton in Dallas can contribute to the vitality of their downtowns, provide additional incentives that are available for their rehabilitation.

We exist as a non-profit organization to ensure that our proud Texas heritage is preserved, and to that end that Texas historic fabric remains intact. We respectfully request that the Texas Department of Housing and Community Affairs adopt changes to the 2011 qualified allocation plan that encourages the rehabilitation and reuse of historic buildings.

Thank you, and if you have any questions, please let me know.

Like I said, we work with communities around the state, and so I'm here on behalf of Preservation Texas and they have drafted a formal letter.

Preservation Dallas urges you to revise the 2011 qualified allocation plan for affordable housing tax credits to better address the challenges facing the growth of affordable housing in dense urban areas. Specifically Preservation Dallas would like there to be more flexibility with regard to distressed buildings in and around urban cores, such as in Dallas.

They support the challenges to the 2011 QAP put forward by Mr. Hal Fairbanks and Ms. Donna Rickenbacker in support -- I'll submit this letter as well -- in Dallas, Preservation Dallas towards out-of-state developers looking at historic rehabilitation and adaptive reuse projects for affordable housing on a regular basis.

As Executive Director of the city's non-profit organization for historic preservation, Katherine Seal listens to their concerns. Of course their main concern is return on investments. While historic preservation and affordable housing are essential to urban --

MR. CONINE: Go ahead and wrap it up.

MS. GEBBIA: Okay. Are essential to inner city development, the current affordable housing tax credit structure does not help cities compete for these investments. They thank you for your good work, and they encourage you to adopt their suggested changes. Thank you.

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

(No response.)

MR. CONINE: Okay. Thank you very much.

MS. GEBBIA: Thank you.

MR. CONINE: Brian Dennison?

MR. DENNISON: Good morning, and thank you, Chairman --

MR. CONINE: Good morning.

MR. DENNISON: -- and Board. I'm here on behalf of Ft. Worth Housing Authority to request consideration for the change in the 2011 QAP that would allow development in central business districts to have a bedroom mix that will reflect the current market in housing.

And I'll just go through some details I do have for the record, a statement that's there. Ft. Worth Housing Authority has aggressively pursued opportunities to preserve and increase the number of quality affordable housing within the city of Ft. Worth. We have used different funding sources and mechanisms to achieve that goal. Most of the funds used is the 9 percent low income housing tax credit administered by TDHCA, and we carefully consider all the characteristics of a site before submitting an application to TDHCA.

We believe that affordable housing must be in locations that provide as many amenities as possible needed for low income residents. The two most critical, we believe, are transportation and employment. In Ft. Worth, the central business district has approximately 35,000 jobs. They have a public transportation system that goes through the heart of downtown Ft. Worth.

In achieving this goal for affordable housing, there are approximately 5,000 employees that are at the 60 percent or lower income level within that central business district. Of that 5,000, and of the units that we have, there are only 168 units are considered affordable that meet 60 percent or lower. And at the end of 2011 they're going to be reduced by 64 as the LURAs expire. So what I'm saying is that the demand is there for affordable housing in our central business districts.

One of the components that we did from a research standpoint was for the demand primarily was centered around one- and two-bedroom units. In the third quarter of 2010 ending September, 59 percent of the units were one-bedroom in the city of Ft. Worth downtown, 38 percent were two-bedroom, only 3 percent were three-bedroom. Therein lies our issues with the QAP.

The development in the central business districts are extremely expensive, we all know that. Developing

affordable housing is impossible if we don't meet what the market is calling for. In our 2011 draft for the QAP, it requires that developers have 15 percent of the bedrooms at three-bedrooms and 30 percent at one-bedroom. That does not fit the market.

I heard the bell ring, so I know my time is up. In short, what I'm saying to you all, and I would like for you all to consider, is to, in the central business districts, make that change that requires the market -- I will be glad to supply or provide for you market studies that provide the same.

I'll answer any questions. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

MR. DENNISON: Thank you.

MR. CONINE: Hollis Fisher -- Fitch. Excuse me.

MR. FITCH: Good morning, Mr. Chairman --

MR. CONINE: Good morning.

MR. FITCH: -- members of the Board. I'm Hollis Fitch. I'm here today on the project Washington Hotel Lofts in Greenville, Texas. I've been before you a number of times on this transaction. This transaction intends to combine historic tax credits with low income credits. It was awarded on '08 and then received TCAP funds, then we ran into timing difficulties with the TCAP funds.

We turned our allocation of TCAP funds back in, and we looked at trying to wait for this NOFA to come out with the additional exchange funds. We were not able to meet the timing requirements for this NOFA of the additional exchange funds, and effectively the transaction is dead at this point. We are going to be turning in our allocation of low income credits from 2008 on this transaction.

We met with the city of Greenville, Texas last night in executive session with the city council. They've asked us to pursue this deal again in the future. The issue that we run into is once we turn in the credits, we will be imposed penalties in making future applications, which we have not received those penalties yet but when the time comes, we'd like you to potentially consider a waiver of those penalty points so we can actually see this deal come to fruition hopefully in the next funding cycle.

Any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: No? Thank you very much.

Shannon Wasielewski? I really butchered that one up, and I apologize.

MS. WASIELEWSKI: That was pretty good. It's Wasielewski, but that was very good.

MR. CONINE: Wasielewski.

MS. WASIELEWSKI: I'm impressed.

I'm the historic preservation officer for the city of San Antonio, and I'm here both on behalf of the city of San Antonio, but also the Downtown Alliance San Antonio and the San Antonio Conservation Society, both of whom have already submitted letters to you previously but couldn't make it today. And we are all in support of the requests regarding the 2011 qualified allocation plan that you've received from Donna Rickenbacker and from Hal Fairbanks.

The San Antonio city council has made it clear that downtown and central city revitalization are an important priority of the city. It's economically, environmentally, and culture sustainability all in one to reinvest in existing infrastructure and in existing and historic buildings in neighborhoods. To this end, over the last year the city council has adopted an infill and reinvestment policy complete with financial incentives for investment in the central city, particularly for downtown housing.

In January, the city launched a major east side initiative to focus on near east side, an area that has seen some neglect over the years. This initiative includes a major component to address housing options in this part of the city poised for revitalization. Mayor Julián Castro recently declared this the decade of downtown and his ambitious SA 2020 envisioning initiative lists revitalizing the urban core as one of its many goals.

As we all know, housing, and mixed income at that, must drive this renaissance of our downtown. Affordable and workforce housing options are a critical part of this mix. Studies show that historic buildings provide a disproportionate amount of the affordable housing in this country. Recognizing the ability of these buildings to meet this end, we urge you to adopt policies that allow and encourage these impactful, adaptive reuse projects.

Donovan Rictama [phonetic], a prominent expert on the economics of downtown revitalization states that no successful downtown revitalization has taken place in this country that doesn't include historic preservation. We strive to preserve our history for so many reasons, to protect our quality of life, our pride of place, our sense of community, but in order to do that we need to save our buildings and make them our homes and our places of business.

While technical historic preservation practice can sometimes increase the cost of a project, the use of the historic tax credit in addition to the low income housing tax credit offsets the higher cost of quality rehabilitation. Rehabilitation not only preserves buildings, but creates jobs in the local economy. The policies -- our policies should allow flexible standards so that existing and historic structures can be adapted to meet our communities housing needs.

The city of San Antonio supports the changes to the 2011 QAP requested by Mr. Fairbanks and Ms. Rickenbacker that would encourage historic preservation and facilitate the adaptive reuse of older and historic buildings in our urban core and turn them into vibrant affordable and mixed income residential options. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: I apologize for butchering up your name once again.

MS. WASIELEWSKI: No, it was all right.

MR. CONINE: That concludes the witness affirmation forms I have for the public comment period. Anybody else wishing to speak before the Board?

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes, sir?

MR. GERBER: I think before we move on to Item 1, Michael Willard with Habitat for Humanity is here to present something to the Board.

And, Michael, if you haven't filled out a witness affirmation, do so afterwards, but go ahead and make your comments and --

MR. WILLARD: Thank you very much.

My name is Michael Willard. I'm president and CEO of Austin Habitat for Humanity. I've got a presentation to make to the Board today. Austin Habitat participates with TDHCA on a number of programs, the Bootstrap Program, NSP Program, and the Down Payment Assistance Program. And because of our participation with the Board and the Department, we've been able to build two houses with the proceeds, or with the funding we received with the Bootstrap Program.

And so we dedicated these two houses on Saturday of this past week, and in that dedication we recognized the Department for their partnership with Austin Habitat, and we've got a plaque to present to the Board for recognition of our partnership and looking forward to continuing to work with the Department going forward to be able to provide more affordable housing here in Austin and central Texas.

MR. CONINE: Thank you very much. We are appreciative of that, and value the partnership we have with Habitat, not only in the Austin area, but in other cities around the state as well, so.

MR. WILLARD: And as president of Habitat for Humanity Texas, I would like to just thank you again for your partnership with our affiliates across the state. There are 80 Habitat affiliates in Texas and, you know, without your all's support we couldn't do the work that we're trying to do.

MR. CONINE: Thank you very much.

Let's give him a hand.

(General applause.)

MR. CONINE: We'll come down there and --

MR. WILLARD: All right.

MR. CONINE: -- do a photo op. How would that be?

MR. WILLARD: That would be great.

MR. GERBER: Get some of the Board members to join Michael and get the -- do a photo op real quick.

(Pause.)

MR. GERBER: Mr. Chairman, I should also mention that Homer Cabello, who heads up our Austin Colonia Initiatives where bootstrap is housed, and also Barney Holloway, who is head of our NSP Program, just do tremendous work, and that's where a lot of the partnership with Habitat lies. So we thank them and their teams for their efforts.

MR. CONINE: Okay. Any other public comments?

(No response.)

MR. CONINE: We'll close public comment and move to the consent agenda. Item Number 1, the rest of the Board see those items that are on our consent agenda, Items 1A through W it looks like. Any Board member wanting to pull a particular item?

Mr. Keig?

MR. KEIG: Not pull, but could Mr. Gerber give us the update on one --

MALE VOICE: The Arbor Oaks?

MR. KEIG: Arbor Oaks.

MALE VOICE: Yes.

MR. CONINE: Why don't we do -- why don't we pull Item D from the consent agenda and let's get the consent agenda passed, and then we'll go back to Item D --

MR. KEIG: Okay.

MR. CONINE: -- and pass it separately.

MR. KEIG: Yes, it was just an update he was going to give us.

MR. CONINE: All right. We're going to pull Item 1D. Anybody else have any else have anything else they'd like --

DR. MUÑOZ: 1J about the pilot program --

MR. CONINE: D and J --

DR. MUÑOZ: It's at 1J, Mike --

MR. GERBER: Okay.

DR. MUÑOZ: -- the pilot program where we might become administrators.

MR. GERBER: Okay.

MR. CONINE: Any other items from any Board members?

(No response.)

MR. CONINE: If not, I'll entertain a motion to approve the rest of the items on the consent agenda.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to approve the consent agenda with the exception of the two items --

MR. CONINE: 1D and 1J. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: The motion carries. Now, back to 1D. Mr. Irvine?

MR. IRVINE: Thank you, Mr. Chairman. My name is Tim Irvine, Chief of Staff and General Counsel. With respect to Arbor Oaks, this is a proposed form of agreed final order. We have the statutory ability to assess administrative penalties and we always go through an informal resolution process with potential recipients of administrative penalties, and that's what we did in this case, and it led to the negotiation of an agreed final order.

It provides for penalties to be really in two phases, one, some specific penalties to be paid up front, period, no matter what, and then if certain corrective actions have not been taken by October 31, there were additional penalties that would apply. That October 31 deadline has come and gone, and our Compliance and Asset Oversight Division has confirmed that not all items were corrected. They are still looking at doing a follow up physical inspection to see that the physical issues in the property are corrected.

So as that agreed order presently stands, if approved and implemented, all of the penalties provided for in that order would be effective and would be collectable.

The order also provides that if complete compliance is not achieved and all of the issues corrected by year end, it's deemed to be a breach of the order throwing open the possibility of initiating different additional actions to pursue, penalties and debarment, whatever the rights and remedies were available to the Department. So we stand to prejudice the Department's enforcement position in going ahead and approving this order.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Thank you. Can I get a motion to approve?

MR. KEIG: Move to approve the order.

MR. CONINE: Motion to approve Item 1D. 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 1J.

MR. GERBER: Mr. Chairman, Item 1J is an item dealing with the HOME Program. It's the recommendation that for the first time really in the HOME Program's history we'd like to set aside some funds for a pilot program to actually go and perform some of the HOME work in communities that have been historically difficult to serve. We have a very robust consultant community that provides a lot of support for our rural communities, which is where 95 percent of HOME Program dollars have to go.

But oftentimes it's still difficult for those communities to be successful and to get homes actually built, or to use it for home buyer assistance, or to use it for tenant-based rental assistance. HOME is a remarkably flexible program.

So this is an opportunity where we feel there may be some gaps in serving rural Texas that are our own HOME staff will ramp up to actually serve in the role as contract administrator, and it's an idea that Jeannie Arellano has been working on with her team for some time. It's going to take on additional -- I mean it's going to take on some additional responsibility, but hopefully meaning at the end of the day more owner-occupied rehab especially gets done in some of our hardest to serve communities.

DR. MUÑOZ: And I appreciate that -- Michael, I appreciate that, but, you know, I've also heard in the last year and a half about just the herculean demand on staff and all of the additional dollars that are coming through the agency, I just -- it seemed to me is this a line of work that we want to implicate ourselves in? And I appreciate it's a pilot, so --

MR. GERBER: It's a tough one. We've set aside $3 million and I think we want to see how it goes. You know, $3 million translates into 45 houses?

MS. ARELLANO: It depends on what activity --

MR. GERBER: Well, of course it depends on what activity that you're doing, owner-occupied rehab. It would be that number houses. I think we want to see what the work load would be and how the work flows would work. And frankly also work with some folks in our consulting community to see if we can -- to see if there's some additional synergies that we can get.

And we're looking at our own process as one of things that came up in our, you know, in our Sunset review is that, you know, we need to make our single family loan process, the HOME process, simpler. And so I think by actually doing some of that work, I think we're going to learn some lessons, I think we'll get valuable insight from those who have been doing it for a long time and see if we can overall make the program more user friendly in rural Texas.

MR. CONINE: I take it we're targeting rural counties that have not had previous HOME funding experience with the Department? Is that the target?

MS. ARELLANO: Jeannie Arellano, Director of the HOME Program. What we'd like to start out with is limited in scope, starting with home buyer assistance. We don't have a lot of consultants that actually provide home buyer assistance.

And we can create a lot of synergy working with some existing programs at the agency, Texas Home Ownership Division, and participating lenders that are already doing work in those programs. And, again, limiting it to non-participating jurisdictions and in areas that are close to --

MR. CONINE: Right.

MS. ARELLANO: -- headquarters so that we can have efficiencies in our work.

MR. CONINE: How many rural counties would you say we have in Texas that haven't touched the HOME Program just because they don't have administrators available to work on their particular issues?

MS. ARELLANO: It'd be difficult for me to make a guess at that.

MR. CONINE: Why don't you look that up and --

MS. ARELLANO: Okay.

MR. CONINE: -- let us know when you report back to us.

MS. ARELLANO: Okay.

MR. CONINE: I'd be curious to see. And I would, for one, if we're going to go through the effort, would, you know, would like to see it go into areas that have had difficulties for whatever reason, and it sounds like what the design of the program --

MS. ARELLANO: Exactly.

MR. CONINE: -- is.

MS. ARELLANO: Yes.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I'd like to speak in favor of the program in that traditionally across the years we've heard over and over and over not only for single family homeowners, but even how difficult it is to develop in rural counties across the state of Texas, and I think it's to the advantage of the Department to reach out to rural communities to improve all of our processes to provide housing for low income Texas. Income is very low in rural areas, and I'm strictly in favor of the pilot program.

MR. CONINE: Any other discussion?

DR. MUÑOZ: Just one question.

Jeannie, was this -- and Michael had indicated this is something you've been developing -- I'm just curious, was this something that was maybe recommended by the people rural communities, did they suggest that if you could provide greater direct support it would be beneficial, or just a conclusion you've reached over a period of time?

MS. ARELLANO: I think it's more a conclusion that we've reached over time. One of the areas that we really keep seeing this happen over and over again is in the area of disaster relief when we have a local disaster that occurs. A lot of times the county doesn't have the resources to actually try to administer the program and/or there's not actually a consultant that's available in the area to administer the program.

We field a lot of calls from individuals, and I'm talking local disasters like severe storms, tornados, flooding that may have hit an area, and there may only be one household that needs assistance there, and it's difficult because of the inefficiencies in a consultant trying to take on a contract to just serve one household. That's really where we've kind of seen it over time.

DR. MUÑOZ: Yes, but this is not something we've done before.

MS. ARELLANO: Correct.

DR. MUÑOZ: Okay.

MS. ARELLANO: And we will definitely report to the Board on how it's working and, again, try to step into it, you know, on a limited scope kind of basis.

MR. CONINE: Over what period of time do you think this will take?

MS. ARELLANO: The home buyer one we hope that we can get that off the ground and really getting some funding out the door in the next six months.

MR. CONINE: So when will we hear from you the next time on this subject?

MS. ARELLANO: When I have updated information, hopefully in two months.

MR. CONINE: You're sounding like a real politician.

(General laughter.)

MR. CONINE: Yes, Lowell.

MR. KEIG: We make a reference to potential expansion to contract for deed conversions. Do we also have something set up to try to address that issue that's been identified by the Sunset folks, aside from this?

MS. ARELLANO: Do you want to speak to that? Okay.

MS. BOSTON: Brooke Boston, Deputy Executive Director. We are looking into what we think the right solutions are for the contract for deed issue noted in the Sunset staff report. There's a couple of facets to it. You know, the first is that they asked that we look at an alternative funding source.

So the first step we're doing is do we really think the first funding source that we're using currently, HOME, is that the wrong funding source, and really what are the challenges. And if we are in a position going into this next biennium where we don't have a different funding source besides HOME, what can we do to make HOME work better.

Then the other alternative is looking at some of the statutory challenges to the way it's written right now. So whether we use HOME or another funding source, is it still the right solution to the problem that the communities are seeing.

Last week, Homer, Jeannie and I went to Harlingen and El Paso and did round tables with contract for deed providers who have used the program in the past, as well as who are planning on using it, or have an interest in it. And we had a really good work session with them on what they're seeing that works, what doesn't. So we're going to be summarizing that for some information and putting that together so that we can have more solid conversations, both with the Board as well as with legislative members as they look into making changes.

So today I don't have the exact solution for you, but we're definitely working on it, and it is in tandem with what Jeannie's working on.

MR. CONINE: Any other questions of anybody?

(no response.)

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

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move in favor of the staff's recommendation to implement the pilot program.

MR. CONINE: 1J. Right?

MS. RAY: Yes, 1J.

MR. CONINE: Is there a second?

DR. MUÑOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 2. Michael?

MR. GERBER: Mr. Chairman, before we go to Item 2, I'd like to ask if Sandy Donoho has anything she'd like to just highlight to the Board regarding the internal audit plan and the Audit Committee meeting --

MR. CONINE: Oh, okay.

MR. GERBER: -- from yesterday.

MR. CONINE: Yes, they did, didn't they.

Hello, Sandy.

MS. DONOHO: Mr. Conine, Board members, Mr. Gerber, I'm Sandy Donoho, Director of Internal Audit. Yesterday at the Audit Committee we talked about the draft internal audit plan, actually I guess you just approved it so it's no longer a draft. The annual internal audit plan is something that's required by the Texas Internal Auditing Act. It outlines the work that internal audit's going to perform in this fiscal year 2011.

The plan is based on an agency-wide risk assessment. It's a rather complex process, it takes a couple of months. We look at all the programs in the agency, we look at statutes, federal requirements, we spend a lot of time talking with management about what the priorities are for the agency as well as what the highest risk programs are. From that we develop our plan, we send it out for comment, and then we come up with the final plan.

On our plan this year we have two carry over audits from last year. One is an audit of the NSP Program and the other one is an audit of Information Technology Governance, which is the requirement of our audit standards. That project is almost finished and we'll have a report for you on that in the next week or two probably. The NSP audit is well under way.

The four new audits that we have on our plan this year cover our highest risk areas. Those are weatherization, disaster recovery, TCAP, and Exchange.

We're doing what we did last year, which is just target the areas that we think are highest risk and then during our gain an understanding and planning processes in the audit, we narrow that down to develop the objectives. We did it this way last year and it worked really well because in previous years we've targeted specific objectives for a project and then our programs are changing so fast and the agency's requirements are changing so fast that then we end up with objectives that don't really match what we're doing anymore, or the program moves to a different division, or something like that.

So this time -- and last year it worked well as well to target the areas and then we develop the objectives during the initial part of the audit and then send those out to make sure that everybody's okay with those.

We will reassess the plan pretty much continuously. If things change and we see that there's another high risk area, or somebody else comes and looks in depth at that program, one of our external auditors, then we might reconsider the plan and bring an amended plan to you all for approval.

We also have a number of special projects and other tasks on our plan, those are the ones below the line on the plan in your book, and those are either required by state law or by our auditing standards, so those are things that we pretty much have to do.

So that's the internal audit plan. Does anybody have any questions?

MR. CONINE: Any questions? Ms. Ray, would you like to comment seeing that you chaired the meeting yesterday?

MS. RAY: Mr. Chairman, I really -- comments really beyond what Ms. Donoho has communicated to us, but we went to a considerable amount of depth and one of the things that we asked them to do on the audit plan, because of the ARRA funding, the magnitude of the ARRA funding, to make that a priority and to step into that. And she'll keep us informed as we move along during the year.

But I think it's very comprehensive, she did a great job last year and we expect the same this year of our internal audit staff.

And I'd like to thank you, Ms. Donoho, and members of your staff who have served as well and kept us out of trouble and helped to improve our processes as we progress throughout the year.

MS. DONOHO: Thank you.

MR. CONINE: Are we fully staffed now in our audit department?

MS. DONOHO: I have one opening that we have hired someone for and they start December 1, and then we'll be fully staffed again.

MS. RAY: And Ms. Donoho has done a real good job in filling her vacancies and staying ahead of the program.

MR. CONINE: Yes, I hear some squealing from management, so that's good.

(General laughter.)

MR. CONINE: Always good when that happens.

Any other questions of Ms. Donoho?

(No response.)

MR. CONINE: We, again, appreciate all your efforts. You're doing a great job, and speaking for the rest of the Board, thank you for your service.

MS. DONOHO: Okay. Thank you.

MR. CONINE: Okay. Item 2 now?

MR. GERBER: Item 2 is the status on the implementation of ARRA and the use of funds, and Brooke Boston will walk us through the spreadsheet.

MS. BOSTON: Great. Hi, again. Brooke Boston.

MR. CONINE: Hello.

MS. BOSTON: This is in your books behind 2A, and we are ready for lots of audits.

(General laughter.)

MS. BOSTON: We actually really value --

MR. CONINE: You're going to get them.

MS. BOSTON: -- them, we actually value all the perspective that we get from Sandy and her team.

I'll just talk you through this real quickly and hit on a couple of highlights for the Weatherization Assistance Program. We have accessed this -- excuse me, accessed the second 50 percent of our funds. DOE will be -- the Department of Energy will be here next week for their quarterly monitoring visit, and we're looking forward to that. They're actually going to look at Travis County and Austin this time.

As of today essentially we now have a new number of units, which is 20,467, so it's gone up again. And then I would note that the 15th of this month is a benchmark for the subrecipients where they are expected to hit 40 percent of their production target and 40 percent of their expenditures. And we anticipate that those that don't will have a really tough scrutiny internally and may be subject to -- we may begin to start looking at some deobligation issues, partial or full, so that we can make sure the money is targeted for getting spent timely.

We have -- and on the weatherization program we have about 9-1/2 months left on their contracts, but we actually have closer to 16 months left on our contract with the Department of Energy. We gave ourselves a six-month cushion so that, you know, in anticipation that we may need to move money around to make sure we have some time to get it spent.

On Homelessness Prevention and --

MR. CONINE: Whoa, before you leave that subject --

MS. BOSTON: Sure.

MR. CONINE: -- did I not see some sort of bragging coming out of Washington, DC about the --

(General laughter.)

MS. BOSTON: You did.

MR. CONINE: Well, okay --

MS. BOSTON: We've hit our 30 percent --

MR. CONINE: -- are you going to articulate what they said?

MS. BOSTON: Sure. The Secretary gave us public kudos, gave us a media press event basically complimenting us on getting all of our units done. And from the time that that came out, I want to say at that time the press release referenced closer to maybe 15- or 16,000, so --

MR. CONINE: It was an end of September report, I think.

MS. BOSTON: Yes. Right. So we're doing well.

MR. CONINE: How many other states have accessed the second 50 percent of their money, would you know?

MS. BOSTON: More than half now. I had asked -- at the time that we got our approval, I had asked how many got theirs before us, and I want to say it was maybe 10 or 15 at the time. They couldn't give me a solid figure. I wanted to know that we were close to the front of the pack, so.

