

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Capitol Extension Auditorium  
1500 North Congress Avenue  
Austin, Texas

September 6, 2012  
9:30 a.m.

MEMBERS:

J. PAUL OXER, Chair  
TOM GANN, Vice-Chair  
LESLIE BINGHAM ESCAREÑO, Member  
LOWELL KEIG, Member  
JUAN MUÑOZ, Member  
J. MARK McWATTERS, Member  
  
TIMOTHY K. IRVINE, Executive Director

*ON THE RECORD REPORTING*  
*(512) 450-0342*

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PROCEEDINGS

MR. OXER: Good morning, everyone. I'd like to welcome you to the September 6 meeting of the Governing Board of the Texas Department of Housing and Community Affairs. Hope everybody had a good break over the summer, August off, nice Labor Day break.

Let's start by going through the roll call here. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Professor McWatters?

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here, that gives us six present, that constitutes a quorum so we may safely proceed.

All right. Let's stand and salute the flags, please.

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

MR. OXER: Thank you.

Michael, do we have any guests we can see here?

MR. LYTTLE: Not at the moment, sir.

MR. OXER: Okay, good -- not good but good that we didn't

miss anyone.

Welcome to you who are listening online.

Okay, Tim.

MR. IRVINE: Thank you, Mr. Chairman. We have on the front row here Bill Dally, who for many years was such a key part of this team and Bill has retired from state government. He retired effective the end of this just concluded fiscal year, and staff held a reception to thank Bill for his many accomplishments. We extracted from him a promise to continue to get together regularly for lunches, the occasional beer, whatever.

MR. OXER: Occasional?

MR. IRVINE: Cheer the Longhorns.

But we also wanted to include some formal recognition at the board meeting, and in that regard, we've prepared a resolution which we would offer to the Board for adoption, and I'd like to read it into the record.

This is a Department of Housing and Community Affairs Governing Board resolution in recognition of William "Bill" Dally.

"Whereas, William Dally, better known to us as Bill, decided 18 years ago to leave public accountancy and begin a career in state government, coming into the Department in 1994 as Internal Audit manager;

"And whereas, since his arrival at the Department, Bill has taken on numerous posts and billets, serving as controller, overseeing financial accounting, strategic planning, information services, human resources, bond finance, first time homebuyer programs and even a major disaster recovery effort in the wake of Hurricanes Rita and Katrina;

"And whereas, Bill brings integrity, knowledge, dedication and a multiplier effect to every team he joins, making it better and more cohesive;

"And whereas, Bill has brought his breadth of knowledge, his ability to inspire and focus and his confidence-building wisdom to the job of leading this Department as interim executive director;

"And whereas, Bill has served as a most senior and trusted advisor and administrator to many Board chairs and fellow executives, including Beth Anderson, Kent Conine, J. Paul Oxeer, Edwina Carrington, Mike Gerber, Tim Irvine and many others;

"And whereas, Bill has firmly established himself as an unrivaled counselor, mentor, leader and strategist;

"And whereas, Bill has learned well the arcane workings of state budgeting and appropriations and used the value of this unique knowledge and perspective effectively and unstintingly in leading this Department as it has navigated unprecedented changes and challenges;

"And whereas, Bill has consistently been a champion for reason, prudence, transparency and hope, hope not only for his beloved Longhorns and the Great State of Texas, but for the programs he has overseen, the Texans he has served, and the teammates with whom he has served;

"Now, therefore, it is hereby resolved that this Governing Board of the Texas Department of Housing and Community Affairs expresses to Bill Dally its deepest gratitude for his service and leadership to the Department and the State of Texas and extends to him and his family its sincere best

wishes upon his retirement, and further resolves that this Governing Board hereby memorializes in its permanent records that Bill Dally is leaving this Department and this State better for having had the benefit of his knowledge, wisdom and service.

"Adopted by the Governing Board of the Department of Housing and Community Affairs this 6th day of September 2012, at Austin, Texas."

We recommend that the Board unanimously adopt this resolution.

MR. OXER: And for the record, I appreciate the efforts that you've put forth on my behalf as I got up to speed, Bill, because it was nothing short of drinking from a firehose for a while, and at least I could get it down with you helping me.

We have to have, for purposes of process, a motion from the members of the Board.

MS. BINGHAM ESCAREÑO: Move to so resolve.

MR. OXER: Motion by Ms. Bingham.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Munoz to resolve as described by Executive Director Irvine. Are there any other public comments to be made?

(No response.)

MR. OXER: In that case, all in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: There are none. Thanks very much, Bill. We really appreciate your service.

(Applause.)

MR. IRVINE: But wait, there's more. This is from the Senate of the State of Texas. "This certifies that the Texas Flag, herewith presented to William "Bill" Dally in recognition of your retirement and 18 years of service to the State of Texas by State Senator Royce West, was flown above the State Capitol of the Sovereign State of Texas on August 1, 2012."

I'd like to present you with this flag.

(Applause.)

MR. IRVINE: Words cannot express the appreciation we have for everything you've done.

MR. DALLY: Thanks, and thanks so much. This is really, truly an honor. And I feel so fortunate to have worked with such a great group of folks, some great Board members through the years, executive directors, and most of all, all of you colleagues who have worked with me all these years. I'm going to miss you guys but I know I have every confidence that the best days for the Department are ahead, so you guys go get him, and hook 'em.