DR. MUÑOZ: But, Brooke, what are the amounts for those other states --

MS. BOSTON: No one has anything near -- yes. Texas was unique in that not only how much we got, but what an incremental increase that was because some other states, cold weather states, tended to already have large funding amounts, so they may have gotten several hundred million, but they were -- they got a lot before that. Ours was the only one in the whole country that just, you know, just multiplied exponentially, so. But I can get you that information, I know that was more anecdotal, that wasn't very specific.

DR. MUÑOZ: Yes, I think just 50 percent of much smaller states versus 50 percent of Texas was a much larger figure. It diminuates what you've been able to accomplish, if I'm not understanding the difference.

MR. GERBER: Well, there's --

MS. BOSTON: We've done a lot.

MR. GERBER: -- the differences are incredible with ARRA funds. I mean Tom Gouris was pointing out the other day that, you know, we're doing Round IV of our Exchange Program, that's $16 million. We'll talk about that in a little bit. But that one -- that $16 million program is bigger than 25 states.

MALE VOICE: Probably a dozen.

MR. GERBER: A dozen states. So it's a lot of -- it's amazing, the dollars we're talking about.

DR. MUÑOZ: No, Brooke, when you just take that number of 20,000-plus and you just say three people are in those homes, down in the Valley, of course that's not going to be three, but -- and I mean, you know, you're talking about 60-, 70-, 80,000 people, you know.

MS. BOSTON: Definitely, who are impacted --

DR. MUÑOZ: Right.

MS. BOSTON: -- by this, yes.

DR. MUÑOZ: Who are impacted. I mean that's a lot of Texans. I mean --

MS. BOSTON: Yes.

DR. MUÑOZ: -- that's every day, every day their lives are improved because of what you've done.

MS. BOSTON: Yes, and the savings the households are able to realize really let's them then move that money into some other more needed household expenses.

MS. RAY: Clothes.

MS. BOSTON: Some bills. Yes.

MR. CONINE: Any other questions? If not, we can go ahead. Sorry I interrupted.

MS. BOSTON: That's okay.

Homelessness Prevention and Rapid Re-Housing, we actually just got a letter from HUD in the last couple of weeks saying that we are on target to accomplish our goals, which I didn't know federal agencies gave you those, but that was exciting.

You know, that program we actually have three years and we are already at more than 50 percent of the way through, so that one we gave our subrecipients two-year contracts and we believe that they'll achieve that.

On the Community Services Block Grant Program, this is the one that has actually already been completed. The close-out period was September 30. They will have through the end of November and therefore December reporting for our purposes to show the final close out.

This is the program that we -- you know, it'll -- time will tell. We'll have to wait for the next reporting cycle, but this is the one we think will be at 99 percent, and the only entity who won't have spent will be the one who we have investigation ongoing with. So we expected that. So huge kudos to that network for achieving their goals.

On the Tax Credit Assistance Program, 41 loans have closed. Mr. Conine, you had asked that we change up the way this report gives you information so you could actually see what's closed, which I think was a good suggestion. This reflects that 77 percent of the funds have closed, and as of yesterday 31 percent of the funds have been drawn, so -- and our big target for that one is that by February 17 we need to be 75 percent expended. You know, Tom and Lisa McKinney [phonetic] and that team are working really closely on getting that done, and we believe we'll achieve that goal as well.

For Tax Credit Exchange, this is the one that we're coming back for activity on the very last portion of funds. Out of all of what we have, they have all executed written agreements and closed, so we just have that last portion awaiting activity, and we have drawn 179 million total.

Across all of the ARRA activities we have drawn 391 million, which represents a little over 33 percent.

And I would just note that right now, and I find this impressive, every Friday I get a report from our financial administration team of how much has been drawn in the week, and it breaks it out by each of the five programs, and since early September we are drawing between 10- and $20 million a week, every week.

And for an agency where most of our programs were between 5- and $40 million for the year, I think that's really significant and impressive, both not only for the program staff, but for financial administration in handling that for us and doing it with some very clean audits on their processes. So I just wanted to kind of give kudos to the financial administration team, and also for TCAP and Exchange in particular, not to shirk the other three, but they get talked about a lot.

And in Exchange, they're the vast majority of the weekly draws, the other programs tend to draw monthly, and so there's a lot of work going on there every week. Thanks.

MR. CONINE: Let me ask you about TCAP right quick. The written agreements executed for 52 awards as of November 1, does that obligate all of TCAP funds we have?

MS. BOSTON: It does not. We still have some funds outstanding, but I will let Tom --

MR. CONINE: Well, I don't have to listen to him, I'd rather listen to you.

(General laughter.)

MS. BOSTON: His answer will probably be more correct though, so.

MR. GOURIS: Tom Gouris, the Executive Director for Housing Programs.

MS. RAY: I like looking at you, Tom.

MR. GOURIS: Thank you.

(General laughter.)

MR. CONINE: You are in the minority.

(General laughter.)

MR. GOURIS: Yes, I don't know where to go from that.

(General laughter.)

MR. CONINE: It's a tough question. Sorry.

MR. GOURIS: There are a number of TCAP transactions that have not executed written agreements yet. We're still going through underwriting to get those wrapped up. There's one you'll hear later today that we're actually recommended a recision on, and they're appealing that, and we're moving forward with transactions we think can hit the 75 percent benchmark, or get us -- help us hit the 75 percent benchmark. So there are about, I'll say eight transactions that are on our waiting list, and we'll be able to pay maybe five at the most.

MR. CONINE: Are those written agreements, I'm going to use a bad word, being delayed being executed because of us, or because of the projects themselves --

MR. GOURIS: A little bit of both. There's some we're waiting on documentation and some we're waiting to wrap up some underwriting or get -- negotiate some terms.

MR. CONINE: Okay. And so when do you expect to have all the written agreements executed by?

MR. GOURIS: By the end of the year.

MR. CONINE: By the end of the year.

MR. GOURIS: Yes.

MR. CONINE: So in January if I ask you that question, you'll be 100 percent obligated.

MR. GOURIS: Or we'll be saying we need to return some funds because of X, Y, and Z.

MR. CONINE: Okay. Any other questions?

(No response.)

MR. CONINE: Thank you for that answer.

There's nothing to approve there. Right?

MR. GERBER: No, sir.

MR. CONINE: We can go on to Item 3, I guess.

MR. GERBER: Item 3 are appeals, and the first item is one multifamily programs appeals, Tuscany Place. Mr. Chairman and Board members, the application, 01115, Tuscany Place in Houston, was awarded and received a 2010 Housing Tax Credit commitment notice in the amount of $2 million.

The key to this appeal is that the applicant did not notify the Department during the application for due process that the development is located within extra territorial jurisdiction, or ETJ, of the city of Houston. Pursuant to the 2010 QAP, any development proposed to be located in a municipality or in a valid ETJ of a municipality, is ineligible for consideration of tax credits unless written support from the governing body of that municipality is provided. A determination of a development's location within a municipality's ETJ's boundaries is the applicant's responsibility prior to submitting an application to the Department.

Subsequent to the notification by the city of Houston that the subject application was, in fact, located within the ETJ boundaries of the city, staff issued a deficiency letter to the applicant requesting the required documentation in order to resolve the issue through the administrative deficiency process. In response, the applicant provided an appeal to the deficiency notice and requested that the notice be rescinded or that the requirement to obtain written approval from the city of Houston be waived.

The requirement stated in the QAP is based on statute and no waiver provision exists in statute and therefore staff does not believe that a waiver for this requirement is available. Staff recommends denial of the appeal and recision of the tax credits that were previously awarded to this application.

MR. CONINE: Okay. And I have multiple witness affirmation forms on this particular agenda item. And all these aren't marked where I can tell whether you're for or against it. So I have more than three people that want to speak, so we're limited to three folks unless somebody is against this particular project.

The city of Houston has representatives here in Robert Voelker, Barry Palmer and Robert Lopez. So there's either four for or there's three for and one against, or two and two, but anyway there's three speakers that can come up. And why don't we just start with Robert Voelker to begin with.

Let me ask the city of Houston, are you for or against this project?

MR. VOELKER: Against.

MR. CONINE: Okay. That solves my problem. Thank you.

Mr. Voelker, you got a haircut since I've seen you last.

MR. VOELKER: It's been a long time.

I've got some materials that are being handed out there. It's been a long time and I appreciate the opportunity to talk to you guys.

Good morning, Mr. Conine and Board. The applicant has asked that I speak to their fair housing concerns that have risen over this development and to address the opportunity that approving this application has for affirmatively promoting fair housing by diversifying the housing opportunities and the demographics in a very segregated region.

MR. CONINE: Let me also say he's got someone donating time, so he's got five minutes. Thank you.

Go ahead. Sorry.

MR. VOELKER: Thanks. I've provided you with a letter that outlines in detail these concerns and this opportunity which was provided to the agency a couple of weeks ago. As you're aware, there are basically two federal duties that all governmental agencies have when it comes to fair housing, notwithstanding any local or state laws, rules or regulations to the contrary, including the QAP.

First is to not discriminate either intentionally or in effect. And second, to affirmatively further fair housing, in other words, to affirmatively promote dispersed housing that will overcome patterns of segregation by acknowledging and overcoming the barriers to fair housing.

What are the obstacles that are in the path of providing affordable housing in Montgomery County? First, the county attempted to withdraw its support for the applicant's local governmental funding from Capital Area HFC after the project received an allocation of tax credits, and the Chamber of Commerce and the school district objected to the project. The county ultimately backed down from that attempt after we spent some time informing them of their fair housing obligations.

And after passing threshold, the applicant was informed that he needed to secure a waiver of the two times state average test from the city of Houston. And Barry Palmer will speak to that issue.

When the applicant appealed that determination, we were informed that the city of Houston had already orally indicated to TDHCA that it would not grant the waiver, before the city council had even formally considered the waiver.

It is clearly apparent that the not in my backyard pressures in Montgomery County had already influenced Houston's political and governmental thought process in requiring the applicant to secure the waiver as a precondition to its tax credits would allow these not in my backyard pressures to be determinative of whether affordable housing would ultimately be placed in Montgomery County.

In its consolidated plan presented to HUD, TDHCA has acknowledged that one of the key obstacles to affirmatively furthering fair housing is NIMBY pressures. Furthermore, the House committee that oversees TDHCA has stated that there are requirements in the QAP that allow NIMBY pressures to be determinative of tax credit allocations. And that in the Houston area this has resulted in an over-concentration of affordable housing in low income, high minority areas in violation of fair housing and in violation of TDHCA's duty to affirmatively further fair housing.

Standing in stark contrast to the vast majority of the Houston area is Montgomery County, which is one of the wealthiest and most segregated counties in the Houston metropolitan area, and which has disproportionately fewer affordable housing units on a per capita basis, significantly disproportionately fewer.

Thus Tuscany Place offers this Board a clear opportunity to affirmatively further fair housing. The two times state average rule was put in place so cities could address over-concentration of affordable housing. That was its purpose. But in this instance Montgomery County and the city of Houston are using that rule as a shield, as an obstacle to prevent dispersed affordable housing from coming into the county because of NIMBY pressures.

TDHCA should not do what it is obligated to do under federal law to overcome this barrier to fair housing and approve Tuscany Place and thus affirmatively further fair housing by dispersing affordable housing into a wealthy, low minority area in the Houston metropolitan area.

Thank you. I'll take any questions you --

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

MR. VOELKER: Thank you.

MR. CONINE: Barry Palmer? He's also got dedicated time, five minutes.

MR. PALMER: Good morning.

MR. CONINE: Good morning.

MR. PALMER: My name is Barry Palmer with Coats Rose, and I'm speaking on behalf of the Tuscany Place partnership. I have -- we're appealing staff's determination that the project must receive a city council resolution from the city of Houston approving the development due to the two times per capita requirement in the QAP.

I passed out for your review a handout that contains the language from the state statute regarding the two times per capita rule, as well as the language from the 2010 and 2011 QAP. As you'll note, the statute only requires a resolution in the event that the development is located in a municipality, or if outside a municipality, in a county that has more than twice the state average of credits.

In the case of this project, we are located outside the city limits of Houston, but we are within the ETJ of the city. If you turn to the language in the QAP, that language goes beyond the statutory requirement and says that you need a resolution if you're in the ETJ or in the county. But we interpret that to mean that you have to get a resolution if you're in the city, and the city has more than two times per capita or if you're in the ETJ and the ETJ has more than two times per capita, or if you're in the county and the county has more than two times per capita.

Here, the city has more than two times per capita, but the ETJ does not. And so if you look at the reference manual in the tax credit application, it says if you're in a city that has more than two times per capita, but you're not in the -- but you're in a county that doesn't, that you go by the county provision. And the county, Montgomery County, does not have more than two times per capita.

Keep in mind that if you're in the ETJ, you don't get to elect a city councilman, so there is no city councilman to go to to try and get a resolution passed.

Clearly the ETJ provision in the QAP is not required by statute and it's not in the 2011 QAP. So we would request that based on the fact that the statute does not require the resolution if you're in the ETJ, and the 2011 QAP does not require it, that the Board waive this requirement of 2010 and approve our appeal.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Robert Lopez?

MR. LOPEZ: Good morning, Chairman and fellow Board members. My name is Robert Lopez, I represent TDA201, it's the co-developer of the Tuscany Place. It's a 152 units in Montgomery County.

This $50 million tax credit project is obviously now in jeopardy of not going through. But I talk on behalf of more of the service part of this development. Tuscany, we believe, is a good project, will provide one-, two-, three-, four-bedroom luxury units. We will provide a business center there, fully furnished club house, energy efficient kitchen appliances, and many other residential services for the people that live there.

We have tried to work hard to meet all the guidelines and requirements and we do have support from many of the community there, the Rich Community Association, the Calvary Christian Fellowship, Rich Baptist Church, and many others.

At this point I would just like for you to consider to make this project happen. We have done some studies there and it showed that the impact economically will be a great success, about $7.5 million in local income and about 626,000 in taxes, and 73 local jobs. So we hope that you would reconsider this appeal and that you would let this project go through.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

MR. LOPEZ: Thank you.

MR. CONINE: Jim Noteware?

Yes, Dr. Muñoz?

DR. MUÑOZ: Before we hear from the others, I'd like to hear from staff and very specifically addressed to what some of what Mr. Kahn has introduced.

MR. IRVINE: Tim Irvine, General Counsel. First of all, staff was waiting to insert this at the appropriate time. We categorically disagree with the assertion that the obligation to affirmatively further fair housing is applicable to the low income housing tax credit program. As we read that statutory requirement, it has its genesis in the HUD programs, and the tax credit program is a completely different program.

With respect to the construction of 2306.6703 where this specific requirement finds its home, we have specified in the QAP that the appropriate body to give the required support and resolution is a city in the instance of an ETJ. So we have really two layers of complexity here. One is there's a statutory requirement that this issue be addressed, and the second issue is we -- this Board has spoken through the adoption of the current QAP that in this instance it's addressed by a resolution in support from the city.

The city has that --

DR. MUÑOZ: But what if there isn't that structure in this terrestrial jurisdiction where you can't elect a city council person to represent that area?

MR. IRVINE: Well, as for the possibilities, you know, they're out there. I mean we have -- we thought when we recommended and adopted that rule that this was an appropriate way to deal with it, since the city is generally the body with elected officials that oversees activity within that ETJ.

You know, if we want to get into a detailed discussion of the statute itself, I certainly would remind everybody that we are available to go into Executive Session under the attorney-client exemption to discuss that, and staff would like to brief the Board on the legal issues.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I recommend -- I move --

MR. CONINE: Oh, hang on, we've got one more witness affirmation form here before we do that.

One more question of staff while we've got staff up here. How long -- we've had the ETJ in the QAP for several years, this isn't a new requirement. Is that right? How many --

MR. GOURIS: It has been there -- this is Tom Gouris, Deputy Executive Director of Housing Programs. It has been in there for a while. I would note that one of the proposals for this year's QAP, the new 2011 QAP, is to remove that provision from this section. It's not in the -- it's how we operate today, but it's one of the proposals for the next year.

MR. CONINE: Okay. All right. Let's --

MR. KEIG: Can I just ask why?

MR. GOURIS: Because it's -- unless a developer tells us they're in an ETJ, it's almost impossible for us to verify it independent of individual contact with a city to find out. We require the applicant to tell us if they're in an ETJ. In this case they did not, so we didn't require them to initially get the letter.

MR. CONINE: You know, and ETJ is a way for a city to claim area outside the boundary of their city limits that they're going to annex, but they're just not quite there yet with all the public services and so forth. But they -- once they put a stake in the ground, so to speak, they look after what goes on in that particular part of the county, so I think that's why we, for years, have required -- had wanted anybody in an ETJ to respond to that particular city because they are going to have a hold -- get a hold of it fairly -- you know, some time in the future.

Let's listen to Jim Noteware.

FEMALE VOICE: Mr. Chairman.

MR. CONINE: Yes.

FEMALE VOICE: Also again, I wanted to yield time to Jim.

MR. CONINE: Yes.

FEMALE VOICE: Okay.

MR. CONINE: Got it.

FEMALE VOICE: Okay.

MR. CONINE: He has five minutes as well.

MR. NOTEWARE: Thank you very much, Chairman Conine, members of the Board. My name is Jim Noteware. I'm Director of the City of Houston's Housing Community Development. I'm relatively new in my role, and Mayor Parker's administration. I have met with Mr. Gerber on several occasions and our staff is in constant communication with the TDHCA staff.

I've come here to introduce myself to you and to comment on several items, including most especially initially the Tuscany situation. What I would like to do is read into the record a letter that I have prepared on behalf of Mayor Parker and the city of Houston.

PC201, Inc., the sponsor of Tuscany Place, was issued a tax credit award in July 2010, but a deficiency notice was issued in September of 2010 when it came to the attention of TDHCA that the proposed site is in the ETJ of the city of Houston. The city understands that since a letter of approval is required, no letter of approval is de facto a rejection. However, we feel it important to explain why the city does not support this project.

Number one, the city's position does not arise from any unlawful motivation with respect to fair housing or NIMBY-ism. It is based on legitimate concerns for direction of the growth of the city. Number two, the city has supported several affordable projects in Kingwood. Kingwood Senior Village is a 193-unit low income housing tax credit senior citizen multifamily property opened December 2007 with the city's support. Two other properties, a first of its kind permanent supportive housing property for developmentally disabled adults and a senior housing campus with a complement of affordable units are in various stages of the development pipeline.

DR. MUÑOZ: Can I ask a question?

MR. NOTEWARE: Yes, sir.

DR. MUÑOZ: Where is Kingwood?

MR. NOTEWARE: Kingwood is --

DR. MUÑOZ: In relation to --

MR. NOTEWARE: -- the northern most part of the city of Houston. It was developed as a master planned community approximately 30 years ago and annexed into the city of Houston approximately 12 years ago during --

DR. MUÑOZ: But not in Montgomery, not in that proximity?

MR. NOTEWARE: Some of Kingwood is in Montgomery County. The city of Houston spans not only Harris County, but reaches into Montgomery County, as well as Fort Bend County. I'm going to be speaking to you later today about the QAP and the ETJ issue as well.

Number three, the process of getting the city's approval was not followed. The developer has claimed that TDHCA's published reference materials were unclear, that the two times rule should be invoked, yet the developer did know that the property was in Houston's ETJ.

In an email from Nancy Shephard to the then Assistant Director's assistant dated February 19, 2010, there was a request that the property be brought to city council for approval. We have no record of a response in our files. The developer proceeded without our support and approached Montgomery County for support of the tax credit award.

Number four, the property is located in Kingwood, in the ETJ of Houston adjacent to the incorporated areas of Houston on the east and the west, on North Park Drive, a major east-west access into Kingwood. The city has serious concerns that the additional traffic generated by this apartment property will exacerbate an already difficult traffic situation.

Number five, the city has learned that the next project in line to receive low income housing tax credits is an affordable senior citizen housing project in the West Chase area of Houston, and area that presently has no affordable housing. Construction of this property would contribute to the city's desire to affirmatively promote fair housing. The city has worked with the developer, NRP, on several other developments and has the utmost respect for them and for their expertise and experience as affordable housing tax credit developers.

However, in this case, the city's rights to direct its growth in the ETJ were violated. If the process had been followed, the developer could have saved substantial time and money in not proceeding with a development that would not have been supported for the reasons listed above.

In Mr. Gerber's rejection of the appeal, he has stated, "It is questionable as to whether the TDHCA Board can waive this requirement, given that it is derived from state statute." The city of Houston takes its responsibilities to its citizens very seriously, and believes that the TDHCA Board should not waive this requirement. Thank you for your serious consideration of this matter, myself and Annise Parker, Mayor of Houston.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Okay. Thank you very much for your testimony.

MR. NOTEWARE: Thank you, sir.

MR. CONINE: We will take a five minute break now for an Executive Session. We probably will go over to Room 20, Room 20 right over there so that we can listen to our counsel relative to any legal issues on this item. We'll be back in about 10 minutes.

MR. GERBER: On this date, November 10, 2010, at a regular meeting of the governing board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned into a closed Executive Session as evidenced by an opening announcement by the presiding officer of the Board to begin Executive Session.

Today, November 10, 2010 at 10:17 a.m. the Board will go into Executive Session to discuss items related to Item 3A, Appeal, Multifamily Program project, Tuscany Place, and legal issues concerning that matter.

(Whereupon, a recess was taken for the Board to meet in Executive Session.)

MR. GERBER: Mr. Chairman, the Board has completed its Executive Session of the TDHCA governing board on November 10, 2010 at 10:43 a.m.

MR. CONINE: And for planning purposes, we will be taking another Executive Session at the lunch break, and it'll be rather long based on our typical standard -- I'll count on an hour and a half or so, just so you can plan for that.

Okay. Back to Item 3A. Any other testimony -- and other questions of Board members, or do we want to get any other testimony?

(No response.)

MR. CONINE: Then I'd entertain a motion. There's one more comment from --

MR. IRVINE: Yes, to answer questions.

DR. MUÑOZ: Do you have any final thoughts?

MR. IRVINE: Well, my summary final thoughts, I guess, would be that, first of all, the urge to issues about affirmatively furthering fair housing, again, I would reiterate those have their genesis in the Fair Housing Act and applies specifically to the Secretary of HUD and the administration of HUD programs, not to the administration of low income housing tax credits which are not generally deemed to be federal funds.

Aside from that, I think it really comes down to an issue of statutory explication and construction and consistency. We have historically taken the position that a municipality, which is referenced in 2306.6703 where this requirement exists, includes not just the municipality itself, but it's extra territorial jurisdiction, and staff recommends denial on that basis.

MR. KEIG: And that's based upon case law or other administrative precedent?

MR. IRVINE: It's certainly based primarily from this Board and this staff's perspective on the -- on this Board's own rule in the QAP defining these requirements which are generally believed to be consistent with the local government code and -- yes, I have not specifically gone and done extensive research of that issue, but it has consistency been this Board's position.

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

(No response.)

MR. CONINE: Then I'll entertain a motion.

MS. BINGHAM ESCAREÑO: Mr. Chair.

MR. CONINE: Yes, Ms. Bingham?

MS. BINGHAM ESCAREÑO: I'll move staff's recommendation to deny the appeal of Tuscany --

MR. CONINE: Motion to deny the appeal. 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: The motion carries. Item 3B.

MR. GERBER: Mr. Chairman, Item 3B is a tax credit assistance program appeal. The residence is Weatherford. Tom Gouris will present that.

MR. GOURIS: Tom Gouris, Deputy Executive Director for Housing Programs. The residence is Weatherford; it's a 2006 bond transaction. It was locally financed with local bonds and tax credits. It was eligible for TCAP and applied for TCAP and was awarded a TCAP award last year.

The information in your book includes the time lines reflecting a myriad of issues that have been -- that we've been working on with this transaction. We've struggled to try to keep this transaction moving from the beginning. They have not spent -- it's new construction so they have not spent a whole lot of time on the construction yet because they haven't closed.

As we're getting closer to closing, the -- we were made aware of a material non-compliance issue and it had been more than six months since the last review of their material non-compliance. The material non-compliance issue was with their general partner who had relationship in another transaction. That situation is being addressed now, but has not been resolved.

At the same time, we are aware of another transaction that we've been given notice that it was posted for foreclosure the last two months. That foreclosure has been delayed, but we don't -- we are not -- at this time we believe that the overall situation in that transaction has not been resolved. And that transaction was -- the first one was a residence at De Cordova, the second was regarding to Maybank, the foreclosure issue.

The bottom line is that we're really concerned about them being able to get to the 75 percent completion mark, and we believe that moving these funds to a transaction that can utilize the funds quicker would be appropriate at this time given the fact that they still are in material non-compliance.

MR. CONINE: Okay. We have several witnesses signed up. The first one is Chad Daffer, I guess? Or you're going to speak first, obviously.

MS. BAST: Yes.

MR. CONINE: Cynthia Bast is going to speak first, and she's got time donated.

MS. BAST: Good morning.

MR. CONINE: Good morning.

MS. BAST: Cynthia Bast of Locke, Lord, Bissell & Liddell. I'm here today representing America First Tax Exempt Investors with respect to the Residences at Weatherford. This development is proposed 76 units for the elderly in Weatherford.

As you heard, this was originally contemplated in 2006 as a bond 4 percent tax credit deal. At that time the parties involved were a for-profit developer, a non-profit general partner, and a tax credit syndicator. Our client, America First, purchased the bonds. Our client put $4.7 million into escrow with Wells Fargo Bank, the bond trustee, and the team did commence construction of the project.

Subsequently, the tax credit syndicator decided to withdraw from this transaction and remove the developer. And, in fact, specifically requested that our client, as the bond holder, foreclose upon the project. So our client was left with no choice and did foreclose upon the project, and that was the first decision point. As you know, foreclosure allows a lender to remove the affordability restrictions.

But our client chose to retain those affordability restrictions and try to move forward honoring that original obligation for this project. So it created a new partnership, keeping the non-profit in the deal, and tried to find other sources of financing to replace that tax credit equity that had been lost. HOME funds and TCAP funds were identified, applied for, and awarded. The owner had submitted all of the due diligence for TCAP and HOME. I have prepared the TCAP documents, they have passed the first level of review at TDHCA, and are in the legal division at TDHCA.

We were actually planning on closing around September 30. However, as Mr. Gouris indicated, on September 27 we were advised that there was a material non-compliance issue with respect to the non-profit general partner on another deal in that it had not filed its LURA on that deal.

So we convened a conference call with TDHCA. I worked with TDHCA and the non-profit to prepare the LURA; I've submitted the LURA, it's executed. I was advised on October 18 that it was being sent to the legal division at TDHCA for final review and that that review would usually take about a week. I don't have it back yet from TDHCA signed, but am prepared to have it recorded in the real property records as soon as I get it back.

So with the submission of the LURA we were hopeful that Residences at Weatherford could proceed with its TCAP and HOME financing. But at that point, staff denied the appeal to proceed, expressing concern, as you heard from Mr. Gouris, that the project would not be able to draw 75 percent of its TCAP funds by January 14, 2011.

So this put the deal in another holding pattern until this meeting, which certainly doesn't help the construction schedule. But our purpose here today is to provide you with the comfort that this project can proceed quickly and meet the TDHCA deadlines.

I've given you a packet to share with you some information. Walking you through that, the TCAP award is approximately $3.6 million. So 75 percent of those funds would be $2.7 million approximately. As of today, 1.4 million has already been spent and would be eligible to be drawn and is verified on the contractor's report. So construction halted when the property was foreclosed, but you can see that they had already performed certain on-site and off-site work.

If this appeal is granted, the -- our client is prepared to drive to Weatherford and pick up the building permits this week, so that's another $300,000. So all we have left to spend by January 14, 2011 is essentially about $950,000. That's all. The contractor's schedule that we have prepared shows that that can be done by mid-December if we can just have this appeal granted and close this deal.

Moreover, those funds that were deposited with Wells Fargo Bank back in 2006, they're still there. They are available capital that will allow the owner to proceed quickly to commence construction. The contractor has approximately 25 subcontractors committed, and you're going to hear from the construction superintendent, who is not related to the owner in any way, to talk about their ability to get this done.

In conclusion, Residences at Weatherford is exactly the kind of project that TCAP was created to support. It's not just shovel ready; the dirt has been broken. We have $2 million that have been expended on this project already. It will create 76 new units, impact 200 jobs, with 85 percent of those jobs coming from local labor sources.

If these TCAP funds -- if this appeal is not granted and these TCAP funds are not awarded to Residences at Weatherford, we understand that the funds will go to the Round IV TCAP cycle, which is for deals that already have TCAP funding, or are completed. So awarding those funds to one of those deals will not get any new units created, it will not create any jobs. This deal will. Residences at Weatherford needs your support to grant this appeal and allow it to move forward with the development. Thank you.

MR. CONINE: Any questions --

DR. MUÑOZ: So the non-compliance had to do with the LURA related to the non-profit for another deal?

MS. BAST: Yes.

DR. MUÑOZ: Which has now been exercised and is at legal and you're waiting for --

MS. BAST: We have prepared the LURA, it has been signed by the non-profit owner, it has been signed by the lien holders, it's awaiting TDHCA signature.

DR. MUÑOZ: Okay.

MS. RAY: It is in TDHCA's hands?

MS. BAST: Yes, ma'am.

DR. MUÑOZ: Okay.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Chad Daffer?

MR. DAFFER: Yes, sir. Chairman, Board, thank you. My name is Chad Daffer, I'm the fund manager at America First Tax Exempt Investors. I'm the darn guy that bought the bonds. I agree with Mr. Gouris, we inherited a number of challenges, a number of partners that we may have not otherwise inherited.

We're here to try and get the project completed.

We're committed to -- our business model is for buying bonds, and in order to do that we have to preserve affordability. And so not only this project, but many other projects in the state, we've funded the acquisition and rehab or new construction of many affordable units.

And we're confident we can manage this fund off a real estate platform. We've been involved for over 20 years in developing all kinds of multifamily housing, student, senior affordable in 38 of the lower 48 states, and invested over a billion dollars in just affordable properties.

So we understand this product, we understand what it takes to get it completed. We're very thankful for the staff at TDHCA for helping us trying to get some of these things corrected. But we're convinced that we can perform. We inherited these challenges, and we're here to commit to fixing them and delivering on time, and on making the time schedule that we've shared with you folks. I'd like to answer any questions you might have.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Jim Funderburt?

MR. FUNDERBURT: Mr. Chairman, Board, I'm Jim Funderburt with CJB Construction. I'm project superintendent. I've been on the project since its onset back in 2007, I think one of the first programs. I've got myself basically ready to build a project, meeting the deadlines and scope of work is no issue with us. Ninety-eight percent of all my materials, labor come from local districts or within the state of Texas. So I ask for our approval of this project and let's get it finished. And I've already broke ground, got a lot of the site work done, all I've got to do is finish. Thank you.

MR. CONINE: Any questions of the witness?

DR. MUÑOZ: Yes, so this -- you don't have any trouble with reaching this 900,000, if everything's counted, and reaching this January 11 deadline of expenditures of 75 percent of funds and --

MR. FUNDERBURT: No, sir, not of those funds, no, sir.

DR. MUÑOZ: We wouldn't see you here in the spring trying to explain why that wasn't done?

MR. FUNDERBURT: No, sir. You'll see me in the spring telling me to go get people in.

(General laughter.)

DR. MUÑOZ: Touché.

MR. CONINE: Ms. Bast alluded to $330,000 worth of building permits.

MR. FUNDERBURT: Yes, sir.

MR. CONINE: That seems a little high for a town like Weatherford.

MALE VOICE: That's what we thought.

(General laughter.)

MR. FUNDERBURT: It's based on their growth pattern, and they're experiencing quite a growth in the Porter County-Weatherford city.

MR. CONINE: Is there some impact fees rolled in there too or something? What's going on there?

MR. FUNDERBURT: No, sir, that was strictly the building permit fees.

MR. CONINE: Wow. Okay. Any other questions?

(No response.)

MS. RAY: Mr. Chairman.

MR. CONINE: I've got one more witness.

MS. RAY: I'm sorry.

MR. CONINE: That is --

MS. RAY: I'm sorry.

(General laughter.)

MR. CONINE: Granger MacDonald, who has time allocated.

MR. MacDONALD: Thank you, Mr. Chairman. Ronald Reagan used to say that 11th Commandment was Thou shalt not speak ill of another Republican. I've always thought that the 12th Commandment should be that Thou shalt not speak ill of another developer. However, in this instance I cannot sit silent and ask you to support the staff's recommendation.

The history of this project is one of failure, it's a rural 76-unit bond deal, and frankly rural bond deals are tough. There's been six in this state, this one and five others. Of the other five, I've done four of them and none of them this small, and they're all very tough to do.

At 76 units, this deal would never have made sense in a long term successful project. The economies of scale are just too small. This project is an '06 deal, and the only -- because it closed in early '07 isn't even eligible for TCAP, the close and questionable call. This means the developer's been trying for over four years and have failed to get this project underway.

In looking at the reasons for the staff determination of the application, had there only been the one issue of the LURA, I would understand the need for the appeal and would support the motion. But the LURA still needs and amendment in the reduction in the number of tax credit units to comply and they adequately reflect the ongoing operations of one of the outfits of the properties.

Additionally, the applicant is obviously having financial issues with another property in Maybank, which has been under scrutiny of the staff, and I do not believe that this would be sufficient reason for termination.

That brings us to the construction schedule by the owner and the contractor which I just don't believe can be met. In all due respect to Ms. Bast, she's working with the data provided to her by her client, and I don't see this schedule being realistic. The construction schedule anticipates work beginning tomorrow morning to accommodate the federal guideline of having 75 percent of the funds the end of September -- by February 16.

Since the deal is yet to close, if the work does begin tomorrow, there will be an ensuing mess to figure out the consequences of mechanic liens which will occur. But assuming that hurdle can be addressed, there's still too much work to be done prior to the deadline. I have seen the site and there is no major dirt work other than clearing of the site to date. And as they've said, they haven't even gotten their building permits.

That means the contractor's schedule listed would have to his site work, including the moving of 70,000 yards of material, building his pads, form them, plumb them, put the steel in, pour concrete slabs, finish his utilities both on-site, off-site, install the utility service to each building, install all fire lines and plugs, build two detention ponds, pace and grade all the roads, pour concrete for the roads, and every conceivable building material on the site be put in a bonded warehouse by January 14.

While this might be doable if the contractor worked his crews 24/7 with lights, et cetera, it cannot be done because -- and considered in the cost consideration, because you'd have to have three complete crews. Based on the fact that TCAP funds are being used, this must follow the Davis-Bacon wage price controls and the work overtime requirements.

This schedule does not contemplate delays for rain or the four largest holidays of the construction business: deer season --

(General laughter.)

MR. MacDONALD: -- Thanksgiving, Christmas, and New Years, nor any of the other delays generated by inspectors and inspections, and small town inspectors are notoriously slow. It does not contemplate the fact that the roads which are being poured must remain traffic free to satisfy structural engineering requirements of the concrete for as many as 14 and up to 28 days.

Additionally, in Ms. Bast's letter requesting the appeal, it states if this project is not reinstated, the community of Weatherford will not have a chance at affordable housing. I'm here to tell you that that's not the case. We anticipate our company starting construction on 80 units of affordable senior housing in January, and the only reason we haven't closed yet is because of the environmental closing requirements for the state in connection with the HOME funds loan.

Additionally, Ms. Bast states it's a better use of the TCAP funds presumably than the Round IV of the TCAP program because this will create new units, which was the purpose of the ARRA funds. I must submit to you, since a large portion of this funding is going to credit replacement, it will not be recycled into the housing over and over again as the loan replacement funds will be, and therefore create less new units in the overall future for the state of Texas.

While I appreciate the valiant efforts to keep this deal alive, there are just some deals that you must let go. This deal has had too many false starts. If this owner wants to save this deal, they should make an application for a 9 percent credit in a 9 percent credit round and deliver a financially sound project to the program.

There's just too much risk of failure for the agency to continue with this deal. Another failure by this owner would mean that these funds would be lost to the state of Texas forever, and while I'm sure this doesn't matter a lot to an out-of-state developer, it does to this Texan. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Okay. Questions? Dr. Muñoz?

DR. MUÑOZ: I had asked a question about whether or not this could be achieved by that spring -- February date, I was assured it would be a minute ago, and now I've heard a cavalcade of impossibilities. Anybody from your side like to respond?

MS. BAST: Well, I think that there may be some misunderstanding of this contractor's schedule in that if you look at this contractor's schedule, this is showing percentage completion of the entire project. So this is showing 78 percent complete by January 14, 2011. We don't have to complete 75 percent of the project by that date. All we have to do is expend 75 percent of the TCAP funds. That's very different. We only have 3.8 million of TCAP funds --

DR. MUÑOZ: Okay.

MS. BAST: -- while we have some HOME funds and we have the 4.7 million of bond funds.

DR. MUÑOZ: Let me pause you there. Is that right?

MR. GOURIS: Tom Gouris, Deputy Executive Director for Housing Programs. Technically it is right, it's right because we made a modification to the plan to allow transactions so we can meet -- so that overall as an agency we can meet the 75 percent test to allow folks to jump ahead on their proportionate draws. The contracts and the policy of the Department was that you can draw 25 percent when you're 25 percent complete, you can draw 50 percent when you're 50 percent complete.

Late in the summer we realized we may have some difficulty and so we added a provision -- asked you all to approve a provision that would allow the 75 percent draw to be done out of step with the proportionate construction completion, though we are still encouraging everyone to try to get as far along as possible.

DR. MUÑOZ: All right. Okay.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I have a question for Mr. Gouris.

Should this appeal be denied and the TCAP funds that are already allocated to this project are available for redistribution to other developers and contract -- well, developers out there, who stands to profit by that redistribution? Would it be within the same area in Weatherford, or would it be -- would those funds go someplace else?

MR. GOURIS: They would go someplace else.

MS. RAY: But not restricted to that particular region?

MR. GOURIS: No, ma'am.

MS. RAY: Okay. Thank you.

MR. KEIG: Is there any other date other than the January 14 date that's critical here?

FEMALE VOICE: Expending 100 percent.

MR. GOURIS: Yes, the 100 percent by the end of next year is critical. The dates in the contract, you know, technically are critical, the 25 percent draw is 25 percent complete. Our concern, not so much for the date but for the method of likely getting -- if they were to get -- go forward and if they're able to meet it, they're going to have to store a bunch of materials, and we're very concerned about that being the expenditure of TCAP funds, a significant portion of our funds would be funding that --

MR. CONINE: Have you seen the --

MS. BAST: And I don't think that's the case. I mean if you look at the contractor's schedule, we're spending

950,000 by middle of January, we're showing of that, you know, we've got mobilization, insurance bond, installation of a box culvert, regrading the roads and the pads. So there may be some stored materials, but I don't think that that would be the dominant amount of the budget based on this schedule. And stored materials are permitted as an expenditure and commonly done to meet 10 percent tests in tax credits, 30 percent tests in exchanges, and other kinds of deadlines.

MR. GOURIS: Yes, and we've had lots of schedules.

MR. CONINE: If they don't meet the January 14 date, what happens?

DR. MUÑOZ: Do we lose those?

MR. GOURIS: It's the penalty side of the Department. If we don't meet the -- it's actually a February date, if we don't hit the 75 percent mark overall, we lose some portion of our funds. And that's what we're trying to prevent. It's going to be very close and this transaction won't -- you know, gives us grave concern about meeting that overall mark. So we would lose some funds, some of the availability to -- and any transaction that didn't meet the 75 percent test would be the transaction that we'd remove the funds from.

MR. CONINE: Well, let me see if I can rephrase that. How much are they getting here of TCAP total funds?

MR. GOURIS: Is it 2.7?

MS. BAST: $3,686,083.

MR. CONINE: All right. If they miss the mark, then the Department's got to come up with three million six to send back to --

MR. GOURIS: The Department won't be able to draw those funds, some percentage of what we miss overall. And we will go back to those who didn't meet the 75 percent mark for us and take it from there.

MR. CONINE: We can't get it back from these guys? I mean --

MR. GOURIS: They won't --

MR. CONINE: -- it's like being half pregnant, I mean it just doesn't exist.

(General laughter.)

MR. GOURIS: Well, they won't have met their 75 percent test and therefore we believe we would be able to not fund any more of their transaction.

MR. CONINE: Now you really got a mess on your hands.

MR. GOURIS: Yes, for sure. It's not a situation we want -- we want to avoid that at all costs, get any of it back.

MR. CONINE: And, Ms. Bast, what's wrong with the idea that was put forth about reapplying for a 9 percent? Is it just the certainty versus the uncertainty?

MR. DAFFER: That's an option. We got approval on this in March.

MR. CONINE: Come on up to the microphone, if you could, because we're on tape and --

MR. DAFFER: This is Chad Daffer. That's definitely an option, sir. We got approval on this in March and was working towards closing documents in September.

MR. CONINE: Right.

MR. DAFFER: And we got a termination notice on Sunday as we were working on closing documents. So we've not evaluated any other options than what we've gotten from you folks here. We thought we were moving towards getting this thing done, we weren't --

MR. CONINE: But that was generated because I guess --

MR. DAFFER: Things outside of our control.

MR. CONINE: -- the general partner that you picked to step in had issues somewhere else.

MR. DAFFER: Exactly. Things all outside of our control. We're not a victim here at all, we just want to get this darn thing built. We got Cynthia to interface with staff so we could make sure we're getting on the right -- went down the right paths. We're obviously not from Texas as the other gentleman very clearly stated to us, but --

MR. CONINE: Well, and I have --

MR. DAFFER: -- we need to have local folks helping us though, and I think Cynthia's done a great job. The staff's done a great job to try and --

MR. CONINE: I have complete empathy for where you are because you get money out --

MR. DAFFER: Yes.

MR. CONINE: -- and it's hard to figure it out. On the other hand, there's a repercussion here that seems to be an exposure to the Department that there might be a better way to solve the problem.

Mr. MacDonald, did you want to follow up with some comments?

MR. MacDONALD: I too empathize with their position. We've all been in that position, and I think this -- that you may be hitting on something, Mr. Chairman. I would like to ask for a forward commitment on behalf of these people --

(General laughter.)

MR. MacDONALD: -- as soon as they make their application. I mean something needs to happen, but I think the risk to the Department's just too great on the TCAP program.

MR. CONINE: All right. Okay. Any other questions of the witnesses?

MR. DAFFER: You have that risk on -- I don't know I'm stating the obvious, I'm sorry --

MR. CONINE: Right. I mean there's a risk when we --

MR. DAFFER: With all of them.

MR. CONINE: -- go to do something else with the money. If the Round IV TCAP is going into existing projects, then that risk is pretty much mitigated.

MR. GOURIS: I have one more thing.

MR. CONINE: Yes, sir.

MR. GOURIS: If the Board chooses to go down the road of agreeing to accept the appeal, deny staff's recommendation, the reinstatement of an application has some compliance rules that have to be followed and the Board has identified four considerations that they have to -- you'll have to recognize when you make such a reinstatement.

And I could read those for you if you want, but they are that, one, it's in the best interest of the Department the state proceed with the award; two, the award will not present undue increased program or financial risks to the

Department or state; three, the applicant is not acting in bad faith; and four, the applicant has taken reasonable measures within its power to remedy the cause for the termination.

MR. CONINE: Can I ask one more fact question? The document you gave us says that the on-site and off-site water and sewer lines, storm drains and all that stuff's in, and I didn't hear Mr. MacDonald say that he saw them out there, at least evidence of them. Can somebody state whether those lines are in or not in?

MS. BAST: If you look at -- and I'll have Jim also address this -- if you look at Item B in your package, this was an inspection report, this was actually the 18th construction inspection report done in December 2008 --

MS. RAY: 10B.

MS. BAST: -- when they were under construction, and if you look at the gray box, it says, Sewer and water main construction is nearly complete, storm drain construction is complete.

MR. FUNDERBURT: That's right.

MS. BAST: Is that the most recent construction inspection?

MR. FUNDERBURT: Yes, ma'am. All the major dirt and everything has been moved, the site has been graded, I need to go in -- I'm sorry, Jim Funderburt -- I need to go back and regrade the site and get any activity of the, you know, minor erosion. I'm ready to put my box culvert in, a TxDOT designed bridge culvert --

MR. CONINE: Are the fire hydrants in?

MR. FUNDERBURT: -- my fire hydrants are in. My potable water's in, my fire line's in, my sewer's in. I'm ready to go. I'm ready to build. Put the pads on the ground, I've got post-tension design, I've got post-tension slab plans.

MR. CONINE: I'm familiar with that.

MR. FUNDERBURT: I think Mr. MacDonald is incorrect in some of his statements there of the --

MR. CONINE: Okay. Any other --

MR. FUNDERBURT: -- status of the project.

MR. CONINE: Any other questions of the witnesses?

(No response.)

MR. CONINE: If not, I'll entertain a motion on this Item 3B.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I believe that to grant the appeal is the best interest of the state, that there's no undue risk to the state to grant the appeal. I believe that the developer and contractor is not operating in bad faith.

And what was that fourth things, Mr. Gouris?

MALE VOICE: Taking reasonable actions to remedy.

MR. GOURIS: They're taking reasonable actions to remedy the situation.

MS. RAY: And I think they're taking extraordinary actions to remedy the situation. I therefore grant -- I therefore move to grant to appeal.

MR. CONINE: There's a motion to grant the appeal. Do I hear a second?

DR. MUÑOZ: Second.

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

(No response.)

MR. CONINE: Now I personally think number two is a risk -- that we have a risk to the Department and would take issue with the four that you laid out.

MR. GANN: I second that motion.

MR. CONINE: Well, can't second that one.

MR. GAUNTT: Well --

(General laughter.)

MR. CONINE: Not quite yet. We have a motion to approve the appeal on the table. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(A chorus of nays.)

MR. CONINE: One, two, three. So we have tie.

MS. RAY: What does that mean, Mr. Chairman?

MR. CONINE: It means it didn't pass based on my -- the motion I guess fails for not getting the majority.

Is that correct, Counselor?

MR. IRVINE: Because there's a judicial action before the Board, you have to make a decision.

(General laughter.)

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I wish to speak in favor of granting the appeal in that, not necessarily on behalf of the developer, but most -- more importantly on behalf of the 76 senior citizens in a small community in the city of Weatherford that will be negatively impacted if we do not grant this appeal. The primary basis for the developer being in this position, as we have seen in other actions, was not necessarily their fault, it was based on another party that had a problem with another development, and we've had this situation in the past. So I therefore reiterate my position to be in favor of granting the appeal.

DR. MUÑOZ: Yes, let me chime in and try to dislodge any of my colleagues from their position.

MR. IRVINE: If I might just interject first from a parliamentary point of view, that motion has failed, so there is no motion on the table to discuss.

MR. CONINE: There is no motion on the table currently. But the discussion will go forward.

DR. MUÑOZ: All right. You know, as I understand this case, the developer has tried to retain the affordability dimension and accessibility dimension of this project, and there's a certain amount of risk in any of these projects related to any kinds of funding that we provide that are a pass through, through the agency.

But we have accomplished people of significant experience, over a billion dollars of developing experience across the country, and we have a construction foreman here indicating that everything will be done in order to effect these projects and they have them underway and from what I understand, Tom recognizes that they will at least obligate the 75 percent of the funding, obligate -- encumber by the deadline, the spring deadline.

You know, that, to me, represents a fairly defensible project. Certainly as defensible as many that we have to entertain.

MR. CONINE: You know, my particular viewpoint is that I've been here, done that before personally, and there is just too many other factors like weather in the winter that you just can't factor in, and for the Department to take that kind of risk of having to give back ARRA funds, and the publicity associated with having to give those back, is none that -- is not a particular exposure I'd like to see the Department take, especially if there are other alternatives available to this particular applicant such as the 9 percent credit round this year, and other things, so.

DR. MUÑOZ: Is there some sort of action, Mr. Chairman, that we might take to explore some alternative consideration -- methodology?

MR. CONINE: I don't know that we have any -- this is -- I mean this -- not at this at time, but, you know, I certainly have a memory and can remember certain projects as they come through, and this one, you know, quite frankly is snake bit, or has been snake bit obviously. It's been around for four years and hasn't had a chance to get off the ground.

And if bond deals are tough to do to begin with, and they can be recreated into 9 percent transactions, then that's a much financial healthier situation for everybody involved, as opposed to trying to make it with just 4 percent credits, so.

MR. GANN: Mr. Chairman, I'll have to concur with your remarks. My experience is also on the construction side, and there's just too much uncertainty out there, and I think because of that uncertainty, it does give the Department that undue risk that we're talking about that we shouldn't be obligating ourselves to.

MR. CONINE: Okay. Any other discussion?

(No response.)

MR. CONINE: Do I hear a motion? I guess we -- since the other one failed, but didn't pass, we don't need to do anything about the other one. So we just need a fresh motion.

MR. GANN: I move that we deny the appeal.

MR. CONINE: Motion to deny. Do I hear a second?

MR. KEIG: Second.

MR. CONINE: Second by Mr. Keig. 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 those opposed?

(A chorus of nays.)

MR. CONINE: The motion carries, four to two.

MR. GERBER: Mr. Chairman, the next item is a discussion and possible action on Exchange Program appeals. Woodland Park at Decatur, which is the second appeal, has withdrawn, so the only one we'll be hearing today is LULAC Hacienda Apartments.

This is the Exchange application 09904, LULAC Hacienda's Exchange award of $5,308,029 was rescinded because the development owner was unable to execute the construction contract and close on the construction loan prior to the September 30, 2010 deadline set by the Board. Subsequently, the development owner has been able to negotiate a new construction contract and has the construction lender lined up for a closing date on or before November 17, 2010.

The development owner has submitted documentation substantiating their ability to meet the 30 percent US Treasury Department expenditure test requirement by December 31, 2010, and therefore staff's delighted to recommend the approval of the reinstatement of this Exchange award. Teresa Shell is here to answer any questions that you might have, and I think David Marquez is here to talk about the project as well.

MR. CONINE: Okay. I have three witness -- or two witness affirmation forms, David Marquez and Raul Vasquez, Jr. Whatever batting order you want, three minutes each.