(General laughter and applause.)

MR. OXER: Okay. Let's get then to the agenda.

There were a few clarification items on the consent agenda, as I recall.

Michael, do you have some corrections?

MR. DeYOUNG: Members of the Board, the Community Affairs rules, item 1(d).

MR. OXER: Name you're called.

MR. DeYOUNG: Michael DeYoung with the Community Affairs Division, I'm the division director.

Item 1(d) is the Community Affairs rules, and in Section 520 determining income eligibility, staff inadvertently omitted "and DOE" from the rule. So the rule would read: To determine income eligibility for U.S. Department of Health and Human Services and DOE funded programs.

MR. OXER: Any questions from the Board regarding the consent agenda?

(No response.)

MR. OXER: Motion to secure.

MR. GANN: I make a motion to approve the consent agenda with the 1(d) correction.

MR. OXER: Okay. Motion by Vice Chairman Gann to approve the consent agenda with amendments.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Are there any other comments?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none, it's unanimous. That included all report items too.

The first item on the action items is the Internal Audit report.

Sandy, good morning.

MS. DONOHO: Good morning, Chairman Oxer, Board members. For the record, I'm Sandy Donoho, director of Internal Audit.

The annual internal audit plan that was just approved on the consent agenda is required by the Texas Internal Auditing Act which is the statute that governs the state's internal audit functions. This plan outlines the work that Internal Audit will undertake in our coming year. It's based on a complex and lengthy agency-wide risk assessment. It can also be modified at the Board or Audit Committee's request, just so you know.

We have a number of special projects and other tasks that are either required by state law or by our auditing standards. These appear on our plan every year. This year they include a peer review which is an external assessment of whether we comply with our auditing standards. Our peer review is scheduled for the first week in November. Some of you may be contacted for your input by our peer reviewers, just for your information.

We talked about two recent Internal Audit reports. The first one was a review of the Housing Choice Voucher Program which is the Section 8 program. We found that the program expends funds and determines eligibility in accordance with HUD rules, however, the program's administrative expenditures were exceeding its budget through 27 of the past 29 months.

We combined our compliance work with an economy and efficiency review and developed some what we thought were useful recommendations that hopefully will help management in making decisions about this program.

We also talked about an audit of the Homeless Housing and Services Program which provides funding to the eight largest cities in Texas for services to homeless individuals and families. The program generally disburses funds in accordance with subrecipient contracts and has a process in place for subrecipients to submit monthly performance reports. However, improvements can be made in reviewing draw requests, monitoring subrecipients and developing performance metrics.

We talked about two recent external audit monitoring or technical assistance reports that were released. The first one is NeighborWorks review of the National Foreclosure Mitigation Counseling Program. NeighborWorks evaluated participants of the National Foreclosure Mitigation Counseling Program, they looked at one of the Department's subrecipients and had no findings, so that's good news.

We talked about the HUD OIG audit of the Neighborhood Stabilization Program. HUD OIG concluded the Department did not adequately manage its obligations for the NSP program because it did not maintain sufficient records to support the obligations reported to HUD. In addition, they felt that the Department lacked adequate and effective controls to operate the program.

More than \$24.7 million of the Department's reported obligations did not match subrecipient agreements. They recommended that



HUD require the Department to provide support for these obligations or repay HUD for funds drawn down. All the NSP funds are required to be spent by March 2, 2013 which is six months away. At the time the OIG review the grant period was 81 percent complete, the Department had spent 52 percent of the grant funds.

HUD OIG makes recommendations to HUD and the resolution of these issues will require the Department to communicate with HUD and work with them to resolve the issues.

There is also an update to the May 9, 2012 HUD NSP monitoring report. The remote monitoring review of the NSP program, we discussed this at the last audit committee meeting in June. It resulted in a decrease in the NSP grant of \$10,673,574.

We have nine prior pending audit issues. In the past year Internal Audit handled 80 allegations of fraud, waste and abuse, 52 were from our hotline, 32 were related to the Department's programs. We also investigated and closed 23 complaints, referred seven to the State Auditor's Office and other oversight agencies, and there are two complaints that are pending.

Are there any questions on the Audit Committee report?

MR. OXER: Any questions from the Board? Any comments from the Audit Committee?

(No response.)

MS. DONOHO: Thank you.

MR. OXER: Good. So this is a report item only. Is that

correct?

MS. DONOHO: Yes.

MR. OXER: Then item number 3, Bond Finance. Tim.

Let me take a moment here to say I think we have Hasan Mack from the Lieutenant Governor's Office. Hasan, good morning.

Okay, Tim.

MR. NELSON: Good morning. My name is Tim Nelson, director of Bond Finance.

The item that we have before you today is resolution number 13.003 authorizing a Taxable Mortgage Program for homebuyers to fund our Program 79, along with related program documents to be administered by the Texas Department of Housing and Community Affairs.

This is a brand new program that I think at least a few members of the Board are aware. This represents a departure from what we've done in the past which I'll explain in a little more detail in a minute. But I would like to remind the Board that our program has not been sort of a stranger to change. Back in the '80s and '90s we sold fixed rate bonds for 100 percent of our issues and were able to fund our programs that way. Beginning in the early 2000s, I think in '04, we did our first swap where we sold variable rate debt, and we did that in order to try to reduce our mortgage rates to provide more attractive mortgage rates.