MR. MARQUEZ: Thank you, Mr. Chair. I just came up here to thank staff for working with us and working through the issues that we have. Theresa is correct, we can meet the 30 percent, we do have the Stearns Bank and then we do have Fannie Mae as well as our permanent lenders. So we just want to thank the staff and would appreciate it if the Board could just push us through. So thank you.

MR. VASQUEZ: Mr. Chairman --

MR. CONINE: Yes.

MR. VASQUEZ: -- good morning, and distinguished Board members. I'm Raul Vasquez, Jr., Corpus Christi. I just wanted to express our appreciation for your consideration of our request, and also just inform you we've been in existence for 27 years in our community providing affordable housing for the elderly. And we do appreciate all that you can do to assist us in our endeavor to create our complex.

Also, I'd like to recognize that three of our board members are also present; drove in from Corpus Christi. The president of our board, Manuel Gonzales; our treasurer, Tony Jimenez; and our trustee and previous board member, Henry Gorham are also present this morning.

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

(No response.)

MR. CONINE: You're going to close it this time?

MR. MARQUEZ: Yes, sir.

MR. CONINE: Okay. That's good.

MR. MARQUEZ: Thank you.

MR. CONINE: Any further questions?

(No response.)

MR. CONINE: I'll entertain a motion.

DR. MUÑOZ: Mr. Chair, I move staff's recommendation to grant the appeal.

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

MR. KEIG: Second.

MS. BINGHAM ESCAREÑO: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: There are no more items, I believe, that are in order under Item 3. The other remaining item has been withdrawn under Item 3E. So we'll proceed to Item 4.

MR. CONINE: Okay.

MR. GERBER: Item 4, the first item is the rules governing the Project Access Voucher Program.

Brooke, do you want to come forward and give a very brief overview of that item?

MS. BOSTON: Sure.

MR. GERBER: Yes, no?

MS. BOSTON: I just lost my great track record, so I wasn't prepared to get up and talk about it.

MR. CONINE: It has your name beside it.

MS. BOSTON: Essentially the Project Access rules were presented to you guys in draft form several months ago. They went out for public comment. As you may recall the Project Access Program we -- you all recently, in one of your Board actions, increased the number of vouchers to 100, which is wonderful, so thank you for that.

We were getting ongoing comment from the disability community that they would like to see that a portion of the vouchers could be used for people over the age of 62. Until this action is approved as a rule, it was always for people with disabilities under the age of 62. So with this new increase in the number of vouchers up to 100, we proposed that 20 percent of the vouchers could be used for the elderly population.

That went out for public comment; we didn't receive any comment. I would note that not getting comment from the disability community didn't mean that they weren't supportive, but it's because we were doing something that they had supported and preferred that we do. So I think that's it, there's no recommended changes to the rule.

MR. KEIG: Question. Why 20 percent?

MS. BOSTON: We had had 60 vouchers up until now and we wanted to be sure we didn't do anything that would make that original 60 go to a population other than its original intent, which was the non-elderly. We could have done 40 percent, and basically made all the additional vouchers go for elderly --

MR. KEIG: Why not less than 20 percent?

MS. BOSTON: It could have been that too. It was just --

MR. KEIG: I'm just trying to figure out --

MS. BOSTON: Yes, there was --

MR. KEIG: -- the basis for picking 20 percent.

MS. BOSTON: Yes, it was --

MR. KEIG: I'm not finding the --

MS. BOSTON: -- mostly arbitrary, to be honest. I think we felt like it was a big enough number with 20 vouchers to be able to make a difference, but not so big that it really took away from the purpose of the program serving non-elderly disabled, which was HUD's original concept for the program.

MR. CONINE: Any other questions of Ms. Boston?

(No response.)

MR. CONINE: If not, I'll entertain a motion on Item 4A.

MS. RAY: Mr. Chairman, I move staff's recommendation to propose a change of 20 percent of vouchers at over 62.

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

DR. MUÑOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Item 4B is a possible action to publish proposed amendments to the HOME Program rules. Jeannie Arellano will describe those.

MS. ARELLANO: Jeannie Arellano, Director of the HOME Program. We are recommending today approval to publish some amendments to the HOME rules that was approved in September. These items are pretty limited in scope and include the following.

We recently received confirmation from HUD that the Department's match requirement for federal fiscal year '09 has been reduced by 100 percent, so we, in essence, have no match requirement for that year. And we've included language to kind of incorporate that and pass that along to our single family administrators because they are constantly giving us feedback that they're struggling with providing match in the small cities and counties.

The second set of amendments is to update references to the qualified action plan for multifamily development threshold requirements that are being adopted under a separate item today. And then the last one is just a clarification of fixed versus floating units under our multifamily development activities. And we ask for your approval to authorize publication of those amendments for public comment.

MR. CONINE: Okay. Any questions of the witness, Item 4B?

MS. BINGHAM ESCAREÑO: Move to approve publication.

MR. CONINE: Motion by Ms. Bingham. Do I --

MS. RAY: Second.

MR. CONINE: -- hear a second by Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, before we go to 4C, I don't believe there's public comment on the remaining items under 4. Could we knock those out real quick and then we'll --

MR. CONINE: Sure.

MR. GERBER: -- return back to the QAP?

MR. CONINE: All right.

MR. GERBER: So we're going on to Item 4D. This is a presentation, discussion and possible action regarding approval of publication in the *Texas Register* regarding the final orders concerning the multifamily housing revenue bond rules. The Department did not receive any public comments pursuant to the 2007 multifamily housing revenue bond rules. There was, however, public comment received on the 2011 QAP that impacts this rule and those changes are identified obviously in the QAP.

Staff is recommending that the Board repeal the 2009 multifamily housing revenue bond rules and approve the final 2011 multifamily housing revenue bond rules for publication in the *Texas Register*. And in addition we ask that staff be allowed to make changes to those rules where applicable to be consistent with other rules that are being approved today at the Board meeting.

MR. CONINE: No witness affirmation forms. Any questions of Mike or staff?

(No response.)

MR. CONINE: Otherwise I'd entertain a motion on 4D.

MS. RAY: Move to approve staff's recommendation, Mr. Chairman.

MR. CONINE: Move staff's recommendation to approve 4D. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. CONINE: 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. Go on to E.

MR. GERBER: Mr. Chairman, Item 4E is the proposed repeal and adoption of new compliance monitoring rules for the publication in the *Texas Register*. Proposed changes will provide more clarity for maintaining compliance with the rental programs that are monitored by the Department, and we'd ask for a motion to approve.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move approval --

MR. CONINE: Move --

MS. RAY: -- of staff's recommendation for 4E.

MR. CONINE: -- approval of 4E.

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any other conversation or discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, Item 4F is presentation, discussion and possible action regarding approval for publication in the *Texas Register* of a final order adopting new 10 TAC Chapter 1, Section 1.1 concerning definitions for housing program activities. I don't believe there's any public comment, we would -- Board's approval of the rule.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation for Item 4F.

MR. CONINE: Motion to approve 4F. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 4G.

MR. GERBER: Mr. Chairman and members of the Board, Item 4G revises a number of rules related to programs administered by the Community Affairs Division, most importantly these changes reflect the fact that income eligibility for the Community Services Block Grant Program has reverted back to 125 percent of poverty at the conclusion of the CSBG ARRA Program.

Additional changes include updating the grievance process for clients that are denied services as well as other technical corrections and improvements to the CSBG and ESGP program as it affects subrecipients. We'd ask approval of this rule.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation for the approval of Item 4G.

MR. KEIG: Question.

MR. CONINE: Question -- there's a motion on the floor questioned by Mr. Keig.

MR. KEIG: Under subchapter B for CSBG, we're removing the actual formula for allocation of funds from the rule and instead requiring that a formula be established and approved by the Board. Can somebody just explain why we're doing it that way?

MS. BOSTON: Yes, which is primarily that we are trying to remove it from the formal rule making process. We have been working with the network, the CSBG -- the Community Action Agency Network on the formula, and we have met periodically already in several round table type sessions, and then we're going to be working with them when the new census figures come out to come up with what we think is an improved formula.

Because we're working so closely with them, our preference is that instead of having to take the rules out again when we come up with a solution for that, that we would just -- it'll still come to the Board, but it wouldn't be part of the rule. And then that way if we need to make modifications over time --

MR. KEIG: Well, would there be an opportunity for any public input?

MS. BOSTON: Definitely. I mean we can set it up that way. We can do it however you all prefer, and if you'd like to give us that directive, we're happy to do that. We mostly just didn't -- you know, we've been trying to minimize that we bring the rules to you guys, you know, it seems as though we're bringing them a lot and --

MR. KEIG: Yes.

MS. BOSTON: -- so, you know, our preference is that we try and do it maybe once a year, once every two years. So things that may have a lot of fluctuation we believe there may be some benefit to try not to have in the rule as long as they still come to the Board for approval. But we would be more than happy to make sure that we have a public comment period before or bring it to you for a draft and then go back out for a final.

I think you would hear public comment at that Board meeting anyway, where we would bring it. I know the Texas Association of Community Action Agencies, we've been working very closely with them, and I imagine they would come and comment.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: May I ask Mr. Keig --

MR. CONINE: Yes, you may.

MS. RAY: -- Mr. Keig, would you like to offer an amendment to my motion to that effect, that it go out for public comment, and I will accept your amendment?

MR. KEIG: So move to amend.

MR. CONINE: Okay. We now have an amended 4G. Is that right?

MS. RAY: Yes.

MR. CONINE: Adding the public comment section from Mr. Keig. I need a second to that motion.

MS. BINGHAM ESCAREÑO: Second.

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

MS. RAY: Mr. Chairman, I accept the friendly amendment to my motion.

MR. CONINE: That's good. I wouldn't want it to be any other way.

MALE VOICE: I'll second that.

MR. CONINE: Okay.

(General laughter.)

MR. CONINE: We've all seconded. All those in favor of the amended motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, Board, Item 4H provides approval for the adoption of the rules that have been published in the *Texas Register* and comments as received regarding whole house assessment requirements. These changes seek to clarify the mitigation action plan requirements of our deob and re-obligation rule and clarify what the whole house assessment requirements are. We ask approval of -- we ask for the Board's approval of these rules.

MS. RAY: Mr. Chairman.

MR. CONINE: Mr. Ray.

MS. RAY: I move the approval of staff's recommendation for Item 4H.

MR. CONINE: Thank you, ma'am.

Is there a second?

MR. GANN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman and Board members, Item

4I is a presentation, discussion, and possible action regarding approval of our real estate analysis rules and guidelines and adopting a new section of the Texas Administrative Code to update those rules and guidelines. Stunningly there is no public comment.

MR. CONINE: Yes, I'm shocked they're not lined up a mile deep.

(General laughter.)

MR. GERBER: So I won't go into detail about the rules except to say that we ask that the Board approve these rules.

And a large part of the success of the REA rules is due to Brent Stewart. And there's one person I'd like to especially point out, who is Audrey Martin, who's been the REA manager for these last two seasons who is leaving the Department to pursue other interests. Audrey been a stalwart of the Department for the last five years, rising to the program administrator, and then in REA as the cost certification administrator, and then finally as the manager of underwriting, and this is her last Board meeting, and she's sitting back there.

And stand up and take a well deserved round of applause for --

(General applause.)

MR. GERBER: And in honor of Audrey, we ask for a motion to approve the --

(General laughter.)

MR. GERBER: -- REA rules.

MS. RAY: Mr. Chairman, can I move that she can't go anywhere?

MR. CONINE: Yes --

(General laughter.)

MR. CONINE: -- you can.

MS. RAY: Mr. Chairman, I move the approval of Item 4I.

MR. CONINE: In honor of Audrey?

MS. RAY: In honor of Audrey.

MR. CONINE: Do I hear a second?

DR. MUÑOZ: Second.

MR. CONINE: Second by Dr. Muñoz. 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 you will be missed, Ms. Audrey.

MS. RAY: Yes, you will.

MR. CONINE: Thank you.

MR. GERBER: Item 4C, of course, is the QAP, and Teresa Morales, assisted ably by Tom Gouris, will present that item. Teresa and the team have done a great job in a very, very complex environment.

And, Teresa, why don't you walk us through what the QAP public comment did, and what we are proposing to the Board.

MS. MORALES: Okay. One of the first things that I would like to mention is that, for those of you looking at a hard copy of the Board book, the propose deleted text did not show up in the hard copy, and so I believe what is being handed out to you now is the same presentation but showing those strike throughs.

Chairman Conine and Board, the Department received a total of 38 public comments relating to the QAP as published in the *Texas Register* after the September Board meeting. Staff will identify some of those areas in the QAP that received the most public comment and where staff recommends a change.

To begin, there was considerable public comment relating to an ineligible applicant, if there was a voluntary or involuntary removal from lender, equity provider, or other investors or owners. This can be found on page 4 of the recent response and page 9 of the QAP.

Ms. Cynthia Bast pointed out an inconsistency between the section heading which lists all parties to be included and the actual provision of the section. Staff agrees and recommends striking "developer or principal" and replacing it with "the applicant, development owner, developer, or guarantor" involved with the application.

Ms. Bast also suggested language to disclose if there's any litigation that has been instituted and is continuing at the time of the application submission. Staff recommends her proposed change.

Several people commented on a defined time period to look back at removals and suggested a five-year look back. However, staff is recommending 10 years on the basis that it is consistent with the Department's debarment policy, and the fact that removal in the first five years is unlikely. Ms. Bast also suggested that only affordable properties be under consideration and staff concurs.

She also suggests the Department consider the compliance history of the development during the time of their involvement. Staff agrees and recommends this change.

Finally, there were comments made by Mr. McGill to include natural disasters as a circumstance beyond the principal's control and the effect that it had on the removal, and staff recommends this change.

A second item that received several comments included the unit maximum percentages, specifically as they relate to adaptive reuse developments, which can be found on page 7 of the recent response and page 12 of the QAP.

Donna Rickenbacker and several other commenters requested flexibility for the developments proposing adaptive reuse, primarily in central business districts and downtown development districts because of the need for only one-bedroom units and to a lesser degree two-, three- and four-bedroom units.

Staff notes that while preferences for at-risk developments exist, the Department has not identified adaptive reuse developments located in such districts as a development priority. As with a number of other comments received, staff believes that this change requested presents a significantly new concept that was not contemplated in the proposed draft and would therefore require a new posting for public comment. However, staff believes that it would be worth considering in the 2012 QAP.

Third, with regards to comments on the two million cap, which can be found on page 9 of the recent response and page 13 of the QAP, staff is not recommending a return to the proration strategies of the past, but staff agrees with some of the comments made by TAP and Ms. Bast in that clarity is needed with respect to those principals that have control over that development.

Staff recommends clarifying language that no more than two million in credits will not be allocated to any guarantor unless the guarantor is also the contractor and is not a principal of the applicant, developer, related party or affiliate of the development owner.

Next, several comments were received regarding the 30 percent boost in eligible basis. This can be found on page 11 of the recent response and page 15 of the QAP. Specifically, TAP has suggested that development location in an exemplary or recognized school attendance zone be reconsidered for the boost. While such change is not reflected in the 30 percent boost, there continues to be a prioritization in the scoring criteria for developments in these zones.

Mr. Henneberger provided comment on this item, suggesting that developments proposed to be located in a census tract which has an AMGI that is higher than the AMGI in the county or the place in which the census tract is located be revised to read that developments proposed and located in census tract in the top quartile when ranked by AMFI attracts in the county in which it is constructed.

Staff appreciates this suggestion but believes that such change needs further discussion and could have an adverse affect on applicants which was not contemplated in the proposed draft and would therefore require a new posting for public comment. Staff believes that it would be worth evaluating this in the 2012 QAP and offers an alternative to next year making this item and the no greater than 10 percent poverty qualifying item additive in order to achieve the eligible basis boost.

The deadline for submission of the third-party reports was another item that received a few comments, among which included Barry Cohn, Darrel Jack, and Bobby Bowling. This item can be found on page 15 of the recent response and page 7 and 41 of the QAP.

Specifically they requested the deadline revert to April 1. While staff maintains that submission of these reports should generally coincide with the submission of the application, in order to allow for a more complete and expeditious review of the application, staff recommends a change here to the latter date only apply to market study and that all other reports be submitted on March 1 with the application. Staff believes the volume of market studies with a few number of active approved market analysts justifies this reversion to the latter deadline.

The next item is the commitment of funding from a unit of general local government found on page 17 of the recent response and page 46 of the QAP. TAP and Bobby Bowling expressed concern over a change in terms from "local political subdivision" to "unit of general local government". Specifically whether a housing finance corporation would continue to qualify for points.

It was not staff's intent in the change in terms to exclude agencies from qualifying at this time. For clarity, staff recommends that language be added to reflect approval of a commitment by the unit of general local government or its designee or agent, and that the term "unit of general local government" be replaced with "government instrumentality" where appropriate.

Staff would also like to note, however, that where funds from another city, City Y for example, are being provided, they must have clear authorization from City X or where the development is located to provide those funds. An example of such authorization would be through an interlocal agreement.

The rent levels of the unit scoring item received comment from several people and can be found on page 18 of the recent response and page 49 of the QAP. All were concerned that the deeper income targeting would be difficult to achieve in today's market, along with the Department's limit on the expense to income ratio, with the exception of Mr. Henneberger, who expressed support for the proposed change.

The preference, based on comments, is to revert to the 2010 QAP language. As staff mentioned last month, targeting deeper rent levels conflicts with financial feasibility and therefore it would be wise not to attempt to claim the maximum points associated with this scoring item if the deal does not work.

If the market and the region prevented such deep rent targeting, the development would not be at a competitive disadvantage with the other applications submitted in the same region. The intent behind the change was to make the maximum score options for this scoring item the income levels of the tenants, both of which address deep rent targeting more balanced. The net difference in the maximum score between last year's rule for the most popular choice and the proposed rule is 10 percent fewer units at 50 percent and 5 percent more at 30 percent.

Next, the community revitalization, historic preservation, and rehabilitation scoring item found on page 21 of the recent response and 51 of the QAP also received multiple comments from a number of state representatives, Sarah Anderson, Donna Rickenbacker, and Colby Dennison.

The comments revolved around the incorporation of rehabilitation into this scoring item, and suggests that this now allows rehabilitation, an advantage in potential funding over new construction developments and suggests that equality be re-established so that new construction developments receive parity with rehabilitation developments.

Staff notes that in the 2010 application round 67 percent of new construction developments received an award when the scoring criteria reflected a slightly greater preference toward rehabilitation.

Next, there were comments regarding the pre-application participation incentive points which can be found on page 22 of the recent response and page 52 of the QAP. Specifically, comments by Sarah Anderson, TAP, Cynthia Bast suggested that this section be clarified to state that not all of the same parties need to remain in the full application, but instead at least one of the principals.

It is not the Department's intent to require the entire development team to remain the same from pre-application to application, but merely those executing the site control. There is no prohibition against adding principals at application. However, principals identified in the site control at pre-application cannot be substituted at full application.

Next, there was public comment from Sarah Anderson, TAP, and John Henneberger on the inclusion of the third-party funding outside of the QCT with the development location scoring item. This is found on page 23 of the recent response and 59 of the QAP. They suggested that this item revert to a stand-alone scoring item. Staff agrees and recommends moving this to it's own scoring item worth one point.

Last, public comment was received from TAP and Cynthia Bast regarding the amendment process, which can be found on page 24 of the recent response and 71 of the QAP. Specifically, they are requesting the Department remove the requirement for all amendment requests to include a proposed form of amendment prepared by an attorney at the applicant's expense. Staff has modified this section to state that the request should only include a proposed form only if requested by the Department.

There are a few other items which received comment, but staff is not recommending changes, some of which you may hear from today, and we will address those if they come up.

MR. CONINE: Okay. Teresa, thank you very much.

Except for Tom interrupting you there, you did a nice job.

(General laughter.)

MR. CONINE: Any questions of staff before we go to the public comment?

(No response.)

MR. CONINE: Okay. Jim Noteware once again. Let's see, he's got -- are you yielding, Veronica? Okay. He's got five minutes.

MR. NOTEWARE: Thank you very much, Mr. Chairman, and I appreciate your consideration of the prior item. Given that consideration, you will probably not be surprised at the element of the QAP that I would like to discuss today. I am passing out a letter authored by Annise Parker, mayor of the city of Houston regarding the prospective change in the new QAP for cities' rights within the ETJ surrounding the cities.

I would like to read portions of that letter into the record today and then add some comments. Under the overall heading, References to the rights of the extra territorial jurisdiction, ETJ, the municipalities should not be removed and the requirement of a letter stating the municipality's support for a project should remain.

In 1963, the Texas legislature enacted the Municipal Annexation Act. The Act provided procedures for annexation and created the concept of extra territorial jurisdiction. The policy purpose of the ETJ is described in Section 42.001 of the Texas Local Government Code, "The legislature declares that the policy of the state to designate certain areas as the extra territorial jurisdiction of municipalities to promote and protect the general health, safety and welfare of persons residing in and adjacent to the municipalities."

Additionally, in Section 54.004, "A former known municipality may enforce ordinances necessary to protect health, life and property and to preserve the government order and security of the municipality and its inhabitants."

The letter goes on to describe several of the rights within the code that are given to municipalities regarding the land in their ETJ. The city of Houston takes these rights and responsibilities for urban growth very seriously. The power of annexation allows the city to direct the course of its growth. The city must have a measure of control over development in the ETJ.

The requirement of a developer of a tax credit project in the ETJ to obtain support from the city of Houston allows for the oversight of the direction of the city's growth. Eliminating this requirement could allow creation of affordable housing properties for which adequate infrastructure has not been scheduled, placing a burden on the neighbors within the city and ETJ. We offer as well citations that may be changed. In deference to time I'll not go into those details. I presume -- anyway, the letter is signed Annise Parker, mayor of the city of Houston.

I might add in addition I would think this issue is important to other cities that retain interest in their ETJ such as the city of San Antonio. In listening to Mr. Gouris earlier today talking about the intent of the change regarding notification awareness of projects that may be in the ETJ, we have great respect, as you know, for the TDHCA staff and Mr. Gouris in particular, if this is a mechanical issue, we'd respect that the staff improve its mapping capability.

But if that's not possible, then we would just request the courtesy of notification of projects in counties which surround the city of Houston, and then we will determine whether they're in the ETJ so we can exercise our rights of approval. In other words, we want very much for the existing situation to stay the status quo and we will offer our assistance in order to provide adherence to that rule and policy.

I'd be happy to answer any other questions, and I know Mayor Parker would be as well.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Let me check one quick thing. Okay. When the city council decides to make an area of the county within their ETJ, are there any reporting requirements back up stream from the city to the state, or are there -- what does the city of Houston do --

MR. NOTEWARE: I understand your question. I, unfortunately do not know the answer to your question, but I will endeavor to get it for you.

MR. CONINE: Okay. I mean there may be something we can tie into that you guys have to do on a normal basis that would help us in determining which area is ETJs or not. You know, ultimately that's -- it falls on the shoulders on the developer eventually, but we understand where you're coming from.

Any other questions?

(No response.)

MR. CONINE: Glad to have you as a new member of the housing team down in Houston. What's your opinion of zoning, by the way?

(General laughter.)

MR. CONINE: We get quite a few zoning cases up here.

MR. NOTEWARE: Well, I'm glad you have them here.

(General laughter.)

MS. RAY: Good answer.

MR. CONINE: I notice you didn't comment.

All right. Thank you very much --

MR. NOTEWARE: Thank you --

MR. CONINE: -- for your testimony.

MR. NOTEWARE: -- Mr. Chairman.

MR. CONINE: John Henneberger. He's got allotted time, up to five minutes.

MR. HENNEBERGER: Mr. Chair, members, my name is John Henneberger. I'm with the Texas Low Income Housing Information Service. We represent the interests of low income tenants and residents of affordable housing developments.

I've handed out to you a list of comments related to the QAP. They fall into two categories. First of all, they fall into -- the first category has to do with the location of tax credit developments. As was reported in the newspaper recently, we've commissioned a study from the University of Texas looking at the geographic distribution of low income housing tax credit developments that have been funded over the past five years.

And some of the results of that study are a cause of concern in that the projects have generally tended not to be located near high performing schools and have generally not been proportionately located outside of areas of minority concentration.

I've asked the authors of that study to come next -- at your next meeting and present the results of that study to you, and we will provide that to you all in advance to look at. But nonetheless, this is an ongoing issue of concern, irregardless of whether the duty to affirmatively further fair housing falls upon the tax credit program, and there are legitimate disagreements of opinion regarding that, and I respect yours. I don't share it. That --

MR. CONINE: What did you say about legitimate now?

MR. HENNEBERGER: Reasonable I should say.

(General laughter.)

MR. HENNEBERGER: I think it's all our goal to see that tax credit developments are located in a manner that give the children in the developments access to good schools and that we promote equal opportunity for people to have a reasonable choice about where they live, near jobs and safe neighborhoods and the like.

One area of great concern is the quantifiable community participation letters that come in. We believe the Department should do two things through the QAP. First of all, change the scoring of these letters to an assumption that -- of support for barring letters which clearly are statements of violation of federal fair housing law. If the objection is a basis which adversely impacts a member of a protected class under fair housing law, the staff should, as a routine course, under instructions in the QAP, set that objection aside and not consider that to be a point scoring letter for purposes of negatively impacting the development.

And secondly, to direct the staff to meaningfully implement the requirement -- I'm sorry, that's in essence the recommendation we'd like to make.

The second recommendation we had had to do with the development location scoring issues, and the staff's recent clarification just now of their statement about our concerns in this regard make us pretty happy in that they said -- as I understood what they said, next year that, within the course of looking at the QAP, that the idea of looking at cumulative scoring, or separately awarding points for developments that meet the high opportunity area standards of good schools, low concentration of poverty and the like, as opposed to blanket scoring of that as just one single six-point scoring criteria would be considered.

And if we could move toward that, that would be a positive thing. We'd like to move toward that this year, but if we're open to think about it next year, then that's okay with us.

One area which does raise some concerns has to do with this income targeting question. First of all, we very much, as staff stated, support the staff's recommendation regarding the scoring of the rent levels of the units. We encourage the Board to retain the staff's language which carefully balances the gross rent trade offs with the relative scoring of 30 and 50 percent units.

And as the staff has pointed out, I think quite correctly, it's not necessarily the case that every development has to be eligible to score every single point, so those units that want to do a little something extra, these points are about making it possible for them to do that, that extra, and we think the staff has struck the right balance there.

However, with regard to the recent change that the Board itself suggested at the last Board meeting regarding the proposed deferral of developer fees, or prohibiting the proposed deferral of developer fees, we have deep concerns with this. We think it's anti-competitive and we think competition is in essence the whole rubric for which the tax -- how the tax credit program operates successfully and has for a number of years.

And so we would urge you to not mandate that developer fees may not be deferred and allow developers to propose to serve lower income populations with their projects if they're able to do so. You can't put guard rails around everything, you can't stop point chasing completely, let the market compete and let people bring to you their best deal. Thank you very much.

MR. CONINE: Thank you.

Any questions of the witness?

MR. KEIG: Yes.

MR. CONINE: Mr. Keig.

MR. KEIG: Doesn't every city require fire sprinklers in multifamily developments? Our local code --

MR. HENNEBERGER: No.

MR. KEIG: No?

MR. HENNEBERGER: No.

MR. KEIG: Okay.

MR. HENNEBERGER: That was the last thing on my list. I didn't get to that. Thank you.

MR. CONINE: Okay. Granger MacDonald.

MR. MacDONALD: Thank you, Mr. Chairman. Briefly I'd like to speak in favor of the five-year look back. I understand the need for a 10-year look back in an involuntary take over of property, but in a voluntary take over I think five years is ample.

Many of the older properties that you have, the syndicator is also your partner. There'll be a certain amount of give and take trading going back and forth of the properties, which is fairly routine, and I think five years is ample time in a voluntary situation to flesh out bad actors. Thank you.

MR. CONINE: Okay. Any questions --

DR. MUÑOZ: Granger, while you're there let me just ask a quick question about, you know, the commenters for these changes --

MR. MacDONALD: Yes.

DR. MUÑOZ: -- as I look through the list of 38, how do you -- do you feel as if the rural voice perspective has been captured by this -- because I've heard some of the same names over and over and they're fairly well centered in large metropolitan areas. I'm just curious of your opinion.

MR. MacDONALD: Yes, sir. I'm 95 percent happy with the QAP, which is an improvement. I usually run about 60-65 percent.

(General laughter.)

MR. CONINE: Does that translate into rural in your opinion?

MR. MacDONALD: Yes, sir.

MR. CONINE: Okay. Donna Rickenbacker. She has time from a James Rickenbacker. Wonder who that is?

(General laughter.)

MS. RICKENBACKER: Kind of related. Good morning. Donna Rickenbacker, Marquis Real Estate Consultants. First I want to thank Teresa Morales and the Department for all the efforts on the 2011 QAP. It's been a long process with a lot of competing positions and they've done a good job on the rewrite.

Marquis is here for the Board's consideration of changes to the 2011 QAP that we presented at the September Board meeting, specifically changes that will provide more flexibility in the percentage of bedroom sizes and the additional cost of the development per square foot when considering an adaptive reuse conversion, historic building preservation, and development of mixed income and workforce housing in urban poor areas of our state.

The Board appeared receptive and supportive of these changes and inclusion of such changes in the 2011 QAP at that Board meeting. During the public comment, several historic preservation organizations, developers, civic and city leaders from San Antonio, Dallas, Ft. Worth and Austin submitted letters into the Department supporting our recommendation, some of which you heard from this morning. We are therefore, again, respectfully requesting that the Board consider inclusion the following specific changes to the 2011 QAP that I submitted to you all today.

First, we are asking that Section 49.4(c)(8) regarding ineligible developments be amended to exempt adaptive reuse and developments located in an urban core, as such term is currently defined in the QAP, from the required bedroom percentages outlined in this section. As was stated by Downtown Alliance San Antonio, developers of market rate housing in downtown urban core areas typically design to a unit mix of up to 70 percent one-bedroom units.

Lower income households desire the same location as market rate households, but find themselves priced out of the market in the downtown areas, leading to a scarcity of affordable and workforce housing options relative to existing demand. These changes will provide the flexibility needed to adjust for the market conditions and put affordable workforce housing into these urban core areas.

Second, we are asking that Section 49.9(a)(8), the cost of development by square foot, which is a 10-point selection item, be amended to allow developments proposing solely adaptive reuse or developments proposing historic preservation through rehabilitation or adaptive reuse be -- have the same treatment as an SRO, which is a single room occupancy development, and still qualify for the 10 points such that the cost is limited to $95 per square foot of NRA and may additionally include up to 50 square feet of common area per unit.

Additionally, we are seeking to provide in this section an adjustment mechanism for those projects that receive two types of tax credits, in this case low income housing tax credits and historic, whereby the eligible basis in a project that is used to adjust the historic tax credit allocation is deducted from the eligible basis of the project for purposes of qualifying for the 10 points and calculating the cost per net rentable square foot.

Adaptive reuse projects, and specifically those that preserve historic buildings, clearly involve higher costs than new construction. These changes will therefore level the playing field and encourage historic preservation projects and facilitate adaptive reuse, affordable, and mixed income projects in emerging residential neighborhoods.

We believe that the described changes are not new concepts and are in keeping with our request made at the September Board meeting, and supported by public comment and therefore respectfully request that the Board incorporate these changes into the final 2011 QAP.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

MS. RICKENBACKER: Thank you.

MR. CONINE: Debra Guerrero.

MS. GUERRERO: Hi. My name is Debra Guerrero. I'm with the NRP Group, and I too want to thank Teresa Morales and her team for the great work that they've done in not only receiving the public comment and digesting it, but really responding to each of the issues that has been brought up, up to this point.

And really I just want to speak to one, just one change, and one proposed change. On page 12 of 78, and I don't know if you have the same QAP that I do, draft, but QAP 49.4(c)(11)(B). Specifically those ineligible applications, or ineligible developments, the listing that's included under this section had previously been under negative points, and so they could still at least have an application. In the new change, they're completely eliminated. There is no opportunity, if it falls within any of these sections, to actually put in an application.

And we understand the staff's comments and what Teresa has previously written, that the staff continues to believe that developments should not be allowed if it meets any of these criteria. What we would propose is an exception. If it is within, specifically to the active railroad tracks, and the exception would be 49.4(c)(11)(B) where developments located adjacent to or within 300 feet of an active railroad track, unless the exceptions being that the city or community has adopted a railroad quiet zone, we would also add to that, that if the local municipality has determined that the land use, or that has the appropriate zoning for multifamily, that it should be allowed.

Or in the case of the city of Houston, or areas where there is no zoning, that we would go to that local municipality -- or, I'm sorry, that local governmental -- local governing body to adopt a resolution saying that the proposed land use would be appropriate in this area. So it still allows the application to move forward, but it requires that local city, county, or whatever governing body to adopt and say that this particular land use is appropriate.

The other exceptions, of course, are transit oriented developments, the commuter or rail lines. And the reason for this is, as Donna just said, the San Antonio -- in the business core, urban core, Downtown Alliance has said this is -- there's railroads all over the place, in San

Antonio, in Ft. Worth, and in the inner city, and to completely eliminate the opportunity to put tax credit developments in those areas is -- it would have eliminated Haven for Hope last year, it would have eliminated Terrell Homes in Ft. Worth. There's dozens of examples of last year's applications that would not even had had the opportunity to come before you all and to be considered.

Again, understand the need for the change, but all we are suggesting is an exception. Thank you.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Okay. Pres Kabahoff -- Kabacoff, excuse me.

MR. KABACOFF: Chairman Conine and the other members of the Board, thank you for letting me testify. My name is Pres Kabacoff. I'm CEO of a company called HRI Properties. We're headquartered in New Orleans, and we revitalize city centers, combining hotel, retail, residential, affordable, market rate, pocket parks, other entities and activities that will help us get our job done.

We've done a couple of billion dollars of this kind of work around the country, and in Texas we revitalized the Blackstone Hotel in Ft. Worth on Main Street, and the Humble Oil Building, historic Humble Oil Building in Houston.

So we worked in the Texas market. But we've been unable, because of your QAP requirements, to believe that we can effective compete for affordable housing, tax credit housing in urban centers, in historic buildings, and you've heard from a number of people testifying on that.

The obstacles are the apartment bedroom size is -- at least for downtown, doesn't work. The downtown market is ones and twos, not threes and fours for both affordable and market rate. And the other is cost. When we go to buy a piece of property, provide parking, live with mid-rise and high rise zoning codes, meet the Department, federal Department standards of historic rehabilitation, it's just more expensive than -- when you lose the 10 points for that reason, you just don't believe that you can compete.

And as solutions, we would suggest that you take a look at, at least in urban centers, allowing ones -- primarily ones and two-bedrooms to get the appropriate points. I think that makes sense in a larger fashion in that when you look at the nuclear family today, it used to be 60 percent of the market, mothers, fathers, two children. In the United States it's moving to 30 percent. So smaller house sizes are going to become a much more predominant part of the market, and that's what works downtown.

The other is, if you take federal historic tax credit, they require you to reduce the eligible basis by the amount of low income tax credit -- excuse me, just the opposite, when you take the low income tax credit, the federal government requires you to reduce the low income basis by which you get in the federal tax credit. And so if you were to apply that, then that would allow us to compete effectively, and I see no down side to this. I see no adverse consequences to changing policies. You end up rebuilding city centers, you avoid gentrification of all market rate downtown, you allow people to reduce their transportation costs and automobiles.

And almost every city in your state is trying to rebuild their downtown, and to take affordable housing, we do artist housing, which is now permitted by the federal government using low income tax credits, to take that out I think you lose a valuable tool for downtown revitalization. So thank you very much.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Joy Horak-Brown.

MS. HORAK-BROWN: Good morning. I'm here to blow the trail whistle again. We just opened in Houston, Texas just a week ago a 166-unit single room occupancy property that is Houston's first lead for homes certified multifamily property in the city. And we're really especially delighted that it would be a supportive housing type that has that distinction.

It is located on the railroad track right between 5th Ward and Denver Harbor addition. We actually did a train study. We counted trains and how many times they blew their whistle or sounded their horn, there are varying gradations. We did it 24 hours a day for seven days, for a week.

The property is beautifully insulated, and I'm telling you what, I've been there again and again, the train isn't a problem. There is a train that runs right next to one of the most expensive areas of Houston is another point. River Oaks has a train that runs right next to it. There are townhomes that are in excess of half a million dollars. There's a train on the seal of the city of Houston. The trains are everywhere.

So I just want you to take that into consideration. And by the way, Mike Gerber was with us for the grand opening and spoke, and we were happy to have him there. Thank you very much.

MR. CONINE: Thank you.

That concludes the witness affirmation forms that we have on this particular agenda item. Do we have any questions of staff that maybe this has generated?

Mr. Ray?

MS. RAY: Mr. Chairman, I have a question for staff on QAP 49.4(c)(11)(B), and it also has to do with the train whistle.

Could you refresh my memory? We may have talked about this, maybe not, I don't recall, how this came to be, this particular item got in the QAP, or has it already been there?

MR. GOURIS: The item generally has been in the QAP, but it was moved from a home breaker into a threshold --

MS. MORALES: It had been in the scoring criteria for 9 percent transactions as a penalty, for each occurrence there was one point that was deducted from the overall score, and that was in the 2010 and previous years' QAP. And for 2011 what we were proposing is to move all of those negative site features over to ineligibility.

MS. RAY: Mr. Chairman, some that I have -- Dr. Muñoz and I had the pleasure of attending the ground breaking here in Austin of M Station. If this is put into the this place, that would have eliminated M Station.

MR. GOURIS: No, ma'am.

MS. RAY: Tell me -- explain to me why it would not have.

MR. GOURIS: Because there's a provision in it already to accept commuter rail as an exception. It also provides an exception for any community -- any area that has a railroad quiet zone. Those are already included. The suggestion that was made in -- by Ms. Guerrero just adds to the exception list, and one of the exceptions that she's proposing to add is that if it's properly zoned, then that would be an exception, or if it doesn't have proper zoning, that municipality identifies it doesn't have proper zoning, which either of those two, or both of those two just negate the entirety of the restriction. So if we were -- a better solution if we were going to consider those two adjustments would be to eliminate the restriction altogether.

The restriction's in place though in order to ensure that folks are taking into consideration railroad tracks and doing what Ms. Horak-Brown did in her development and creating a development that can coincide with railroad tracks next door. It doesn't absolutely eliminate them, it requires a plan to be in place to address it.

DR. MUÑOZ: But, Tom, but --

MS. RAY: That's not the way I read it.

DR. MUÑOZ: But moving it from an area where there's a one point assessment to a threshold, I mean that places an entire different sort of seriousness.

MR. GOURIS: It does, but as a point scoring item, it doesn't address any tax credit transactions associated with bond -- tax and bond transactions. And so those transactions never had to have this consideration, other than through environmental issues that might come up.

MS. RAY: My concern is that the area of the QAP where it is currently relocated, to which it is currently relocated, specifically is entitled Ineligible Developments. Ineligible developments, which if you put this one in that area that addresses ineligible developments, it would lead one to believe that an area that had these active railroad tracks would make it an ineligible development. That's my concern.

MR. GOURIS: Unless it qualifies for one of the exceptions, and one of the exceptions is that the community has adopted a quiet -- a railroad quiet zone or that the railroad in question is a commuter light rail, or that it's funded through -- it's already funded through the rural development fund at the USDA. Those are the exceptions that are proposed -- that staff proposed.

DR. MUÑOZ: Only those three?

MR. GOURIS: Only those three. So -- I'm sorry.

MR. KEIG: Yes, so in other words, if the developer did something to insulate the noise -- for noise, that's not going to -- it will be ineligible. That's not going to help.

MR. GOURIS: If it doesn't meet one of these other three criteria, then what we would expect the developer to do is to assist the community in creating a railroad quiet zone and meeting that requirement.

MR. KEIG: What is a railroad quiet zone?

MR. GOURIS: You know, that's a good question.

(General laughter.)

MS. RAY: We have those in San Antonio --

MR. GOURIS: Yes.

MS. RAY: -- railroad quiet zones, and they have been put into place where we do have more multifamily residential going into areas where they have been noisy, every time the train went through. However, my concern is having this restriction in the section of the QAP where it addresses ineligible development. Might it not be better served to move this back to where it was before?

MR. GOURIS: It would then not apply to any of our tax exempt bond transactions.

DR. MUÑOZ: I'd like -- can anybody define what a railroad quiet zone is, because I mean like characteristically what does that look like, because having grown up on the wrong side of the train tracks, about a block away, it didn't matter if you were on this side of the street or this side of the street or a block down, you still heard the trains.

So like what exactly does a quiet zone resemble? Because in Houston apparently it's on the seal, and so one presumes that there's trains and train tracks well represented.

MR. GOURIS: Yes, and I apologize, a railroad quiet zone was something we had prepared for -- Barry, come on up.

MR. CONINE: Mr. Palmer.

DR. MUÑOZ: Like if I was in one, Barry, what would that look -- what would that feel like?

MR. PALMER: Well, creating a quiet zone is a very time consuming and expensive thing. I went through it. My wife created the first quiet zone in Houston in the West University area. They're typically done in high income areas because it's very expensive. You have to put in these safety barriers across any streets that go over the trains so that no one can go around the safety barrier, so that creates the big expense.

So you would typically see quiet zones in high income areas, but not in the 5th Ward, because it's just too costly, and you have to raise the money to pay for these barriers.

DR. MUÑOZ: So there's a bit of a contradiction between these zones and maybe some affordable housing community developments.

MR. PALMER: Right.

DR. MUÑOZ: They'd be more difficult to accomplish.

MR. PALMER: Yes, the areas that have quiet zones don't really want affordable housing.

(General laughter.)

MR. CONINE: Wouldn't it be as simple as saying you can't blow the train whistle coming through, you know, during the night 11:00 to 7:00, or something?

MS. RAY: Yes, but you try getting it through Vienna [phonetic]. Biggest brouhaha in the world about imposing a quiet zone in a neighborhood.

MR. CONINE: No one wants to take on the Burlington Northern Railroad.

MS. RAY: Well, it also has to do with the residents in the area too. It's a mess. My only concern is I would like to ask the Chair if it might be appropriate that we revisit that particular item in the section dealing with ineligible developments. Particularly, in municipal areas I don't know how you can get around that.

MR. CONINE: Well, you know, I have sympathy for not putting apartments that can have either seniors with Alzheimers or kids in them running around close to railroad -- freight railroad tracks. There's an exception here for, you know, DART lines and so forth, and I don't, you know, care really whether it's downtown or not. To me, to have something close to a railroad track is not an attractive feature.

Now I understand that there are -- you know, there's this over-reaching, over-arching desire to do more downtown rehab, because we've got a lot of folks that testified to that, and that's something I think the Department ought to consider, it's a novel concept, it requires -- in my mind it requires a lot of thought and study and targeting by the Department, and it's something we ought to take a look at for next year's QAP and create, you know, just a whole section for downtown rehab. And you could put all kinds of either restrictions or lack of restrictions.

But if, you know, a railroad goes through San Angelo and the city council says that they can zone it for multifamily inside that 300 foot barrier, I don't think it's smart for us to allow an affordable housing project 300 feet within the railroad, even though the city decided the zone it that way. So that's the kind of ramifications you're dealing with here.

Now, back to your point of, you know, instead of having an ineligible project versus a deduction of points, I think what we were trying to do is to say, instead of you spending 50 grand on an application and having points deducted and you not being in the money, we're just trying to say, you know, it doesn't meet the threshold here so save your 50 grand and go do something else somewhere else. That's what -- that's my interpretation of what's really going on here.

I do think, again, as strategy for the Department to -- you know, the other concern I have with downtown preservation and rehab and so forth is it's very expensive, as we've had testimony here. And every time you increase the money, or the tax credits, go into a "more expensive deal", guess who you're taking it away from? You know, typically rural Texas, even though we have, you know, an allocation formula and so forth. When you take a dollar -- when you put a dollar more in somewhere, it's got to come out of somewhere else that has been historically going on.

So I'm all for downtown rehabs, I think I expressed that at the last meeting, I think it's something we ought to take a look at, it's -- we have now had a 25-year run of pretty good -- of putting low income housing tax credit projects in numerous areas of both urban and rural Texas, and it's time to take a look at some of the downtowns and see if there's something we can do to carve out a little niche for that particular group, if it doesn't get too expensive and, at least in my mind, and deplete what we're doing already in some towns that may or may not have had the benefit of affordable housing up to this point.

Do we have another comment? Sandra Williams.

You want to come up and share a comment with us?

MS. WILLIAMS: My name is Sandra Williams, and I'm a housing tax credit consultant working in various parts of the state, and recently have been looking at site in Region 11 that has an unusual configuration in that the driveway into the site, which is part of the parcel, part of the development, comes on to a street, and across the main highway is a railroad track. And depending on who's tape measure you use, is either 298 feet or 305 feet, but it is --

(General laughter.)

MS. WILLIAMS: -- but the boundary of the property is really pretty close to that railroad track.

The buildable space where you would be able to configure a building and adequately put residents is some 600 feet from the highway. So you're substantially away. However, this development would be excluded under the terms that if you're doing an exclusion. Under the current language we would just lose a point and we would still be able to go forward with the development.

So I just think that having that harshness of that description when you're talking about the entirety of the development, not where the buildings are sited, not where the people are actually impacted, is a really harsh one, and I would just like to speak -- add my voice to this chorus that says that maybe we should think a little harder about this before we make this change.

MR. CONINE: Okay. Thank you very much.

Any questions? Dr. Muñoz?

DR. MUÑOZ: Having it remain where it currently is and not moving it to the section of ineligible projects, you know, the down side of that is what, other than perhaps some kind of deleterious effect for the developer who proceeds with the possibility of not being in the money? I mean but that's their prerogative.

MR. GOURIS: Well, I think Mr. Conine pointed that one out and I point out the issue of consistency among programs. But, you know --

DR. MUÑOZ: If you were to leave it where it's at --

MR. GOURIS: It wouldn't as it -- without any other changes, impact local issuers -- the tax credits associated with local issuers bonds. So we don't have a rule in place to address that, so a local issuer --

MR. CONINE: You're catching the bond deals when you put it in a threshold.

MR. GOURIS: Scoring doesn't apply to the -- to, you know, a bond transaction under the QAP. All the other QAP apply, but the scoring items don't, and this is -- this is, I mean arguably something we should have probably fleshed out a little bit more in --

DR. MUÑOZ: I think, Tom --

MR. GOURIS: -- providing exceptions --

DR. MUÑOZ: -- I think the sensitivity, at least for a few of us, is some of these projects that we've seen recently and, you know, it's hard to discern in some instances between the track as a freight or a track carrying a commuter train. But when you go to some of these projects and you see these rail, you know, railroad tracks, it seems like some very promising, desirable, and necessary projects could be precluded in the future. I think that's the sensitivity here.

If there's a mechanism to ensure that these desirable kinds of projects are somehow accentuated for us, then I think it's less of an issue. But there's just been some of these projects like M Station and others that have used as a bit of an incentive, they've highlighted their proximity to railroad, and now there seems to be some kind of penalty for proximity to railroad.

MR. GOURIS: Well, again, the M Station would not have been --

DR. MUÑOZ: Yes. Right.

MR. GOURIS: -- impacted by this transaction.

DR. MUÑOZ: Because it's commuter.

MR. GOURIS: Many wouldn't.

DR. MUÑOZ: All right.

MR. GOURIS: I think an exception --

DR. MUÑOZ: I think that's where the sort of intuitive kind of --

MR. GOURIS: Sure.

DR. MUÑOZ: -- caution is arising from.

MR. GOURIS: Sure. And I think the whole area of development sites with negative characteristics are things that we are trying to, you know, keep developments from being affected by. I think there was some comments just --

DR. MUÑOZ: Right.

MR. GOURIS: -- you know, on a side line, for other issues that some folks would like to see urban core or adaptive reuse transactions not have this apply to them. The entirety --

DR. MUÑOZ: And I'm sensitive to the Chairman's comments, and I agree in respect to having housing and multifamily, et cetera, within a few feet of, you know, freight lines where, you know, children or seniors, you know, would be in some hazard, so.

MR. CONINE: You know, I also think that the definition of an active railroad track has, you know, one a day to a hundred a day. I mean there's a huge variation there, and there's ways to go about, you know, at least at the time of the application and the construction of the project --

DR. MUÑOZ: To assess that.

MR. CONINE: -- to assess that and the use of the track may change over the 30-year period, but --

DR. MUÑOZ: Right.

MR. CONINE: -- but at least we can assess it up front. And we ought to provide for that in the QAP and, again, what I was saying, we need to sit down and rethink this whole --

DR. MUÑOZ: Well, even -- I mean --

MR. CONINE: -- concept.

DR. MUÑOZ: -- speaking from -- even that language, even some language to assess the activity. I grew up close to a train, and when I was a young boy, it was you heard it often and you waited for it to go by before you walked behind it and --

(General laughter.)

DR. MUÑOZ: -- there was not a safe zone or whatever. But over the years it's become less and less active, so even that kind of language, I think for me would allay my concerns.

MR. CONINE: Like you I grew up a block from the railroad track and that sucker blew his whistle at 2:00 in the morning all the time.

MS. RAY: You learn not to hear it then.

MR. CONINE: And we'd go smash coins, you know, put coins down on there, let them smash them and go by and pick them up.

DR. MUÑOZ: So you grew up -- you weren't in a safe zone either.

MR. CONINE: No.

MS. BINGHAM ESCAREÑO: Mr. Chair, I have a --

MR. CONINE: Yes, Ms. Bingham.

MS. BINGHAM ESCAREÑO: -- question about form of a motion if we ever decide to make one.

(General laughter.)

MS. BINGHAM ESCAREÑO: Would the motion to approve staff's recommendation for the adoption of the QAP include the staff's agreement to revise based on comments what's posted in our attachment, or how would we go about --

MR. CONINE: Yes, I think --

MS. BINGHAM ESCAREÑO: -- making that motion?

MR. CONINE: -- that is that staff recommendation, as I understand it, to make these revisions.