In '05 and '07 we actually had to sell two transactions where we had 100 percent of the financing was in variable rate. Again, that was a change and that was done in order to provide more attractive mortgage rates.

In '09 we embarked on the \$500 million NIBP program that we've been doing for the past several years. That was a major change from what we did before. And so now we're going to look at TMP which, again, is just a further evolution in the market.

Before I talk about TMP, though, I would like to mention a couple of things about NIBP which one of the consent items that you approved today for us, and I thank you for that, is the final rollout of the final piece of NIBP, but I did want to report to the Board some, I think very positive facts on that program. To date we've done \$450 million. That program was released in May of 2010. We expect when it wraps up this Fall that we'll have \$550 million. We've assisted over 3,900 families to date; we expect when we're completed that will be 4,800. We have disbursed, to date, \$18 million worth of down payment assistance; we expect by the time we're done it will be over \$22 million.

This is particularly, I think, important, when I started in December of '09 one of the first questions I asked of the people in my area was how much money we had available for down payment assistance and I was told not one dollar. And so I think it's commendable through the work of the people in my department and home ownership that we've been able to accomplish this, and I certainly wouldn't have told you three years ago that we could have done this, but that's what we've been able to do.

All of the transactions that we have closed under NIBP we achieved full spread under the tax rules which basically means we were as profitable on those deals as we could possibly be, and that we were able to do

those with a minimized capitalized interest contribution over what we were doing prior. One of the benefits of moving to TMP is that we don't need any capitalized interest contributions to get a TMP program done.

The other thing that I'd like to do is acknowledge one of the changes that we made under the NIBP program which was a huge departure for us is that we needed a warehouse provider because as opposed to what we did on prior deals, we had to set our mortgage rates, originate our mortgages, put them into pools and then warehouse those pools until we reached some critical mass, and then at that point we did our conversions like we received approval today, and then you put those MBSs into those bond issues.

We, through an RFP process, have selected First Southwest as our warehouse provider, and I would like to thank them for all the hard work that they've done. They were instrumental to the success of this program. They will also be providing warehousing services for us on this new TMP program, if it's approved, and they will also be our MBS purchaser under the TMP program. So they've been an outstanding partner for us and I believe we've go them here today, if you guys would like to stand up. And thank you for all your hard work.

So let's talk about TMP. It's, again, a departure from what we've done before, but I think we can simplify it down for your purposes to what we are doing under the TMP program is taking these MBSs that we have created and we are selling them out on the secondary market and using that to fund the program. That's a departure, obviously, from what we've been

doing prior which we'd sell bonds, put those into a trust indenture, and then use the proceeds of those bonds to buy these MBSs. That is the only difference.

We went through an RFP process earlier this year to select a master servicer which is U.S. Bank, who is the same master servicer that we are using on our current program. We went through an RFP process to select this MBS purchaser that I was telling you about, and First Southwest was the winner under that RFP process. But if you look at all of the other parameters of the program, they're virtually identical to what we're doing under our current Program 77: we utilize a master servicer, we have the same master servicer we had before; we utilize our lender network to originate all the loans and we have an agreement with all of those lenders; you still have to be a first time homebuyer just like you are under Program 77; you have to adhere to the same purchase price limits, same income limits, has to be your primary residence, we're not funding vacation homes, second homes; and we're providing up to 5 percent in down payment assistance and we're doing that in the form of a second lien mortgage, the same as what we're doing under the current Program 77.

There are a couple of changes that we have made to the program. We've reduced the time to deliver mortgage loans. Under the proposed program, lenders will have to deliver their loans for purchase within 60 days; under our existing program we've given them up to 120 days. I'll make a couple of comments on that. This has changed over time. In some of our older programs we used to give lenders up to 180 days to deliver loans.

That time compression or allowing shorter periods of time just allows us to more effectively hedge our pipeline, and it also comports a little more closely to what lenders already do. If you go in to a lender today to get a mortgage loan, you're going to get a commitment and you're going to need to close on that loan within 60 days, typically. So this lines up a lot more closely with what they're doing in their current line of business.

The other thing that we've done is that we've increased lender compensation. We actually went through and did a survey of what other state agencies are paying on their programs, we went out and took a look at what was going on in the marketplace and talked to lenders, and believed that it was appropriate that we make an adjustment in our compensation plan, so we are looking to increase compensation to lenders by half a point, and the other thing that we're doing is instituting a minimum of what they call servicing release premium so that lenders, if you're doing a small loan you will get a minimum servicing release compensation of \$1,000, and we think that that will, hopefully, make it more attractive for lenders in the rural markets, where you're typically doing smaller loans, to be incentivized to bring those loans into our program.

I want to talk a little bit about a couple of things that we needed to do with the TMP program is that we did have to go through and promulgate new rules. Staff worked on those throughout the Spring. We brought those, along with the program, to the Strategic Planning Committee in both May and June. The Board, at the July 26 board meeting, approved the draft rules for publication. Those were published in early August. The comment period for

those rules will expire next week, and we look to bring final rules to the Board for your approval at the October meeting.

A couple of other things that I wanted to talk about that I don't think are different from bond programs but are something that we needed to spend some time on, and primarily one of the things that we had to take a look at was risk under this TMP program. We wanted to make sure that the department, given that this was a new financing approach, that we were properly protected. And you know, under bond programs we have interest rate risks, that's one of the things that has to be managed. As I said before, either we sell bonds, you fix your rate and then we've got to spend six to twelve months originating those proceeds, we're taking interest rate risk, or we go out and commit the monies, put them in an MBS, and we finance them in a warehouse agreement, and we're taking risk on those until we go sell our bonds. So you've got interest rate risk.

You have that mitigated under the TMP program in that we do have this MBS purchaser that every time we set a rate, that MBS purchaser agrees to buy an MBS backed by that loan from us at a set point in time at a set price. So we're able to mitigate the interest rate risk under the TMP program.

You've also got counterparty risk, and counterparty risk we've talked about before under our bond programs, we have swaps, we have investment contracts, we have all kinds of agreements. Any time you're entering into an agreement with somebody else where they have to do something, you're taking on counterparty risk. Well, we obviously have

counterparty risk in this TMP program in that we now have this MBS purchaser who we're relying upon and we have a servicer that we're working with as well.

We have, I think, mitigated the risks under those two approaches by setting up a \$2 million escrow with each one of those parties, and we've told them if there's any sort of default related to any one of the agreements that they've entered into, the full extent of our risk in the transaction is that \$2 million escrow that we've set up with them. And I would point out that I think that's a fairly unique arrangement, we're probably the only issuer in the country that has done that, and again, I applaud our partners for working with us on that. But I think that allows us to move forward with this new approach and know that we've got the risk properly handled.

So in the end, why do TMP? Lower cost, we're going to have about half the cost of what it takes us to do a bond program. As I said before, no negative arbitrage, NIBP reduced it, this completely eliminates it. We've lowered and mitigated our counterparty risks, interest rate risks. And most importantly, as I said was done in all these other changes on the bond side that we implemented, it allows us to achieve a marketable rate. We can achieve a rate out of the marketplace, providing this assistance at less than 4 percent. If we were looking to do a bond deal, that would be more in the 4.50 to 4.75 range which would, of course, be higher but I don't believe that would be a competitive rate out in the marketplace.

With that, I'll conclude my comments, and staff recommends approval. I'd be more than happy to address any questions.

MR. IRVINE: I would also insert that the bond issuance and so



forth is a completely different set of statutory authority for activity, and the provisions of statute that govern the First Time Homebuyer Program is a completely different set of statutory authority, and what this program is created under is a section of the statute that deals with authority to buy a deal and trading in mortgages. So it looks a whole lot like the First Time Homebuyer Program because we want to keep consistent those appropriate governmental purpose like attributes of the program but it is under a completely different authority.

MR. OXER: Is there a motion from a member of the Board before discussion?

MR. GANN: I'd like to make a motion to approve resolution number 13-003 authorizing a Taxable Mortgage Program.

MR. OXER: Motion by Vice Chairman Gann to approve the resolution.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig.

Are there any comments? I've got a couple of questions. On the down payment assistance, you said it's 4 percent or 5 percent?

MR. NELSON: Up to 5 percent.

MR. OXER: Is there a cap on that amount?

MR. NELSON: A dollar cap?

MR. OXER: Right.

MR. NELSON: No.

MR. OXER: Okay. You've shortened the period for which

there's the risk on this and you've capped the risk even at the \$2 million escrow. Is that correct?

MR. NELSON: That's correct.

MR. OXER: Okay. Have there been any comments that we've received on the rules that have been published to date?

MR. NELSON: No. It's not unusual for those to come in at the end so it's possible. The comment period ends on the 10th, so it's very possible we could get some in on the 9th and 10th, but nothing received to date.

MR. OXER: So this will provide a higher rate of turnover -- not a higher amount but a higher speed in the turnover essentially for the down payment assistance that we have.

MR. NELSON: Yes. That is the other thing I didn't mention, that is a benefit under this program. The \$18- or \$22 million that I mentioned before, that was all funded under the RMRB indenture, those were liquid reserves we had to come up with. Under this TMP program, we'll have to fund the initial float, but within 60 to 90 days, we will sell that MBS out into the open market. That premium will come back in and it creates sort of a revolving fund, if you will, for the down payment assistance. And that's a huge relief, again, over what we've been doing which is every time we go to release a lot, we've got to go find a million or \$2 million worth of down payment assistance to go with that log. These sort of self-fund themselves so it takes a whole lot of stress off that DPA funding formula.

MR. OXER: So we fill the tank the first time and it essentially

maintains itself.

MR. NELSON: It maintains itself.

MR. OXER: Okay. All right. Are there any other questions from the Board?

(No response.)

MR. OXER: Is there any other public comment?

(No response.)

MR. OXER: And just a point of procedure here, the area right up here is going to be our on deck circle. Anybody who wants to speak regarding any item, come up here so that we know you all wish to speak. And then when you come up, there's a sign-in sheet that you'll print your name clearly on so we can read it so that the recorder can tell who you are. That's a quick interjection process.

Any other comments from the Board?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thanks, Tim.

MR. NELSON: Thank you.

MR. OXER: We'll look forward to making this one work. It just continues to support the concept that TDHCA is a far more financially strong component of the State's balance sheet than apparently has been recognized

in some quarters, so we continue to operate as a bank.