Is that correct?

MS. BINGHAM ESCAREÑO: That are already in here?

MR. GOURIS: That's correct. That's staff's recommendation that any additional revisions like this one moving back would be something you need to spell out so that we can know what you'd like to do there.

MR. CONINE: Yes, the other issue I wrote down that I'd like to bring up is the ETJ issue and adding that language back in here, especially after what's happened so far today. I would think that we would need to just go back to the 2010 language, unless you see a reason not to, Tom, or Teresa.

MR. GOURIS: It adds the clarity that ETJs do matter, and it's an area of -- like the railroad issue, it's something that I think we want to clarify across the board for the QAP in the next round --

MR. CONINE: And I think --

MR. GOURIS: -- that we focus on.

MR. CONINE: -- we're going to get an answer from

Houston on what cities have to do once a city council passes --

MR. GOURIS: Right.

MR. CONINE: -- a new ETJ area, and there's got to be a reporting mechanism somewhere somehow rather than just to the county. I would think it'd have to come to the state somehow. Once we get an answer to that, we can figure out how to incorporate it on our end. So I would, you know, propose we make the ETJ change back to what we had.

MR. GOURIS: Okay.

MR. CONINE: Any other discussion points, any other comments, any --

MR. GOURIS: Can I suggest something on the other issue, on the railroad issue?

MR. CONINE: Yes.

MR. GOURIS: Two options might -- or three options, leaving it the way staff proposed it, addressing it as an exception predetermined by the Board, you know, that's some -- we can add an exception in there that would say, Unless the Board has predetermined that the railroad issue is not a concern. So someone who wants to make an application in that area would bring something to staff and we'd make a recommendation and you all could preapprove it. Or moving it back as was suggested, just that one item, to negative feature and have it be something that we can address in the next year's QAP.

MS. RAY: I see Tim getting up. I don't think he agrees with that.

(General laughter.)

MS. BINGHAM ESCAREÑO: I'll be good.

MS. RAY: I liked it, Tom.

MR. GOURIS: Well, I tried.

(General laughter.)

MR. IRVINE: I may agree with it as a sentiment, but in terms of --

(General laughter.)

MR. IRVINE: -- but in terms of working within the scope of what's been put out for public comment and reacted to, you know -- what we're really talking about is that there may be some other facts and circumstances under which there would be a determination that a project should not be ruled ineligible.

MS. RAY: Yes.

MR. IRVINE: And it would seem to me that a more appropriate way to address that would be frankly to appeal a determination of an eligibility.

MS. RAY: I don't know. I like the way Tom said it better.

MR. IRVINE: Logistically it would be cleaner.

You could create something like that, it's just simply -- you know, other than the concept of deals by railroad tracks are ineligible, the public doesn't have notice that that idea is even under discussion. I mean the idea of creating, you know, and exception basis.

MR. GOURIS: Kevin, you want to add to --

MR. HAMBY: You do the things, you do what Tom said too.

MR. IRVINE: I think so too, but --

MR. HAMBY: We can't write --

MS. RAY: Could you -- we can't hear what --

MR. CONINE: Yes, I'm not --

MS. RAY: -- you're saying.

MR. CONINE: I'm not following the bouncing ball.

MR. IRVINE: The question is how do you write something that is specific enough that everybody knows exactly what they do or don't have to do.

MR. GOURIS: Right. And there'd be a vagueness problem with saying you have to get it preapproved by the Department without knowing what the criteria would be. So my number two suggestion would have that concern. We would probably go through a year of folks who would present it and we'd have very little ability to say no, so we'd have some folks that we just say yes to --

MR. CONINE: What --

MR. GOURIS: -- and then we'd fix it next year.

MR. CONINE: Let's just leave them ineligible for a year and then deal with it in the next year's QAP, because after all this discussion, we're going to -- we need to flesh out this whole downtown concept, to my mind, and that can be certainly a part of it.

MS. RAY: Mr. Chair.

MR. CONINE: Yes.

MS. RAY: I regrettably submit to your assertion that we need to look at a specific set of rules for downtown development, and to which this area of the railroad tracks could be included, and therefore should be left the way it is for a year.

MR. CONINE: I do have one other question while I've got you guys here. I do have a sensitivity to, if somebody wants to come in with a downtown rehab deal this year, the bedroom mix issue. And my question to you is, it seems to me like the only way around that, under the current design of the QAP, would be for the person, or the developer to come in and I guess appeal to the Board for a waiver variance, whatever the case would be.

MS. RAY: Up front.

MR. CONINE: Up front. And my question is, the way our procedures are now, when can they do that?

MR. GOURIS: Well --

MR. CONINE: They do a -- let's assume they do a preapp January 1, when can they -- and it's got, you know, 70 percent one bedrooms.

MR. GOURIS: We don't have a -- I don't believe we have a method for them to come in and get a preapproval of something. What would happen is they would submit it, we determine it's ineligible, and they would appeal it.

MS. RAY: They appeal.

MR. GOURIS: And that would typically happen after they'd made full application. And that's happened, you know, that they've appealed our -- staff's recommendation to terminate an application, and they would --

MR. CONINE: Can we -- is it possible for us to create that appeal process in January?

MR. GOURIS: I think it --

MR. CONINE: Again, I'm trying to -- you know, if they don't get the appeal and they don't go through the full application, they save a bunch of money. If they do get the appeal, then they can go ahead and put the full application together and bingo.

MR. GOURIS: Yes, they'd have to submit more information and frankly say, you know, we've recognized this as a termination and go ahead and terminate us so that we can appeal is what in essence -- because we don't get that kind of information in the preapp stage, we don't evaluate it from that perspective. So they would have to provide it to us so that we could terminate and they could appeal. So they'd have to announce to us that that's what they're doing. It's kind of contrived, but --

MR. CONINE: Is that --

MR. IRVINE: Well, it isn't exactly contrived. What it is, is we're talking about situations where people have to come back to this Board and convince you, and you go on the record and say, Here's some actual reasons why we need to set aside our general requirement and go with your proposal.

MR. CONINE: Well, our Board meeting's January 20 or something, you know --

MR. GOURIS: Right.

MR. CONINE: -- whatever the date is for that. We're just talking about for this one year, if somebody's got a deal teed up and all they need is this bedroom exclusion, I'd like to be able to say to them today to go ahead and submit it, appeal it, we'll hear it on the 20th of January and you'll know whether or not you got a deal or not after that. If I can do that without bringing something up that hasn't been discussed that the public's not aware of.

MR. IRVINE: May I have a second to confer and --

MR. CONINE: Please do.

MR. IRVINE: -- get back at you?

MR. GOURIS: And from a practical --

MR. CONINE: Yes.

MR. GOURIS: -- perspective it wouldn't give us -- give staff much time to evaluate the merits of that -- the request.

MR. CONINE: No.

MR. GOURIS: And so --

MR. CONINE: But --

MR. GOURIS: -- it almost moot the need to have the request.

MR. CONINE: There may be other issues, as you work through the underwriting process --

MR. GOURIS: Right.

MR. CONINE: -- but it would at least save the a ton of money if they know that the Board said, You know, that location just is terrible and that building's terrible, we don't want anything there. Or they say, You know, it looks like maybe a pretty good deal, let's try it and see if it meets all the other criteria. I'm just trying to find a way to create a mechanism to do that for this year only, and as usual the lawyers will tell us whether we can or can't.

DR. MUÑOZ: What would we present? When we hear back on that issue, regarding that issue, the other would be to move staff recommendation, these changes with the exception of reintroducing the extra territorial jurisdiction.

MR. CONINE: Yes.

Any other questions of Teresa while we've got her?

(No response.)

MR. CONINE: You did a good job.

MS. RAY: Except for the choo-choo trains.

(General laughter.)

MR. GERBER: Tell them the legal requirement.

MR. CONINE: Okay. We can do that.

Why don't we -- rather than forcing a quick legal decision, why don't we go ahead and take our Executive Session now.

MS. RAY: Sounds like a good plan.

MR. CONINE: -- and we can come back and reconvene at this point. My guess is -- we still think it's going to be about two o'clock?

MR. GERBER: I think 2:00, a few minutes after.

MR. CONINE: All right. We're going to go into Executive Session now. We'll be back at about two o'clock with a determination on what we can and can't do.

MR. GERBER: On this date, November 10, 2010, at a regular meeting of the governing board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned into a closed Executive Session as evidenced by the following: a) an opening announcement by the presiding officer of the Board to begin Executive Session today, November 10, 2010 at 12:48 p.m.; b) the subject matter of this Executive Session will be [indiscernible] Executive Session, closed to the public.

Number one, the Board may go into Executive Session pursuant to Texas Government Code for purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; two, pursuant to Texas Government Code to meet with the internal auditor to discuss issues related to [indiscernible]; three, pursuant to Texas Government Code to seek the advice of its attorney about pending or contemplated litigation or a settlement offer including, a) *The Inclusive Communities Project, Inc. v TDHCA, et al.* filed in federal district court; four, pursuant to Texas Government Code 551 for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Government Code; or five, pursuant to Texas Government Code 551 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person.

(Whereupon, at 12:46 p.m., the meeting adjourned to meet in Executive Session.)

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

(Time Noted: 2:24 P.M.)

MR. CONINE: Let's go ahead and get back into session.

Mike?

MR. GERBER: Mr. Chairman, the Board completed its Executive Session of the TDHCA governing Board November 10, 2010 at 2:15 p.m.

MR. CONINE: Thank you.

Let me see here. Okay. When we last left, we'd asked Mr. Gouris and the crack legal team to see if we can figure out a way to deal with bedroom discrepancies.

Can you all deal with bedroom discrepancies in your job?

(General laughter.)

MR. GOURIS: It's the same issue.

MS. RAY: Very discreet, Mr. Gouris.

MR. GOURIS: I think it's the same -- we have the same concerns that we do with -- on the railroad issue as far as coming up with some new language that provides a preemptive or preapproval of the new bedroom consideration without defining what that criteria is for when a decision's going to be made. It makes it very difficult for the public to know what -- when an exception will be granted and when it won't be granted.

Is that -- that's -- I think that's --

MR. IRVINE: That's where we were. Right? We were talking about --

MR. CONINE: Yes, I was again trying to figure out -- a guy turns in an ineligible application, you deem it ineligible, he can appeal the decision --

MR. IRVINE: He can appeal the termination.

MR. CONINE: The question is when.

MR. IRVINE: Once it's been done, once it's been terminated.

MR. CONINE: Well, if we wait until after the January Board meeting, it doesn't do him any good.

MR. IRVINE: That's --

MALE VOICE: It would have to be after March 1.

MR. IRVINE: Right. Yes, it would be after March 1.

MR. CONINE: All right. And that's what I was trying to avoid just because of the obvious expense to go through a full application, you don't want to have to do it if you're ineligible and then get to be eligible by virtue of the Board.

MR. IRVINE: Well, under the rule language, the Board in its discretion may waive any one or more of these rules that defines that a waiver is appropriate to fulfill purposes or policies or for other good cause as determined by the Board. I mean that's a pretty wide area of discretion and, you know, as written those types of issues could come before you at any time. You know, I mean it's different from the --

MR. CONINE: Okay.

MR. IRVINE: -- just appeal of a --

MR. CONINE: So the answer is anybody wants to turn one of those in, tell them you want, you know, to get turned down right away so that you can get on the January Board meeting.

MR. IRVINE: Well, no, I think that the issue is that when you have identified that you have a need for s specific waiver --

MR. CONINE: Right.

MR. IRVINE: -- and you have identified specific facts and circumstances, you may bring that to this Board and place it before it for good cause and the Board may consider whether it is appropriate to grant a waiver for those specific circumstances.

MR. CONINE: Even without action from the staff?

MR. IRVINE: That is what this suggests. It's not a --

MR. GOURIS: We already looked at the language and the waiver language that Tim just referenced doesn't require a termination or a staff decision. I thought it did, but it doesn't. It's pretty broad.

MR. CONINE: Your guy behind you maybe --

MS. HAMBY: Kevin Hamby, Senior Counsel. Mr. Chairman, I think the problem that we have with what you're saying is that you're basically inducing people to come in and say -- ignore our rules. And with that inducement you're asking them to come forward and say that, While we believe that this one-, two-, three-, four-bedroom mix is vital for the rest of the state, if you have a narrow little set of applications here, we'd like to be able to waive the rule for you without actually putting it out into a rule, and you don't have any objective standards by which you could possibly tell people to come forward.

So you're in essence inducing them to create an application that fits this because you will then create a preference for this particular small group of applications.

MR. CONINE: Well, I was not trying --

MR. HAMBY: And that's where you end up with a vague.

MR. CONINE: I wasn't trying to give them a preference. What I was trying to do -- to say, if a market study says that that market -- that sole market is a 70 percent one-bedroom market and our rules say that they can't do that, and the building configuration says they can't do that, that the only thing that they can do is 70 percent one bedroom, then I think that case should be appealable to the Board at an early enough pace to where once it gets through -- if it gets through this Board, then they can go spend the money for the real application in March and go on down the road.

MR. HAMBY: I know, but what you're saying by -- I mean what you're saying by -- what you're saying with that is that we're going to create an exception -- you want to create it across the board that anybody who can show the market study that it only takes one --

MR. CONINE: I wasn't approving it at this meeting, Kevin.

MR. HAMBY: Okay.

MR. CONINE: What I wanted was the process.

MR. HAMBY: Well, I understand, but you --

MR. CONINE: What I want is the ability for the applicant to be able to come before this Board on the January Board meeting and if our current rules allow that process. That's all I need an answer for, I think.

MR. HAMBY: But if you're trying to create -- okay. If you're saying that, I don't believe our current rules allow that, because you wouldn't have anything until you get to the point of having the -- you'd be asking for a rule waiver in anticipation --

MR. GOURIS: That's how we've always treated it, but this is -- we read this to say it would allow it whether it's -- whether --

MR. CONINE: Okay.

MR. HAMBY: Okay.

MR. CONINE: In either case I'm not going to change the language of the QAP at this point to reflect it. You all can decide that later on. If someone calls you, you know, and says, Hey, I got a deal I'd like to submit, but it's, you know, it's out of whack and then tell them whatever you want to tell them.

MR. GOURIS: Can I throw one other -- one additional -- if anyone is listening to this and wants to pursue that route --

(General laughter.)

MR. GOURIS: -- I would very much encourage them to come talk to us and maybe there's some -- maybe we can work something else --

MR. CONINE: Yes, ahead of time.

MR. GOURIS: We're more than welcome -- or more than glad to do that and try to -- the earlier we know about it, the earlier was can try to resolve it.

MR. CONINE: Okay. Thank you for that intellectual discussion.

MR. GOURIS: Sorry.

(General laughter.)

MR. CONINE: I got one more witness affirmation form, but I'm not -- I've closed public comment on this meeting, so we're not going to do that.

And so I guess we're in the mode to make a -- create a motion on Item 4C.

MS. BINGHAM ESCAREÑO: I'll make a motion.

MR. CONINE: Okay.

MS. BINGHAM ESCAREÑO: Just preface it by saying that it really is encouraging at the Board's level to see so many commenters come up and make favorable comment about how far the QAP has come and how much our staff strives to address the concerns of all the different communities that are involved, so -- and it sounded like from Mr. MacDonald's comments about being 95 percent happy, let the record show that we have come a long way.

So with that I'll make a motion to approve the final order adopting the new QAP with one recommendation for a change, and that's the verbiage that was on the ETJs back to the 2010 QAP language.

MR. CONINE: Okay. Is there a second to that motion/

DR. MUÑOZ: Second.

MS. RAY: Second.

MR. CONINE: There's a second by Dr. Muñoz. Any further discussion?

(No response.)

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

MR. GERBER: Mr. Chairman, in the absence of Mr. Keig, would it be possible to hold the actual vote. This is one of the few rules that it's always nice to say we had the full Board and unanimous -- whatever action you're going to take, it would be nice to have him on record. I know he'll be back in just a moment, if it's possible though to hold. Sorry.

MR. CONINE: How many moments?

(General laughter.)

MR. GERBER: Probably about five.

MALE VOICE: About seven.

MR. GERBER: Five or seven.

MR. CONINE: I'm not waiting.

MR. GERBER: We'll vote.

MR. CONINE: Okay. 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 5A.

MR. GERBER: Item 5A is a presentation and discussion on the status of applications that were awarded housing tax credit exchange funds, and the numbers that staff is presenting to you today are slightly different than what was provided in your Board book. We were able to close an additional transaction after the publication of the Board materials.

The Department has closed all 84 currently awarded exchange transactions. This represents $577.7 million, or 97.25 percent of the total exchange dollars that the state received. These 84 transactions represent 7,795 units and approximately 9100 jobs. Of the 84 closed transactions, three remain held in escrow. The transactions were closed into escrow pending the US Department of Agriculture's final closings of the deals. The Department's working diligently with USDA to close these transactions in the coming weeks.

TDHCA, as I mentioned earlier, has the largest exchange portfolio in the country, and as you may imagine, it is closely watched by the Treasury Department and other federal and state agencies. As such, in September the Treasury Department performed an on-site audit of the exchange program and the result of that audit was very positive.

The Treasury Department did request that the Department return all extension fees to those transactions that requested an extension, paid the $2500 extension fee, and subsequently closed on the exchange transaction. Staff is working with the accounting department to reconcile the applicants' accounts and return those funds.

The Office of the Inspector General of the US Treasury Department also performed an evaluation of the TDHCA exchange program and the basis of the evaluation was to ensure management's accountability, control, and oversight of the exchange funds. And as a result of the requested information, staff has implemented a new required monthly report for each of the developments, and this new report allows for staff to better track construction completion and the amount of total capital drawn for each of the deals.

As for additional reporting, staff continues to monitor the progress of the portfolio and provide requested information as required. And you'll find in your Board materials copies of the reports that are filed quarterly with the Treasury Department. Teresa Shell is our very able exchange administrator.

Anything you want to add to the discussion?

MS. SHELL: Thank you, sir.

The only thing I really would add is that as of last night there have $190,990,920 disbursed for the transactions. We're getting there.

MR. CONINE: Okay. Any other comments or questions from the Board members on the exchange program on the report we got?

(No response.)

MR. CONINE: Okay. Moving on to 5B.

MR. GERBER: 5B is a discussion and possible action to award the remaining exchange funds and/or return the funds to the US Treasury Department. We would vote for -- on the staff level, option A. In conjunction with the information on the status report of the exchange program, and as a result of the actions you took with regard to approving LULAC Hacienda's appeal, you'll note that there remains roughly $11 million in exchange funds remaining to be reallocated.

Staff is asking the Board to ratify a NOFA that went out a little over two weeks ago to allocate those remaining funds. Staff first exhausted the waiting list for original applications that had not been withdrawn or closed with their existing funding. Staff has also collected and preliminarily reviewed requests for additional funds to support cost overruns and the like with exchange developments, but these requests only total to slightly under $3 million and would require a more detailed reunderwriting.

Thus staff prepared the NOFA to prioritize at-risk developments that could close quickly and meet the 30 percent test by year end as required by Treasury. We've received 10 applications by the initial deadline of last Friday, and are prepared to recommend the top four highest scoring at-risk developments.

Anything you want to add to that? I believe those four --

MS. SHELL: Yes.

MR. GERBER: -- developments are listed in your Board materials.

And, Teresa?

MS. SHELL: They are and they total an amount of $10,619,440, which would bring the total aggregate amount of exchange dollars awarded to that of $588,369,867, which leaves $414,032. However, there may be some slight modifications in the exchange rates for perhaps one transaction.

The four top -- the five -- the four top transactions come in at 81 cents and 85 cents, but I've had indication from one transaction that they would actually be able to support an additional 30 percent bump, so that would take them to 85 cents, which would therefore take that $414,000 and drop it down to $164,000 remaining.

MR. CONINE: Okay.

MS. SHELL: Which is about .03 percent of the portfolio funds.

MR. CONINE: I have several witness affirmation forms here that people want to speak on.

Brigitt Hartin? How are you?

MS. HARTIN: I'm good. How are you?

MR. CONINE: Good.

MS. HARTIN: My name's Brigitt Hartin. I'm with State Representative Darby's office. I'm reading a letter from the Representative regarding the Blackshear properties.

It reads, Dear Board Members, It has recently come to my attention that the Blackshear project located in San Angelo is requesting funds under the Housing Tax Credit Exchange Program. This development will add 20 affordable single family residential homes to House District 72.

I would like to express my support and your approval of this organization's application for the Housing Tax Credit Exchange Program. The Blackshear project has retained the necessary funding to qualify for this program, and the construction of these homes will allow low income families additional housing options. Thanks for your consideration. Sincerely Drew Darby.

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

(No response.)

MR. CONINE: Thank you very much.

Bob Salas?

MR. SALAS: Good afternoon. I'm Bob Salas and I came down here with a group of citizens that drove down from San Angelo.

You want to stand up, please? Thank you.

We're here to support the Blackshear Homes project which is competing for the Tax Credit Exchange Program. Unfortunately the staff is not recommending approving at this time. But we have some history. The Blackshear was awarded tax credits in 2008 and we really want to thank the Board for that, it's really appreciated.

And we basically have everything in place. We had a construction loan, we had the land, we had a commitment from the investor, the equity investor. Unfortunately, at the last minute the investor pulled away and pulled out of the deal. So it kind of left us in a lurch, and looking for another investor, which we couldn't find. So right now the only option available to us and the only chance of getting funding for this Blackshear project is through this exchange program. This is the last remaining option.

We understand that all the projects are important, and I know they're important to their communities. But Blackshear is more than just putting people into homes. Blackshear is about helping to revitalize an area that has been neglected for many years. It's really a key player, and that's the difference between the Blackshear and the rest of those projects that you're going to be funding.

We invested two years trying to work on this project, and we hate to see this die; we want to make it a reality, of course. So we're really kind of encouraging the Board at this time to kind of reconsider and basically award us exchange, if you will. We have other speakers as well to kind of flesh out these comments. Thank you very much.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: Craig Meyers. He has additional time, up to five minutes.

MR. MEYERS: Mr. Chairman and Board members, thank you for the time. This is the fifth time that we have appeared before you, and we appreciate the fact that you have listened to us. In those five times that we've been down here, we've learned some things -- oh, excuse me, Craig Meyers with WTOS in San Angelo in support of the Blackshear project. Excuse me.

We have listened to dozens of presentations and applications and appeals and amendments from other projects, and we do not understand exactly what the criteria are by which we were not approved, but we do know what we have presented, that had you approved us in the past because the project as it's presented to you is exactly the same one that you did approve in the past.

And I can tell you some of the things that hold this project up as being different, and they are measurable and we know they're different than other projects. This is not a stand alone project, it's a part of a much greater effort. It also is not presented by a developer but rather was underwritten primarily by the city of San Angelo. And finally, this is the smallest of all the projects, I believe, that have been proposed. So it's different. But those aren't necessarily bad.

Let me tell you what we presented that told you that it was different. This is a part of a very, very successful neighborhood revitalization program that is probably unparalleled in any city in the state of Texas. As stewards of the taxpayers' dollar, I think that you need to consider the fact that this has a 10 time multiplier in terms of the money expended in this revitalization project to the amount of product on the ground.

In the past years, other than money that's already been allocated for the operations of city departments and block grant monies, less than $2 million has been assigned to this revitalization project, over $20 million of product has been put on the ground. That's a good thing, I would think.

And one of the first reasons is collaboration. Generally on projects there are two or three groups collaborating. In this project virtually every stakeholder, private, not-for-profit, community organizations, churches, and citizens themselves, the city of San Angelo, all of these folks have been involved in putting their resources in this one project so it doesn't depend on just infusing government money to put that $20 million-plus on the ground.

We have bankers, we have realtors, we have the police department, we have the development corporation, we have every city department, we have the San Angelo Health Foundation, and we have the community citizens, and all the other organizations they're involved with. The collaboration is unparalleled in any project I think you'll find.

The second thing is it's comprehensive nature. If you have a free standing project, no matter how good, and you plop it down in the middle of a declining blighted neighborhood, eventually that neighborhood will prevail in dropping the value of that particular project. Here we are not just dealing with housing, we are changing the landscape, the environment, the zoning, the law enforcement, everything about it.

We have, for instance, put over 40 new houses on the ground. That comes primarily through half cent sales tax buy downs of 40 percent of mortgages for low income people. We have seen over 500 houses revitalized and rehabilitated, half of it through not-for-profits and half of it through the citizens themselves who, for the first time in this history of this neighborhood, have found that it's valuable to invest their money in their property because it's appreciating.

We have seen 20 blocks of sidewalks, we have seen partitions that have not existed between heavy industry and a residential area put in, over a half mile of the border for the city. We have seen stop signs and yield signs and street lights.

We have seen hundreds of vacant lots that have been allowed -- not allowed anywhere else in any part of the city of San Angelo to grow up head high in brush and fill up with trash. Those have now been leveled, they're ready for redevelopment and over 750,000 pounds of trash have been removed, primarily by a not-for-profit. So what you have is a collaboration on a comprehensive effort that has totally changed the landscape of four neighborhoods.

Community development recently did a statistical analysis that indicated not only are the residents beneficiaries, but law enforcement --

MR. CONINE: I have to ask you wind it up, please, sir.