MR. NELSON: Yes, sir.

MR. OXER: So thank you, Tim.

Good morning.

MS. MOLINARI: Good morning, Chairman Oxer, Board members. My name is Jennifer Molinari, and I'm TDHCA's Fair Housing coordinator.

We have before you today our quarterly presentation on the status of our analysis of Impediments to Fair Housing Choice, and I have with me Heidi Aggeler of BBC Research and Consulting, and she will be providing that update to you today and can answer any questions that you might have about the progress. And I'll turn it over to Heidi.

MR. OXER: Thanks.

MS. AGGELER: Good morning, everyone, and thank you for having me and making the opportunity to provide the update on the Texas Plan for Fair Housing Choice.

MR. OXER: Heidi, you have to identify yourself.

MS. AGGELER: I'm sorry. I'm Heidi Aggeler. I'm with BBC Research and Consulting. We are the prime contractor on the state's Plan for Fair Housing Choice.

I'm going to give you an update on what BBC and our subcontractors have accomplished since June when you last heard from us. We have been working very hard to complete the public input process on the study, and that's consisted of a statistically significant resident survey. We

have completed 586 surveys via telephone, both land line and cell phones, of residents throughout the state, asking about their preferences in housing, their housing needs, as well as if they've faced discrimination and what they did about it.

We collected 345 supplemental surveys online so those were voluntarily provided by residents throughout the state. We also conducted and received 597 stakeholder surveys, so these are individuals who are involved in housing, in supportive services, in real estate in some fashion, as well as economic development. They were invited by TDHCA and also selected to be invited, asked to be engaged in this process, to participate in this survey, and we had a very good response from stakeholders.

We have completed a preliminary analysis of the resident survey, the statistically significant telephone survey. We're in the stages of supplementing that analysis with the online survey and analyzing the stakeholder surveys as well, and that will be completed by the end of September.

We have also completed a housing market analysis that's a required component of the study. We supplemented our initial analysis with the data from HUD that's been recently provided on fair market rents at the zip code level. It's part of a demonstration program with the Dallas Housing Authority. We've also obtained additional data on the Low Income Housing Tax Credit Program.

What HUD typically recently has required of housing market analyses is that we look at program participants or beneficiaries through the

state's housing programs, and then compare them by their protected class, so race and ethnicity or disability, for example, with their income-adjusted population. And so we've completed that for all of TDHCA's programs. That appears in the analysis.

We've also completed our interviews with stakeholders using our subcontractors who are both Texas businesses. We launched online stakeholder focus groups. Again, these are voluntary groups that stakeholders of many different industries have participated in. We've received more than a thousand comments through those focus groups.

We've been in the process of doing in-person focus groups that residents as well as stakeholders have attended, and one of my colleagues, Jen Garner is in McAllen today actually conducting a focus group, probably as we're speaking right now. We'll be completing those focus groups -- those are held throughout the state -- over the next few weeks.

And finally, we've continued researching areas of further inquiry so as comments come up through our online stakeholder focus groups, through our interviews, as well as we're analyzing the resident and stakeholder surveys, we're looking a little more closely into potential impediments, to solutions, most importantly, for addressing barriers to Fair Housing choice throughout the state.

The next steps are to finish the public input process through the month of September, continue our analyses of impediments, as well as crafting solutions and starting to develop a draft Fair Housing Plan. Our preliminary report, our draft report is due to the state in October, and then from

there, there will be a public comment period, and the final report right now is on track, per our contract, to be completed by the end of the year.

With that, I'm happy to take any questions.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Seems a bit esoteric and intensely detailed, but with respect to the stakeholders that you have asked or solicited their comments, go over again who they represent, generally.

MS. AGGELER: It's actually quite a variety of industries. So TDHCA, we hope to craft an invitation for stakeholders who are on a variety of interest lists to be engaged in this process. We invited them to complete the stakeholder survey, as well as to participate in our online focus groups. So we had a survey out there -- it wasn't a survey, but a form that they could complete to request participation and to be kept abreast of that process.

From there we invited them to participate in the stakeholder survey, to circulate that survey. It's an online survey; we also provided hard copies, but most stakeholders will complete surveys online, as well as to participate in the online focus groups.

Our preliminary analysis when we look at the industry distribution of the stakeholder surveys, it pretty much covers everything from economic development, chambers of commerce, planners, people who are engaged in housing, supportive services for people with disabilities, for example. So I wouldn't say that there's a concentration of just one industry when we look at the stakeholder participation.

On the online focus groups, we did have the greatest participation by councils of government, so representatives of councils of government, they were very active participants in our online discussions.

MR. OXER: So your assessment would be that the stakeholders, as a whole, as a group, represent a broad spectrum of interest from all perspectives in the state.

MS. AGGELER: Absolutely.

MR. OXER: Okay.

MR. IRVINE: And that was a key driver in designing the RFP and making the selection. We really wanted this process to get everybody's input. I mean, this should not be a process that's driven by one or two special interest segments, it should be very inclusive.

MR. OXER: Great. Okay. Your draft report is due to the agency in October. Is that correct?

MS. AGGELER: End of October.

MR. OXER: End of October. Okay. Is there anything in there that would prevent you from achieving that? You're on schedule, on time?

MS. AGGELER: We are on schedule, absolutely. I don't see, sort of barring any major events, that there would be anything that would keep us from doing that. And we've completed almost all of the research activities, and the next two months we'll be spending analyzing the impediments, and most importantly, as I said earlier, coming up with solutions for the state, for stakeholders of the state, for partners of the state to address those impediments.



MR. OXER: Good. Are there any questions from the Board?

(No response.)

MR. OXER: Thanks for the work you're doing, we appreciate it.

MS. AGGELER: Thank you for your time.

MR. OXER: Thanks, Jennifer.

Okay, let's see. Cameron, I figure it's about time for you to show up.

MR. DORSEY: Good morning. Cameron Dorsey, director of Multifamily Finance.

The first item, if I can remember anything other than rules, is an appeal. This is an appeal related to a 2012 tax credit transaction that got an award, a conditional award on July 26. The condition was that it meet the requirements of underwriting. At the time underwriting had not been completed. We didn't previously recognize that the applicant had requested a loan structure that was only viable with a board waiver of the specific issue. This doesn't fall under the same waiver provisions as provided for in the QAP, this is a waiver related to a HOME Program loan. They requested a \$2 million loan to fill their gap in financing.

The rule is one that requires a lien position that is consistent with the principal amount of the loan that we are providing in relation to other loans in the transaction, obviously. So in this particular transaction we have a 980,000 some odd dollar conventional loan in the deal and a \$2 million requested HOME loan, and they would like us to basically take a backseat, the second lien position to this much smaller conventional loan.

Well, there are several things I think I want to convey before the applicant has an opportunity to speak, and one, this isn't a new thing, this has been around for a while. I think an appeal on this specific issue was heard back in '06 when I started here at the Department, and at the time it was a policy, more or less, and after that, I believe in perhaps 2008, I think, it became a rule at that point in time, and it's been maintained as a rule since then.

The reason that this is put in place and the reason that we require a lien position that is consistent with the principal amount of our loan is simply to control risk. The second lien lending is a risky endeavor and we are using federal funds but that doesn't make the risk any less impactful for the Department. HUD has recapture requirements if the transaction fails in year 19, the entire principal amount of the loan must be repaid to HUD, the entire amount. We don't get credit for 19 years worth of compliant operations. And we have had failures in the past, and so we have a series of requirements to help mitigate some of the risk of lending in a second lien position, in a subordinate position in these transactions.

The waiver requires that the Board find that the financial risk is outweighed by the need for proposed housing, so that's a key element of any decision on this appeal. It's not just granting the appeal but providing such a waiver.

The other points that I want make is this was a choice, this was a choice in deal structuring, to structure the deal in this manner. We're dealing with a product, single family, detached homes that are much more expensive

than other types of product that could have been utilized to structure this application and this transaction. We've got very large units, a huge portion of very large units in this development, and what happened is the eligible basis, basically the eligible costs in the transaction support the ability to request more credit and less HOME funds or perhaps no HOME funds, except that we have an award maximum in Rural Region 11 where this transaction submitted application of somewhere right around 932,000, and so in order to structure a deal and request an amount of credit that complied with all of those requirements of the credit program, and to structure a deal that met the HOME requirements could have certainly been done but wasn't.

The second thing is this is not a rule with the expectation that a conventional lender take a backseat to the Department. That's a pretty rare circumstance. It is an allowance that we will allow them to take backseat, if they wish, and in this case, PNC has stated that they can't take a backseat. But that's not true in all cases. In fact, this year, the same year, we had another transaction where PNC was willing to take a backseat to our HOME loan, and the deal was structured that way and submitted that way because the applicant reviewed the rules, knew that that was a requirement, didn't expect that they achieve a waiver of the rule to gain this kind of unique structure that's not available to everyone else who followed the rules, structured a compliant application and didn't require this type of waiver, and dealt with the repercussions of that.

And the repercussions are this: there's an impact on score, there's an impact on the strategic ability to play the field for getting a tax credit

award. Increasing the amount of HOME funds that you need and decreasing the credit request effectively decreases the amount of credit per bedroom and it enables a strategic advantage in a tiebreaker, and this particular transaction was, in fact, in a tiebreaker.

So this at its core is a choice, this at its core is about the Department managing risk, and given kind of the circumstances of this transaction, staff did not feel that this warranted a waiver of the rule.

MR. OXER: And staff recommendation is?

MR. DORSEY: Denial of the appeal.

MR. OXER: Okay. Is there a motion from the Board to begin so we can receive comment?

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig to deny the appeal.

DR. MUÑOZ: Can we ask Cameron some questions?

MR. OXER: Not yet, not till we have a Board action.

DR. MUÑOZ: Second.

MR. OXER: Okay. Second by Dr. Muñoz to deny the appeal.

Now we'll have comments. Are there comments from the Board?

MR. KEIG: Can we address Mr. Dorsey first?

MR. OXER: Absolutely.

MR. KEIG: In 2006 when it was a policy, what did we do at that time with that appeal that you referred to?

MR. DORSEY: That appeal was denied.

MR. KEIG: And since 2006 have we made any exceptions, any

waivers of the first lien position rule?