MR. MEYERS: Okay. Law enforcement has indicated that crime has gone down in those areas and the tax rate has -- I mean the tax benefit has been tremendous to the city, and I think that this is a project of which Blackshear's an essential part of that is well worth investing in. Thank you.

MR. CONINE: Thank you.

Any questions?

(No response.)

MR. CONINE: Jerry Sea.

MR. SEA: Good afternoon, Board.

MR. CONINE: How are you doing?

MR. SEA: We're back again.

MR. CONINE: Yes, you are.

MR. SEA: Yes, we are. And we're back again for the people of Blackshear. Now there are people in Blackshear -- you know, over the years Blackshear has been killed by no services, no taxes being spent in that area for a very long time. So it killed that neighborhood. But as you heard, we went in and we cleaned it up.

And the people over there had no hope. They had no hope for the future, they knew that there couldn't be a future there, and the kids grew up and graduated from school and they left. Righteously, I guess I would have too, because without hope you don't have anything for the future, there's no future. You know, you have no vision.

And with this project being approved, once this project was approved the first time, you could almost hear a cheer across the Blackshear neighborhood because there was hope. People started to get vision again. They started to see where there's an actually an opportunity that somebody cares about us and somebody's going to do something for us.

But in the process of this process, there was some type of hiccup, whatever it was, I don't know, and I'm not going to try to throw anybody under the bus. But you're taking hope away from people that has been disappointed so many times in the -- before. Now they have another opportunity, and you have an opportunity to give them and their children hope so that when they graduate from school they could stay there.

In San Angelo, I don't know if any of you have ever been there, San Angelo is a very nice, safe place to live, and it's a good place to bring up your children. And we pray that you guys give us another chance. It's not just us, because if it was just us, I'm sure a lot of us wouldn't be down here now; I know I wouldn't, you know.

But it's for the people of Blackshear, and it's for the grannies that were babysitters or midwives and janitors and chauffeurs and things back in the day. They lived off of very, very little money and now that a lot of them are retired or about to retire, they have no hope. They're living in shacks. Is that a way to reward them for their hard work? And most of them, like I said, we're not throwing people under the bus, but, you know, most of them were of ethnic groups that live in Blackshear.

And you've snatched the rug out from under them. You know, you promised them this and promised them that, and promised them this, and we had a lot of naysayers, and now that they've seen so much good being done in the neighborhood, that some of them said, Hey, maybe we can get some help. For 40 years you took our tax money and didn't do nothing. You killed the entire neighborhood.

But now that there's hope, and there's a vision, and there's a light at the end of the tunnel, you have an opportunity to re-instill that and not snatch the rug out from under them again, and we pray that you don't. Thank you very much.

MR. CONINE: Thank you for your testimony.

MR. SEA: Thank you for the time.

MR. CONINE: You bet.

John Gambini.

MR. GAMBINI: Yes, sir. I'm John Gambini from Austin, Texas. I'm here representing Pioneer Crossing Family. I'm a general contractor. I've built over 22,000 tax credit units in 27 states. I've been building multifamily for 37 years. I'm here presenting Mr. Jooma as well. I've been to the city, I met with the city on his behalf, and verified that the project is ready for permits.

I had storage agreements in place already, as well as a facility in Lufkin so that we will be ready and able to meet the 30 percent test. And I'm ready to get the project built. Okay. Any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

MR. GAMBINI: Thank you.

MR. CONINE: Noor Jooma.

MR. JOOMA: Good afternoon, Board.

MR. CONINE: How are you doing?

MR. JOOMA: How are you, Chairman Conine?

MR. CONINE: Good.

MR. JOOMA: I'm here to speak for Lufkin PC application number 10283 for the exchange program under the new NOFA. I have an application which has the second highest score of all the exchange applications for this round. And the most beneficial economically to the Department at 70-1/2 cents.

I realize the importance of at-risk deals having a priority for the simple reason that staff feels that they will meet the 30 percent test; however, as you heard from my general contractor that the test requirements could be met. And [indiscernible] after reviewing his plans, has written a letter that I just submitted that the test requirements could be fulfilled.

My consultant, Mike Sugrue, has also reviewed the plans and interviewed the general contractor and he concurs that the test -- that line could be met. I'm willing and able to close on or after December 6 when my comment appeared after the newspaper publication for home environmental expires.

Should the Board approve staff recommendation, I humbly request them to please have Lufkin PC as their primary back up should any of the recommended transactions for whatever reasons may not be able to timely close. I just received an email about 30 minutes ago that another home clearance was received recently. I just go that email. So I've crossed another hurdle towards closing.

Thank you very much for your time. I'm willing to answer any questions should the Board have any.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

MR. JOOMA: Thank you.

MR. CONINE: Bill Fisher? Granger MacDonald and Dan Allgeier are the next two.

MR. FISHER: Good afternoon, Chairman Conine, Board members. Bill Fisher, Odyssey Residential. We are Champion Homes at Marina Landing on this list, and my comments today are really just trying to make sure that the Board makes an informed decision. This is use-it-or-lose-it money and as you're hearing, there's a 30 percent test that has to be met before the end of the year.

You know, I want to make sure that the Board has all the information, whether there's TCAP money available to fund some of these projects. Certainly I think our experience with the USDA closing quickly are -- you know, that's generally not a good experience. Our one project uses 100 percent of the available exchange money. So the Board would know with our transaction that 100 percent of your funds will be used. And, since we're really under-funded, to the extent that there was fall out on other transactions, we could absorb that.

So my request today is just to make sure you get all the information from staff about what total funding is available to fund all the transactions, what the risk is in the USDA really closing in time, and understanding that you have one transactions here that makes sure you've used 100 percent of your, you know, use-it-or-lose-it money.

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

(No response.)

MR. CONINE: Granger?

MR. MacDONALD: Mr. Chairman, Granger MacDonald again. I would only ask that the Board approve the staff to be able to allocate all of these funds at this time so that -- because you won't have a Board meeting in time to get the closings done. So if there is something that comes back, the staff can reach down and pick another applicant, if possible, off the list of people that aren't in the first four.

And if there's any partial funds, I know it's running from somewhere from 414- to $100,000, there's some projects like our own who could take a partial funding that are ready to close. So I would encourage that every last penny of this money be used and not sent back to Washington.

MR. CONINE: Okay. Thank you.

Any questions?

(No response.)

MR. CONINE: Dan?

MR. ALLGEIER: Dan Allgeier, New Rock Companies. Heritage Park Vista has a current exchange award, but we lost our local funding from the city of Ft. Worth; for some reason or another they're not able to honor their commitment. Administratively this would be the easy thing to do. I don't need all your money, I just need a small amount of your money. Rather than send it back to Treasury, again, we could take a partial amount of money, something to offset what we lost from the city of Ft. Worth for the Heritage Park Vista deal.

It's not on the list, it's not on the list because existing exchange deals -- staff said we didn't need to file an application, but if you have funds that are available, we'd like some money to offset what we lost from Ft. Worth.

MR. CONINE: Okay. Any questions?

(No response.)

MR. CONINE: Okay. That concludes the witness affirmation forms on that particular agenda item.

MR. GERBER: Mr. Chairman, would it be helpful for Tom to walk through how we got to the NOFA and --

MR. CONINE: Yes.

MR. GERBER: -- how we proceeded with this, and what the criteria were?

MR. GOURIS: Sure. What we did was tried to recognize that we didn't have enough in funding to -- or we didn't have enough in additional overrun kind of transactions to fund a little bit more to a couple of transactions, and we looked also at if there's enough room in their basis in the existing transactions to fund the difference. And there wasn't going to be enough in requests to do that.

So we came up with a strategy to say, let's open this up because the exchange program federally wasn't restricted to a certain number of years, or even to an existing tax credit development.

We maintained the idea of that restriction in that we wanted to make sure we got it from a tax credit deal so they were eligible for tax credits, something that already got an award so we had underwritten it, something we could easily replace. And then we looked to focus on transactions that could move quickly to meet the 30 percent deadline in December.

DR. MUÑOZ: So all of these have already been allocated.

MR. GERBER: Given awards.

MR. GOURIS: All of these have tax credits.

DR. MUÑOZ: They've all been underwritten. Okay.

MR. GOURIS: Correct. And so we prioritized those that were at-risk because --

DR. MUÑOZ: At the time -- let me ask --

MR. GOURIS: Okay.

DR. MUÑOZ: -- at the time when that award was given, did they know about this possible new NOFA and availability of funds that are now being --

MR. GOURIS: You know, there's always been the possibility of some funds coming back in exchange to be able to add more --

DR. MUÑOZ: But this shouldn't have been anticipated in their --

MR. GOURIS: Yes.

DR. MUÑOZ: -- planning.

MR. GOURIS: No, that's correct.

DR. MUÑOZ: All right.

MR. GOURIS: We believed that we were -- the first group of applicants were going to be enough, up until maybe a month or so ago, I think.

MS. SHELL: And we posted the NOFA on October 22, and the deadline was noon last Friday, the 5th.

MR. GOURIS: And normally we would have taken action to come to you all to ask for approval to do the NOFA and go through the process that way, but we needed to do so pretty quickly so that we could get through these deadlines and ask for you to approve the NOFA and the award in the same meeting, which is pretty extraordinary under these extraordinary circumstances.

So we tried to follow the pattern that we had before, followed the same rules that we had for the original NOFA. The only exception was that we prioritized at-risk transactions because they're the most likely transactions to not be able to get their tax credit deals moved forward. Rural deals are also given a slight priority in this structure in that the first, if there's a tie-breaker, the first deal will go rural and the next deal would go urban.

In this case, all of the top five transactions were at-risk and they happened to be rural, so there's not -- we didn't have to go to any of those kind of tie breaker kind of situations, so we just went by score based on at-risk. So there are some new construction transactions that fall out with a higher score, but they weren't at-risk, so they're not prioritized.

MR. CONINE: What about the USDA issue, that seems to be --

MS. SHELL: It's an issue and a concern to quite a few folks, and it's something that we've been working with USDA on. We actually have a commitment letter from their state office, from their state --

MR. CONINE: They actually answered the phone.

MR. GOURIS: Yes, and --

MS. SHELL: Yes, they did.

MR. GOURIS: -- and actually called us, because they are very anxious to see these transactions get done. Something of a fire has been lit under them, I think, to get -- to help with these transactions.

MR. CONINE: That'll be 180 degrees from previous --

MR. GOURIS: That's correct.

MR. GERBER: But we alerted the IRS to it and asked them to put pressure on USDA to come in to -- because being that they're stimulus funds, I mean there's a --

MR. GOURIS: I think there's been a lot of --

MR. GERBER: -- there's a lot of pressure put up --

MR. GOURIS: -- discussion about it with -- by lots of folks.

MR. GERBER: -- with USDA again.

MR. GOURIS: And -- yes.

MR. GERBER: But we would also want the discretion that if USDA can't perform on a deal, we go to the next --

MR. GOURIS: That's correct.

MS. SHELL: Exactly. And then on page 2 of the Board write up in your book --

DR. MUÑOZ: And this would be --

MS. SHELL: -- we're asking for --

DR. MUÑOZ: Let me ask a follow up to Mike's comments. And this would be the order that they would be selected in? In this order?

MR. GOURIS: Yes.

MR. GERBER: Yes.

MS. SHELL: Yes, sir.

DR. MUÑOZ: This is a ranked order, so you wouldn't be able to go down three, it would be River Place --

MS. SHELL: Not by --

DR. MUÑOZ: -- Lufkin, et cetera?

MR. GOURIS: That's correct. The only thing that we are going to have a difficult time with is if we end up with $400,000 or $100,000. Our criteria have been that a whole deal gets replaced, and so going down the list to do the next deal that needs $2 million with $100,000 isn't going to really work for us.

DR. MUÑOZ: What about the comment earlier about some sort of partial allocation?

MR. GOURIS: That hasn't been part of the plan. What we could do instead, if you all directed us to do so, is to look at those that had cost overruns, prioritize those in the same manner and those that have the highest score could be -- and showed the need and we were able to substantiate the need could get the extra funds. I think there are --

MS. SHELL: There are six.

MR. GOURIS: -- six transactions, about $2.8 million in additional requests based on those six transactions. I think one -- I think there are a couple that could take the entirety of the $400,000 by themselves.

MS. SHELL: But if you rank them by score, the first two would --

MR. GOURIS: Yes.

MR. CONINE: Any other questions?

DR. MUÑOZ: Just so I'm clear, Tom, so I mean this was a bit of an unexpected sort of windfall, or extra dollars that were --

MR. GOURIS: Well, I think we always understood that we probably wouldn't hit it perfect, you know, and so the $400,000 I think is not -- wasn't unexpected. I think the $11 million was a little bit unexpected. There were a couple of transactions that failed to move forward, we talked about one this morning that --

DR. MUÑOZ: But I guess what I'm saying is, in no instance is any of these projects -- they hadn't planned for this contingency. They might have hoped for it, but nothing is being withheld or taken back.

MR. GOURIS: That's correct. In fact, all of these, expect for the Blackshear transaction, just got an award of tax credits telling us --

DR. MUÑOZ: When did Blackshear receive an award?

MR. GOURIS: They received an award in --

MS. RAY: 2008.

MR. GOURIS: -- 2008.

DR. MUÑOZ: 2008.

MR. GOURIS: I guess I should take that back, two of the transactions received forwards from '09 as well, Marina Landing and Mustang also.

DR. MUÑOZ: And that commitment and those awards remain in place.

MR. GOURIS: That's correct. And we presume and hope that they'll be able to find --

DR. MUÑOZ: So it's not as if --

MR. GOURIS: -- the transaction.

DR. MUÑOZ: Okay.

MS. RAY: None have been kicked out.

MS. SHELL: No, ma'am.

MR. CONINE: Syndicators can still close on them.

MR. GOURIS: Yes. With the exception of Blackshear, which is not likely -- if they can't get their syndicator to close in the next week, they won't be able to -- I mean they have some very significant issues in that if they will go forward as a tax credit deal, they need to -- it's an '08 transaction, I believe they'd have to complete by the end of this year, so I don't see them making that with this cycle of funds. They'll have to return and request additional allocation in the future.

MR. KEIG: Let me just make sure I understand this. The scoring criteria we're using for this proposition is the same scoring criteria we used for the original NOFA for the exchange funds?

MS. SHELL: Yes.

MR. GOURIS: Yes.

MR. KEIG: Okay. And the fact that we have in the top four three by Dennis Hoover, that's just --

DR. MUÑOZ: Coincidence.

MR. KEIG: -- coincidence?

MS. SHELL: Happenstance.

MR. GOURIS: Yes, they're all at-risk is why they're -- yes.

MR. CONINE: Any other questions of the witnesses?

(No response.)

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

Oh, did you have any other red liners to read?

Okay. I'll entertain a motion.

MR. KEIG: I move staff's recommendation.

MR. CONINE: Motion to move staff recommendation by Mr. Keig. Do I hear a second?

DR. MUÑOZ: Second.

MR. CONINE: Second by Dr. Muñoz. 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: The motion carries.

MR. GERBER: Mr. Chairman, I would just note, thanks to our -- to folks from San Angelo who made the journey out, once again, it's a case of too scarce of resources for affordable housing, and we really look forward to working with them, and with others around the state to --

MR. CONINE: Absolutely.

MR. GERBER: -- their projects on the ground.

We'll move to Item 6, which is our disaster recovery items.

Kevin, you want to come forward and present those?

MR. HAMBY: Kevin Hamby, Senior Counsel. Item 6A and 6B are similar, Mr. Chairman, if you'd like to take those together.

MR. CONINE: 6A and B?

MR. HAMBY: 6A and B.

MR. CONINE: Yes.

MR. HAMBY: The goals of 6A and B, as we move forward with the Rita program -- and I'm very happy to say that the end is in sight of having all of the Rita homes built, we anticipate by 12/31 that we'll have most of the homes built. However, we've discovered there's some excess funds that are both in Rita Round I and Rita Round II that are unexpended through either efficiencies, or not having enough applicants, or not having enough funds in some areas to extend those applicants.

And so we're -- both of these items are to gather those fund together, put them into one fund and create a one last little bit of funding to acquire homes whether it's a MSU or built homes for people who are currently under the HAT program of Rita Round II. And it just authorizes the Executive Director to start doing those transfers so that we can get all the fund together and actually do some construction.

MR. GERBER: But we think there's about 4- to $6 million left over in all the various programs, like for example in Sabine Pass $12 million was allocated there, they've only -- they've used, you know, most of it, but there's 1.2, 1.5 million left over. These will transfer in. The same is true for Harris County, which has turned over its funds that they can't use to -- this is Katrina evacuees. There's other --

MR. HAMBY: Correct. It's various programs scattered around though. If the Executive Director has the authority to either amend -- if necessary, amend the action plan or just do the transfers. We're asking the Board to give the Executive Director the authority to do whatever is necessary to get those funds together so after the first of the year we can assist those last homeowners that are still in the application process, in the pipeline but we don't have the funds to assist them under Rita Round II unless we gather these together.

MR. GERBER: But the 40, 50, 60 homeowners that we think will -- that we have been working most with, they're ready to go with those funds, so we're -- there won't be additional lag time with the ACS contract. We think they'll construct those homes probably over January and February and wrap up the entire project --

MR. HAMBY: Correct. We are just asking -- we're also going to extend by a few months the ACS contract once they complete the Rita Round II. The principal that they already have, we're going to ask them to continue to finish these last homes. And, again, as Mike says, it's probably between 40 and 50, maximum.

MR. CONINE: Okay. Any questions of the witness at this point?

(No response.)

MR. CONINE: This is for Item 6A and B, to wrap all those up. Do I hear a motion to -- do I hear a motion?

MR. KEIG: I move that we accept staff's recommendation on Items 6A and 6B.

MR. CONINE: Motion by Mr. Keig. Is there a second?

MR. GANN: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 6C.

MR. HAMBY: Mr. Chairman, members of the Board, this is a request to have some extensions to various contracts with Ike funds -- or some amendments to contracts with Ike funds. The city of Houston is requesting some extensions to tie in together with the actual properties that we're also funding in other programs so that all the deadlines are the same so it's one cohesive area.

There is a question, they still have some $13 million in obligated. They have a proposed contract right now with Linda Vista, an applicant called Linda Vista, and they're looking to have those. This is not a blanket extension and that was one of the things we were very careful to do, it's not a blanket extension of the contract and delaying the spending of Ike I funds. It is very targeted so that they have the ability to do these deals on a systematic and consistent basis across the board.

And then Montgomery County is requesting that they use some of their existing funds and allow the temporary relocation assistance for homeowners. It will not cost any additional funds, and they do not anticipate that it will reduce the amount of beneficiaries and they're looking to just to have the authority to do that.

Galveston County is a slightly different one. And again, we're very targeted on this. There are some homes in the area that are going to have to be raised higher than they originally thought, and they've limited that to 50 homes, but it's going to cause an increase from 125 to 145 for those -- $145,000 per home for those homes. We have limited -- we will limit the amendment to the 50 homes -- not more than 50 homes that get this bump up. We wanted to make sure we did not have an across the board $20,000 bump up of every home in Galveston County.

So the amendments are fairly well tailored and they are specifically to address problems or additional benefits that have been requested by these three communities.

MR. CONINE: I have some witness affirmation forms here.

John Henneberger.

MR. HENNEBERGER: I'm John Henneberger with the Texas Low Income Housing Information Service. At the last Board meeting I testified about concerns that I had with the extension of the funding to the city of Houston for the disaster recovery funds. Those concerns remain in place.

The city of Houston has allocated $60.5 million for the rehabilitation of multifamily housing under the Ike I funds. It's allocated about one-sixth of that amount for the rehabilitation of single family homes. That is exactly the opposite of what every other jurisdiction around the state has done. Every other jurisdiction has prioritized single family homes.

They come before you today having not spent -- or not obligated all of those funds and having some significant delays in actually expending the funds for multifamily rehabilitation, and ask for an additional 16 months in order to obligate and expend those funds.

We are opposed to this. The city of Houston allocated sufficient funds for only the rehabilitation of 247 single family homes under the Ike I program. It is anticipating rehabilitating over 2,000 multifamily units at the same time. The FEMA damage estimates do not comport with that disproportionate ratio of 10 to 1 multifamily to single family units.

We ask that the state and that the city of Houston move these $13.5 million of currently unobligated funds from multifamily to single family. The city told us last week that, while they have sufficient funds to rehabilitate 247 homeowners -- homes, they have 2,000 applications from homeowners.

Now it doesn't make sense to me that if you don't have an immediate way to spend them multifamily money, and you're having significant delays in getting applicants and getting that money spent, that -- and you've got 2,000 low income homeowners who have blue tarps on their roofs.

You ought to prioritize some of those 2,000 applicants that you've got in hand before you go out and you try to find additional multifamily properties to rehabilitate, especially since the allocation was disproportionately 10 to 1 almost weighted for multifamily versus single family in the first place, making Houston an outlier in performance from the way every other jurisdiction that administered Ike/Dolly funds chose to spend their money.

So we ask, number one, that the $13.5 million be moved to the single family program, that the city of Houston -- that the state require the city of Houston to demonstrate that the multifamily developments that they are proposing to fund affirmatively further fair housing. We're deeply concerned about the location of multifamily units that the city of Houston is rehabilitating because we believe that they are going to further isolation and segregation of the classes. Thank you very much.

MR. CONINE: Are there any questions of the witness?

FEMALE VOICE: For anybody from --

MR. CONINE: Yes, Jim --

FEMALE VOICE: -- Mr. Noteware.

MR. CONINE: -- Noteware is here, and Linda Crosson.

MS. CROSSON: Good afternoon. Linda Crosson, Manager of Disaster Relief on the multifamily side for cit of Houston. Our request today is -- I would say that we've actively been engaged in the rehab of some older apartment communities that suffered hurricane damage in our neighborhoods. We are underway, under construction, and we are actually in the process of rehabilitating and providing accessible -- over 5 percent of our units are going to be rehabbed with accessibility features and 2 percent for visibility features.

We are underway with seven projects. Two for the projects that are before you we're asking for an extension to coincide with the exchange deadlines of December 2011 for those completion dates. We hope to have the opening of one of our projects on January 2011. It's the Reserve at Creek Bend project in the Fondren Southwest area. That's one of our target zones that had hurricane damage.

And the remaining project that we discussed was the Linda Vista project. They came to us with a $14 million request. It's over 550 units. It'll serve over 1,000 individuals in that neighborhood if we can rehabilitate that project. There's been -- because of the size of the request, we weren't able to honor that initially. However, some of our applicants fell out because they couldn't meet the program guidelines, and we've been able to reduce the scope on that project to 488 units.

There has been some delays in getting funding, some additionally funding on the project, and they're working towards making that happen. I would like to note in the May Board meeting, in the program guidelines, they are allowing for 36 months of a time frame to complete multifamily projects.

When we initially did our application, it was a two-year time frame, and I think because of what it takes to get a multifamily project through the permitting process, through developing a scope of work, through the bidding process and putting subcontractors in place with all the Davis-Bacon wage requirements, it does take some time to get a project underway.

So we ask for your approval to continue to make use of those funds. And I'll let Jim speak with regard to policy issues.

MR. NOTEWARE: Yes, the questions that Mr. Henneberger has raised regarding the allocation of the funds between single family and multifamily are issues that we take very seriously. Our new administration came into office as activity was already underway. The multifamily allocation and specific projects that Linda just mentioned were already underway when we came in. And also the same situation with the single family. Our goal was to finish things that were underway.

Under the prior administration the single family program grew significantly both in numbers of units repaired and also the amount per unit grew significantly. We are in the process of revising our program guidelines in terms of qualification and amount of allocation per unit as we go forward, particularly in light of what we understand to be the pending awards for the next round of disaster recovery.

MR. GERBER: Could I ask a couple of questions?

MR. NOTEWARE: Sure.

MR. GERBER: Jim, talk a little bit about the -- you know, I had some knowledge of the conciliation agreement, which, you know, fortunately or unfortunately you all are represented by the Council of Governments through that process.

How are you going to address the affirmatively furthering fair housing issues in Round II, and how are you going to serve that backlog of thousands of homeowners in Houston? I mean I grew up on the -- one side of Fondren Southwest, I'm very familiar with it. I also know that there's, you know, thousands, tens of thousands of people in Houston who have blue roofs and still need repairs to their homes made. Talk to me about -- talk to us about that program and when that comes on board.

MR. NOTEWARE: There is an awful lot of discussion underway now about exactly how to do that in terms of setting up geographic priorities and setting up income and other qualifications. It is a work in process at this stage.

DR. MUÑOZ: Can you be any more specific?

(General laughter.)

MS. CHAPA-JONES: Hi, I'm Veronica Chapa-Jones, Deputy Director for Grants Management and Compliance. I've also been one of the leads in the city for looking just at disaster recovery Round II, and there are two components that we're looking at. Right now we're in the process of looking at just the data, the damage assessment data that was provided by the state, the storm maps, and also looking at the low income households, where they're located.

For Houston, it's a unique case because we're a majority/minority city. So if you look at our CDBG low income areas on a map spatially, it could take up 60 or more percent of the city. So we're trying to right now do the planning where we're intercepting the data, the information to say where exactly -- where are the households that were the most low income affected, and then how do we assist them.