MR. DORSEY: I couldn't recount all of the circumstances, but I do know that it has occurred. In fact, it occurred earlier in this year, and the circumstances under which that occurred were the following. We were dealing with two bond transactions, non-competitive 4 percent transactions, both of which were subject to HUD regulatory agreements that actually prevented us from having a second lien position. It was actually explicit in their regulations that they couldn't have anything less than a second lien position. We worked out some alternatives, it's kind of a workaround. We saw that as an accommodation to work regulatory issues out between two government agencies, and in fact, both of the sources of funds were HUD funds, so we saw that in a bit of a different light as resolving regulatory constraints.

MR. KEIG: So this situation is distinct from that situation in that the prior situation was HUD wanted the first lien, in this one it's a private lender.

MR. DORSEY: That's correct.

MR. KEIG: As far as the need in this region and in this particular are, were there any other tax credit applications that might have addressed the need in that area?

MR. DORSEY: In this subregion that is absolutely correct. There were several other applications submitted within the subregion. In fact, the one right below this would have lost on tiebreaker and we actually completed the underwriting and the review and the score held up and everything, and that one was right in line behind this one.

MR. KEIG: What cities were those other ones in?

MR. DORSEY: We've got La Feria which is this transaction, Rio Grande City, Uvalde, Raymondville, Peñitas, Carrizo Springs.

MR. KEIG: That's all my questions for right now.

MR. OXER: Juan, do you have a question?

DR. MUÑOZ: Cameron, you mentioned in some other case PNC agreed to a second position. Why wouldn't they in this case?

MR. DORSEY: My understanding, it's fairly unusual. In fact, it caught my eye back at the beginning of cycle, so I called PNC and talked to them about it. They basically said these guys are big players and we want to work with them, and they wanted to work with that particular development group. It came down to capacity and financial strength and track record.

DR. MUÑOZ: You also described that sort of this combination of financing would give them some advantage during the scoring process. Can I presume that that did take place and that was partly the basis for which they received the award and some of those other proposals that you just mentioned didn't?

MR. DORSEY: I would say partly that is correct.

DR. MUÑOZ: All right.

MR. OXER: Is there public comment? I gather there is. Ms. Jackson, how nice to see you again.

MS. JACKSON: Good to see everyone. My name is Toni Jackson and I am here to represent the applicant in this particular development.

I respectfully disagree with a couple of things that have been brought before you and I'd like to clarify a few things. This particular rule is somewhat different from other appeal processes, and that is why we are before the Board. The QAP actually does not speak more specifically to this rule, but this rule is one of the few rules that very specifically indicates that a waiver can only be provided by the Board. So although we respect the fact that staff has submitted a decision to you or a recommendation, it is because based on the QAP that is the only process we have. However, it is our premise that this rule very specifically sets out that only the Board can make the waiver but it is a waiver that the Board can provide. So this was not a situation, as has been alluded to, that we just simply did not follow the rules, this was a situation where this is a rule that is waivable by this Board.

Additionally, what you have here is a situation where we are in a smaller jurisdiction that could not provide these particular HOME funds to this particular transaction. The need is great here and this city very much wants this deal and wants the single family structure that has been put before you in this transaction. And so therefore, if this particular city of La Feria had HOME funds, this would not be an issue because this is not a HOME requirement, this is simply a TDHCA requirement.

We fully respect and understand that TDHCA is concerned about cities making an investment to show that they have participated as fully as possible in the transactions that are going to them and the tax credits that are coming into their area, however, again, as you know, smaller cities that are non-entitlement cities simply do not have that level of funding.

This is not an issue of risk, it is simply an issue of priority, as you've said, but again, the amount of that priority would change the moment the funds begin to be paid down. The construction loan is larger than the HOME funds, and so we have a construction loan that is coming into this deal of \$4 million, however, at permanent conversion the conversion takes that amount to \$908,000 which makes the TDHCA loan higher.

Again, when we close into this loan, the construction loan, which is the same lender, is in first priority because it is the higher lien. At any point when the loan is paid down, the HOME funds are always at risk of being a larger dollar number because as those liens are being paid down, those liens are not being paid down at the same rate and the HOME funds will always have a situation where they may become a larger lien.

Also, we were told there's an issue of being concerned about the affordability. The affordability is not at risk. We, on a regular basis, set out affordability criteria and priorities and make certain that those priorities are senior to any other requirements on the lien. So the HOME funds affordability priority will continue to be senior, even though you will not have a senior lien position.

Again, I just want to remind this Board that you do have the ability to waive this. This is not an applicant that has come in an effort to break the rules, or more importantly, that simply did not follow the rules. We looked at the rules and the rules very specifically allow for a waiver of this and the way that the underwriting condition was wet out, it allowed us the ability to come before you based on those rules to request a waiver. In the event that



that does not happen, it is not our understanding that our application is simply terminated, we simply have to work to look for additional funding, but we have looked for funding and we have spoken to numerous lenders and this is where we have been at this point. But again, I just remind this board that this is not a situation where an applicant has simply blatantly not followed the rules.

DR. MUÑOZ: I have a question. Early on in the process was it made clear at some point in time that this waiver would have to come before the Board?

MS. JACKSON: Yes, we understood that it would have to come, and again, this is a situation that's kind of tricky because it is a rule, it's part of the Administrative Code rules and it's not in the QAP, we technically cannot come before you and ask for a waiver until we had been underwritten and we just got underwritten.

MR. OXER: So you can't come ask for it until you formally know that you need it.