The challenge for the city of Houston is that with the disaster recovery Round II funds we have the infrastructure component that has to come into play. So we're actually working and partnering with our public works department, which is the infrastructure side, to put together a model that says, if we're really going to assist distressed communities that are also economically disadvantaged communities, let's prioritize those that have the worst problems first.

So what we'd like to do, and this is theoretical, but I am sharing kind of our processes, is to identify the worst infrastructure components that were damaged and affect low income areas, intersect that with the housing problems and provide an analysis of what households should be assisted in order to not only assist the homeowners that were affected, but offer some long term solutions in some areas that do have serious drainage, do have serious storm problems, seven inches of heavy rain after Ike, and there were areas that flooded and people couldn't go home the next day.

It's an interesting set of problems which is what I love doing at the local level. We don't have a final plan. I will keep you posted. I'm happy to answer additional questions to that. We are also sensitive about the single family-multifamily distributions, and there's going to be a quantitative process that goes into making that determination.

But the other unique characteristic for Houston is that we are a community of renters, we have a lot of people that do rent, and some of the solutions that are presented when you go to these conferences are specific to moving populations, that you should move them, or give them the choice to move to high opportunity areas.

Well, on certain parts of Houston, or larger parts of Houston, we couldn't define it necessarily as a high opportunity area and move a whole group to go live there.

DR. MUÑOZ: Okay. Let me stop you right there because you happened upon a term. Define high opportunity.

MS. CHAPA-JONES: That is the -- and I don't want to say it's a newer term, but it's --

DR. MUÑOZ: I understand it's part of a new vernacular.

MS. CHAPA-JONES: That we're using to say if it's, you know, areas with exemplary school districts, have access to grocery stores, has access to better drainage. It's those -- the community where you want to live as opposed to the challenges that you might have in other parts, because it's older or because all the things that happen with older neighborhoods.

So the challenge that we have with the multifamily-single family distribution is that -- and I think this is just interesting from an affordable housing perspective, currently the recommendation is to move whole populations, that we should offer the choice. But what I'm saying is I think the choice currently as we have in Houston is going to be limited for those areas to move the population that really would benefit from that.

So what we're actually trying to do is what we're calling place-based strategy. That's an academic term that a friend of mine told me to use in planning. And rather than saying we're going to move people to all these other areas, really talk about the revitalization component. We are in the process of looking at policies that work in tandem with multifamily. The difference that you're going to see is, again, the focus of the city is community development.

It's not going to be the production of just those multifamily units, it's when we put the units in a particular neighborhood, what other amenities are accompanying that particular project. Are there opportunities for jobs, are there opportunities for us to do either a public facility, a museum, other source of infrastructure projects in tandem with what's happening with that particular project. So it's taking it to a much higher level as opposed to just looking at the street level, here's the one complex, what's everything around it.

It's not perfect, I think it's going to be a great story in two to three years when we start seeing some of the beautiful work that has come as a result of it. And the one thing that Jim can speak to if you'd like is where the disaster recovery dollars have gone. We have some aerial photos. We should probably show those at the staff anyway and a map.

If you go through even a Google earth map to see these neighborhoods, where they were a year ago when they took it, and to look right now, it is not the same neighborhood. It is literally turning around and allowing for more investment, and that's what we really want to do.

MR. CONINE: It seems to me that I think you said that there's 247 homes, single family homes that have been rehabilitated.

MS. CHAPA-JONES: Yes.

MR. CONINE: What's that, about 20 million or -- 15 or 20 million that came out of Ike?

MS. CHAPA-JONES: It's about nine million. One of the challenges that we've had is the money is completely a grant, and when we go do a homeowner sometimes you can't rehab, you have to do the full reconstruction, so you're talking about 90,000. And we do relocation and pay for the tenants time out of the unit. So it's on average to 100, 110,000 per household, which just means we're assisting less households. So that's, you know, the issue that we grapple with.

You could do a little bit less, but you're going to be giving up maybe some interior cosmetics, you know, opting not to paint or do, you know, other finishing touches because we'll be going just doing the restructural stuff so that we can assist more people.

MR. CONINE: Well, just, again, from a bouncing standpoint, it just seemed like -- I understand the use of funds goes a lot further in multifamily in every case, not, you know, measured against single family. That's a no brainer. But the fact that you got 12 -- no, 13-1/2 million of unobligated money sitting here on the multifamily side, what would be wrong with switching that over to the single family side now so that you can get money to those people quicker than waiting on Round II money and coming up with ideas and plans and which is all going to take time.

MR. NOTEWARE: We had figured that the best thing to do was to stay on course with the projects that we had in the pipeline to complete the financing rather than to do the switch as you suggested. We have considered that alternative. But rather to deal with a bird in the hand that we had rather than waiting for the future funding, the one in the bush, that's a management call that we have been making.

MS. CROSSON: And you might -- we're underway under rehabilitation in two projects in the Antoine-DeSoto area. The one that we're speaking about is a third project and when Veronica was speaking about revitalization, it's our hope is to take an area -- and I can tell you, a year and a half ago I was escorted, armed guard, to walk through, you know, one of the apartment communities that we are rehabilitating, and I can -- today I think there's going to be a real turn around, but we're trying to I guess give the best chance for that area to work.

And by taking a property that's 35 percent occupied that suffered a lot of damage, that has a chance to turn it -- the whole area around and basically capitalize -- we're doing two projects and if we can do the third, it gives the chances of success, you know, a greater chance to happen if we do that. And so we're -- that's another, you know, where we are on, you know, our motivation to continue to turn this entire area around.

MR. CONINE: And I understand that philosophy. Again, I'm talking -- speaking more to timing because you know there's a second round of money coming. And whether or not that third or fourth project over in that particular area comes out of this pot or the second pot, it doesn't matter. You still end up getting the thing done. Based on what I'm hearing, if the systems are in place for the city of Houston to rehab some single family homes, if you've done it before in other words, you know how to do it --

MR. NOTEWARE: Oh, yes.

MR. CONINE: -- it would seem to me like I would have an interest in reallocating that 13-1/2 million back to single family to put some more emphasis in that area, as Mr. Henneberger has suggested, and then when Round II comes you can fill in the holes with the multifamily as you see fit, just simply because you get to the single family folks a little quicker.

MR. NOTEWARE: If we have the flexibility to handle the allocation so that the projects that we have underway to complete the work that we have intended in the Antoine-DeSoto and other related areas, then I think that might be an appropriate suggestion.

MR. GERBER: And I think the message from HUD, Mr. Chairman, is that we all have flexibility, but it's somewhat more limited than it was a year ago, and I think we all have to strike the right balance. I think from TDHCA's standpoint, we really applaud the kind of planning and thoughtfulness and it gets to those higher goals that we're all trying to achieve. At the same time, we've got a lot of folks who are really poor who are saying, These dollars were intended to help us rebuild their homes and rehab our homes.

And so, you know, we're hearing a lot from that side at the staff level, and I think that's roughly what Mr. Henneberger's raised as well. We're going to have to deal with that balance as we work through Round II as well, because it's not going to be hard to hit a trigger that's going to bring the entire -- it's not just going to be the city of Houston's funding, it's going to be the entire region's funding because it's all interconnected I think, in HUD.

So now this becomes important. So we would recommend --

DR. MUÑOZ: How would we then know, Mr. Chair, if once the analysis of what's required of that remaining balance be applied to bring to full fruition the existing projects to the satisfaction of the city, and then what would remain thereafter potentially to be applied to single family?

MR. CONINE: Well, there's an unobligated piece here, 13 million 456.

DR. MUÑOZ: Are you talking about all of it?

MR. CONINE: Oh, yes, I'd do it all.

DR. MUÑOZ: That's not what I understood to be said. That they would complete the current projects --

MR. NOTEWARE: If we're allowed to continue the funding of the projects that we have underway. Technically it's not obligated, yes, but it is, in our words, committed to special -- specific projects to be completed.

DR. MUÑOZ: Is that some of that committed part of that thirteen four?

MS. RAY: That's what he said.

DR. MUÑOZ: That's what you're saying?

MR. NOTEWARE: That's what I am saying, yes.

DR. MUÑOZ: Okay.

MR. HENNEBERGER: Mr. Chairman, Kevin Hamby again. To address the issue about the difference in Round

I and Round II, the issue we're going to address next are the housing guidelines. And Mr. Henneberger's discussion that he would like to see the affirmatively furthering fair housing out of each of these in Round I, while it was technically a requirement under the law, it's certainly not required as it is under the conciliation agreement in Round II.

I haven't looked completely at the Antoine area, but since my wife grew up in that area I'm reasonably familiar with it, it would be very difficult, I believe, to meet the affirmatively furthering fair housing guidelines in that area to assist in breaking up racial segregation in that area. It has a fairly high -- and I could be wrong.

Veronica, is that still true?

MS. CHAPA-JONES: Yes, that's actually right on point.

MR. HAMBY: So the concept that they could potentially do that project in Round II is probably not true because of the affirmatively furthering fair housing requirements that they're going to have versus the conciliation agreement in the housing guidelines in Round II.

MS. CHAPA-JONES: In other words, when we go through out data modeling to prioritize where we're going to put the money, it's no guarantee and we can't guarantee that the Linda Vista folks in the Antoine-DeSoto area could get any of the Round II funds. We would want to do --

MR. CONINE: I wasn't touching Linda Vista.

MS. CHAPA-JONES: Okay. Well, that's --

MR. HAMBY: That's the 12 million, most of the --

MS. CHAPA-JONES: That's the 12 million.

MR. HAMBY: -- $13 million.

MR. CONINE: Oh, is that the -- okay.

MS. CHAPA-JONES: Yes --

MR. HAMBY: Yes, that's most of the 13 --

MR. CONINE: That's not the way this -- that's not the way I'm looking at this.

DR. MUÑOZ: And that's what you mean by the committed.

MR. NOTEWARE: Yes.

DR. MUÑOZ: Oh.

MR. NOTEWARE: That's precisely what I mean.

MR. HAMBY: Yes, that's the $13 million, so the staff is prepared --

DR. MUÑOZ: So the twelve five is in the 13 --

MR. HAMBY: Yes.

DR. MUÑOZ: Okay.

MR. HAMBY: Correct. It's not --

MR. NOTEWARE: Now we're beginning to understand the puzzled looks.

DR. MUÑOZ: Okay.

MR. CONINE: Yes, I thought we had --

MS. RAY: I thought there was --

MR. CONINE: -- I thought the proposal was already there --

MR. NOTEWARE: That's right.

MR. CONINE: -- but it's not 13-1/2 million.

MS. CHAPA-JONES: That's the one he'd be saying no to, in effect.

MR. CONINE: Okay.

DR. MUÑOZ: We'd be saying no to the Linda Vista.

MR. HAMBY: Yes. Yes.

DR. MUÑOZ: Okay.

MR. HAMBY: And it's also an important part of the consideration in Round I of Ike and Dolly. The direction was that there's a significant amount of local control on how the funds were spent.

MR. CONINE: Yes, I just -- been hearing the balance between single and multifamily did quite sound appropriate to me. And it would be my hope that the city of Houston would correct that in the second round.

MS. CHAPA-JONES: We'll make you proud.

MR. CONINE: Okay. Any further discussion?

(No response.)

MR. CONINE: All right. We need a motion I guess.

MS. BINGHAM ESCAREÑO: I'll move staff's recommendation to approve the -- are they extensions basically for city of Houston and Montgomery County and Galveston --

MR. HAMBY: They'd be contract amendments, just in general. Some of them are extensions, some of them are --

MR. CONINE: Item 6C.

MS. BINGHAM ESCAREÑO: Amendments. I move staff's recommendations for --

MR. CONINE: Motion to approve by Ms. Bingham. Item 6C. Is there a second?

DR. MUÑOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. NOTEWARE: Thank you.

MR. CONINE: Thanks for clearing that up for me. Item 6D. Mike?

MR. GERBER: Kevin.

MR. CONINE: Kevin.

MR. HAMBY: Item 6D is what we were just sort of talking about in the last item. It is the housing guidelines. According to the conciliation agreement that was signed to help direct the funds from Ike Round II, one of the requirements of the -- one of the requests and one of the agreements in the conciliation agreement is that we would create a housing guidelines task force so we would have, across the board, similar benefits being given to the victims of both Hurricanes Ike and Dolly.

Part of the concern was in the first round you might have somebody who's receiving $150,000 of benefits in one community, and the same person -- or a similar situated person would only receive a $56,000 home in another community. And the goal of the Ike -- of the housing guidelines is to even that out, and also establish what people could and couldn't do as part of the process.

There are several key issues, and as you can tell if you've looked at this, we had a committee that developed this. We have lots of different proposals in here. I'll hit some of the high points. We've had, I believe at last count, 138 comments. It's QAP like in it's public comment approach -- I'm sorry 222 is what it ended up being finally. It was a very significant amount of comments.

The guidelines are broken down into several programs, but probably the key program that you're going to hear the most about and has the most questions raised about it, we have a program within this that targets, and you heard Houston reference the needs assessment, there's a requirement that they also, in these program guidelines, that they look at the needs that have been addressed and have not been addressed from the hurricane and target their whole programs around that.

The difference between Round I and Round II, in Round I you could have a first come first served type basis for receiving benefits, in Round II it has to be an affirmative marketing program addressing the needs that are discovered in the needs assessment.

Part of our analysis of impediments that's coming forward is going to identify two different areas that we have also agreed in the housing guidelines to look at to affirmatively further fair housing. We're going to look at areas of racial concentration that are 65 percent and greater in any one block. And we're going to look at areas of poverty that are 35 percent or greater.

If we find those areas, the communities will have to do -- and we find that they have needs from the hurricanes, the communities -- we'll have to do actually affirmative outreach marketing to go into those communities and look for people who need to participate in this program and their damage from the storm.

After they've identified the people who are in these programs, we're going to have a three-prong approach with a counselor. A counselor will be assigned to the people who are brought into the program and throughout the life of their application until they actually do something else, they will have this counselor go with them. This is what is called the HOP program, Homeowner Opportunity Program.

And if we identify those concentrations of racial minorities, and we identify the concentrations of poverty, or if somebody was in the flood plain, one of those three areas, we're going to provide the people that are in those applicants to have one of three opportunities. If they choose, they can rebuild in place using one of these general -- we have an architect that's doing a typical home that cannot be exceeded so they all get the same benefit from that standpoint.

If they choose not to rebuild in place, they can go find a lot elsewhere and we'll rebuild one of our homes on their new lot. Of course whenever they move they have to move out of whatever they're moving into. We're not going to allow them to go into a different area that increases racial concentration or increases poverty. So they have to relocate to an area that is neither of those. And obviously we're not going to build in flood plains either, which is different than not allowing people who are already in flood plains to participant, which we have a problem with in one particular area.

And then we're going to -- if they don't want to do either of those, they can also take the same amount of funds and go out and look for a pre-existing home and just purchase -- we'll purchase the home for them and then take their lot, et cetera.

This is all going to administered at the local level, but this is a process that has been designed to meet the state's affirmatively furthering fair housing guidelines, and that's all in this guideline. There's lots of other stuff in here. It's a pretty dense document, as you might imagine because it covers multifamily issues, it covers homebuyer assistance questions, it covers a lot of detail.

And we think that probably these changes are significant enough to where if we have your blessing, we're going to send them back out for public comment because we've some substantial changes in those 222 comments, and we're also going to obviously have the committee bless them again, the Housing Guidelines Committee which, you know, is a representative of each of the COGs, a representative of the housing advocacy community, and representatives of staff. And we've all been kind of working together to draft these up.

I'll go into more detail if you want. If you want to wait and until you see the more finished product at the end of the day, I'm open to whatever you all want to do.

MR. CONINE: Well, actually I came to this meeting -- after I was thumbing through the Board book, I came to the meeting today because it was so voluminous, I wanted just to table this item until the next Board meeting just to give me time to understand a little better what we're actually trying to do here.

MR. HAMBY: It is dense. I would encourage you to let us put it back out to the public, if you want to do that, and bring it back at the 16th meeting. There was a big rush to get these done at one point, but as it turns out, we don't have anybody who's actually building with Round II funds immediately. They're all doing needs assessments instead of using it.

Some of the big issues that we're going to hear -- you're going to hear push back on, people who are in Round I who have applications in the Round I will not necessarily qualify for Round II because they have to meet the needs assessment and they have to meet the affirmative marketing programs. The Homebuyer Assistance Program -- since Houston's in the room I'll pick on them -- the Homebuyer Assistance Program that Houston did frequently in Round I will not be available for the most part in Round II unless they identify that need.

Most of the needs assessment and most of the targets are aimed at 30 percent -- or 50 percent and below, and that's where most of these funds are going to go. If they've met some of that, they can obviously take credit for things they did in Round I, but they can't just do a blanket first come first served. There's a very targeted pattern which they have to operate under. They can't do a blanket homebuyer assistance for people who qualify between 80 and 120 percent of area median incomes. There are a lot of those type of qualifications in this.

MR. CONINE: Was it in this document where we were -- where we anticipated getting the draft of the AI back some time between now and the next Board meeting and we want to circulate that too?

MR. HAMBY: That's actually the next item, which is the --

MR. CONINE: That's the next item. Okay.

MR. HAMBY: Agenda item.

MR. CONINE: Sorry about that. Well, you know, if it's going to go back out for comment and come back ultimately and then the Board can comment on it at that time, I'm okay with letting it go now. If there's no real time crunch, I'd just as soon table it and have a chance to digest it between now and then.

MR. HAMBY: Well, there will be a time crunch as soon as the new year starts and as soon as we get the AI up because people -- as soon as the AI becomes official, people will start doing this. So I wouldn't -- I mean it'd be difficult to table it until December and then send it back out and then have it come back in January. That would be more difficult. It --

MR. CONINE: On the other hand, if the Board wants to make drastic changes, it's got to go back in front of the public.

MR. HAMBY: True. But we're hoping that you'll recognize all the work that the AI committee -- or the, sorry, different committee -- the Housing Guidelines Committee is doing --

MR. CONINE: I'm not saying I want to, I'm just saying --

MR. HAMBY: I understand. But the --

MR. CONINE: -- it's the chicken and the egg.

MR. HAMBY: Yes. We'd at least like to have the opportunity to make sure the public sees it again and at least the Housing Guidelines Committee and have them look through this and see what comments they can agree with and what comments they can't agree with unless there's something in this that you just absolutely can't agree to at this point, but --

MR. CONINE: I don't know.

MR. HAMBY: I understand.

MR. CONINE: I'll admit I don't know.

Any other comments from Board members?

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

MR. CONINE: Yes, I guess we do.

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I thought I understood Kevin to say that we might not wish to table it, we might wish for this document to go forward for additional public comment.

Isn't that what you said?

MR. HAMBY: Yes, ma'am.

MS. RAY: If you table it, you're going to delay it.

MR. CONINE: Right.

MR. HAMBY: If you're going to table it, the only thing that you would probably be taking off the table is we have something in here that says the Executive Director can approve this --

MR. CONINE: Yes.

MR. HAMBY: -- you know, and that may be something you don't want to do as part of this issue to bring it back to the December meeting. But we'd at least like your blessing to move this process forward and, you know, if we can't get there in the December meeting -- by the December meeting, we'll definitely probably ask that the Executive Director have the authority to do this because we will have people starting to build in January most likely.

Are you going to take no action on it, we'll move it forward, then bring it back to you -- we'll bring -- you know, that's the one part that --

MR. CONINE: You can circulate it to the public with no action from us. Right?

MR. CONINE: Yes. Yes, sir.

MR. CONINE: That's what I prefer to do then.

MR. HAMBY: We always want to make sure you also saw it, that there is a lot going on with --

MR. CONINE: Oh, yes.

MR. HAMBY: -- this program and then it's -- like I said it's --

MR. CONINE: You guys have done a lot of great work --

MR. HAMBY: -- QAP like in its comments.

MR. CONINE: I'm not kidding.

MS. RAY: I don't think the QAP is that big, 128 pages.

MR. CONINE: Okay. 6E.

MR. GERBER: 6E is --

MR. CONINE: Wait, whoa, whoa, whoa. You know what, I had a couple of public comments on that.

Don Baylor?

MS. RAY: On 6D?

MR. CONINE: D, yes. Back to --

Is Don Baylor here? I had a witness affirmation form for him and I didn't know what he wanted to talk about or what particular item he wanted to talk on. I assumed it was this one.

John, come on up.

MR. HENNEBERGER: Don and I will postpone our comments until next time.

MR. CONINE: Oh, that's nice.

MS. RAY: Yes, keep us on the hot seat.

MR. CONINE: Yes. Okay. 6E.

MR. HAMBY: Part of the conciliation agreement that is a bit of a challenge for us at this moment, after the Westchester County case, there has been a larger push to make sure that we all have a clear understanding of impediments that have a -- present an issue to affirmatively furthering fair housing. The state has always had an obligation and the state has maintained an analysis of impediments to fair housing.

Our last one was approved in 2003. As part of the -- it was written in 2003 and approved in 2004 -- as part of the conciliation agreement, we have agreed to update our AI in two phases. The first phase of the update is going to deal solely with the disaster recovery areas. This is a fairly large project, and to give you an idea, in 2003 I believe that our research shows that we spent about a year to 16 months writing the AI. The conciliation agreement gave us 120 days to complete a substantially final draft. So it's a little shortening of that process there.

We have completed a substantially final draft and given it to the committee that's part of the conciliation agreement that is helping us draft the AI. At this point we have -- I think our AI, as I recall, is somewhere around

163 pages.

In addition to that we've contracted with two different groups, one, Dr. Murdoch out of Rice University, who is producing some 900 pages of demographic material and maps that will show these concentrations of poverty and concentrations of racial -- racial concentrations. We are looking at -- also we have Southwest Fair Housing Council that is our primary contractor on the job, and they have been working to get some of the material completed.

The substantially final draft went out to the committee, which is composed again of the four COGs, two representatives of the fair housing community, a rural representative, two members of TDRA, and two members of TDHCA. That group has worked together and they are currently in the review process. We have had reviews of the materials and had the initial responses sent back. I think we identified approximately 18 to 20 impediments and an additional probably 30 have been identified since then that we are trying to work through.

We will again meet next week -- we're hopeful we'll meet next week, next Thursday to be exact, and go over the process one more time, and then hopefully come up with a reasonable final version that we can give out to the public. Because of the timing on this, we are requesting that the

Executive Director be given the authority to forward that copy on to HUD as soon as we get some sort of approval from the AI Committee, and we also get approval -- well, we'll send it to HUD at that time, once we've gone through a public comment process.

MR. GERBER: And obviously we're doing it as a state, so it's not just us, but all the HUD programs including the ones operated by the Department of Rural Affairs and including the Health and Human Services Commission, which has the Housing Opportunities for Persons with AIDS Program, and all this will be done.

And the conciliation agreement was in no small part assisting with the -- and helped Governor Perry's office, and so we'll be working with them to finalize this. This will be the state's product, although we're taking the lead in pulling it together.

MR. HAMBY: It will be the state's Phase I. And again, it's going to be for the impacted areas, so it will be basically the four largest regions that are impacted, Deep East Texas Council of Governments, Southeast Texas Regional Planning Commission, Houston-Galveston's and Area Council, and the Lower Rio Grande Valley Development Corp, all of those groups together will be brought -- that's the most significant part. There are some other counties that are involved.

They're not going to be as detailed in this particular AI.

And then next spring we'll do what is called the balance of state, and then we will go through and bring -- merge this back in and then do the rest of the state. The focus on this interim AI is the disaster recovery program predominantly, however.

That said, we'd like to have the blessing to send it to HUD as quickly as possible because all Round II funds, except all existing Round II funds, especially for housing are held up until we get approval from HUD, or at least acceptance by HUD of the AI.

MR. CONINE: Okay. Any questions?

(No response.)

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

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation that the Executive Director be given authority to move forward with this plan.

MR. CONINE: Item 6E --

MS. RAY: Item 6E.

MR. CONINE: -- approve. Is there a second?

MR. KEIG: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Mr. Gerber?

MR. GERBER: Mr. Chairman, there are items at the back of your Board book that are report items. One is a our usual report on outreach activities, the other is an update on the status of our CDBG programs under Round I and Round II for Hurricane Rita, as well as for Round I and Round II for Hurricanes Ike and Dolly. So I commend those to you to review.

I think we provided the report that has the Rita program completing, you know, in the next several months, so we're excited about that. And hopefully we'll be able to chronicle some of that for you in way that really shows what a tremendous accomplishment that was. I mean that's really the model of what HUD is pointing to for disaster recovery, and we look forward to seeing more results from Houston and from others as we wrap up the Ike programs in the weeks and months ahead. There's a lot of need and expectation.

With that said, we'll look forward to the December Board meeting.

MR. CONINE: All right. Again, thanks to everybody for hanging in there today. We'll have our normal holiday celebration with staff at the next Board meeting, and everybody have a happy Thanksgiving.

We stand adjourned.

(Whereupon, at 3:50 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: November 10, 010

I do hereby certify that the foregoing pages, numbers 1 through 242, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

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(Transcriber) (Date)

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