MS. JACKSON: Exactly.

DR. MUÑOZ: And Cameron, you knew that they were going to come ask for it?

MR. DORSEY: We had no clue until it was in underwriting that this was the case. It wasn't made apparent in the application, it wasn't disclosed in a very transparent manner. While the term sheet for PNC indicated that it would need a first lien and stuff, that was in there, they weren't hiding it, but they weren't making it apparent.

DR. MUÑOZ: There weren't many sentences.

MR. DORSEY: Right. Three sentences in 300 pages.

DR. MUÑOZ: It wasn't emphasized anywhere else?

MR. DORSEY: No.

DR. MUÑOZ: A lot is predicated on this waiver. Right? It would seem that it would have received a bit more attention.

MR. OXER: Let me clarify something here for my own edification on this. In the event that the waiver is not offered, the application is not terminated, you just have to rework your financing. Is that correct, Toni?

MS. JACKSON: That is correct. That's our understanding.

MR. OXER: Okay, that's good. And go back to your point, Cameron, why did PNC insist that they have to be first lien on this as opposed to second where they've done a second before?

MR. DORSEY: It's unusual for them not to require a first lien, highly unusual, I will say. The way the rule is written, though, is not to say we anticipate, people do this all the time, it's simply if we encounter a circumstance where someone is willing to take a second lien, why would we preclude that.

MS. JACKSON: And Mr. Chairman, we do have PNC here prepared to speak.

MR. DORSEY: The one other thing I wanted to say is our LURA will go away if it's foreclosed. If we're foreclosed out of the deal, the LURA will go away. That's how all of our documents are written. That's not to say that we couldn't come up with something else, but I know our legal division has been very uncomfortable with alternative structures, given how the HOME

funds federal rules read.

MR. OXER: So if we take a second position on this, the LURA dissolves.

MR. DORSEY: The LURA will go away if the property is foreclosed by the first lien lender and they determine that they don't want to maintain it. It would be voluntary, it's a choice that they can effectively make at that time.

MR. OXER: So we're risking their decision.

MR. DORSEY: Definitely. And we have been foreclosed out and this has happened before, so it's something that's a known quantity. Tom is dealing with some like this right.

DR. MUÑOZ: Last question, Cameron. And when that does happen, when the first lienholder forecloses and doesn't sort of adhere to the LURA, do we have virtually no recourse?

MR. DORSEY: We have none. We don't have recourse except through our other compliance measures which are like not letting them come back and get more money but we are on the hook to HUD for that money with no collateral.

MS. JACKSON: And may I speak to that point also? This is a situation where we are going with the same tax credit investor and lender, and it would be to their disadvantage to foreclose on this property because they would then have a tax credit liability, and so they are not going to foreclose on something because they would have far larger ramifications to foreclose because of the tax credit risk that they would be exposed to.

MR. OXER: So what's the possibility of that tax credit being sold out to somebody else beyond that? Could that potentially change?

MS. JACKSON: Again, even sold to someone else, they are a part of that back end investor, but they are not going to do anything to risk creating a tax credit liability because of foreclosing on the affordability restrictions, and that's why they have agreed to allowing those affordability restrictions to be senior in priority.

MR. OXER: Okay. Cameron, do you have another comment?

MR. DORSEY: Yes. Our liability to HUD is 20 on this particular transaction, and our tax credits for ten years, compliance period is 15 but we see transfers happen after ten years frequently, so it's not an absolute mitigation of the risk. In fact, foreclosure and properties failing, we've had them fail quite far out into the process.

MR. OXER: Your point is noted, Toni. You're understand where we're playing on this, trying to match up all these lines.

MS. JACKSON: I fully understand.

MR. OXER: There's a pretty wide crack you can fall through out there if you're not careful.

MS. JACKSON: I fully understand.

MR. OXER: Professor McWatters, you have a question.

MR. McWATTERS: Cameron, one thing I'm confused about, and you too, Toni, if the first lien is foreclosed -- and the first line is for what, \$908,000?

MR. DORSEY: Nine eighty.

MS. JACKSON: Nine zero eight.

MR. OXER: Yes, it is nine zero eight.

MR. McWATTERS: So it's around a million dollars, and the second is what, \$2 million?

MS. JACKSON: Correct.

MR. McWATTERS: So presumably the property is worth well over \$908,000. Right? So the property is probably worth approaching \$3 million. So if the first lien forecloses, I think the way most foreclosure law works, is the first lienholder can only take the amount of the property equal to their outstanding debt, principal, interest, attorney's fees, all that stuff. So what happens to the balance? If this property is sold in a foreclosure proceeding, \$2-1/2 million is received, it would seem like a ton of that money would go to the second, if I'm thinking about standard foreclosure law, but there may be a wrinkle here I'm not following.

MR. DORSEY: I think what the property is worth out several years from now and what condition the property is in and all those things have been issues in the past, but I would defer to Tom on more asset management specific questions, particularly related to the foreclosure issue.

MR. OXER: Okay. We'll get to him in a second.

Were there other folks who wanted to speak?

MS. JACKSON: Yes, I have a few other people who would like to speak.

MR. OXER: Good morning.

MAYOR BREWER: Good morning, Board members, Executive

Director. How's it going? My name is Steve Brewer. I'm the mayor of La Feria.

(General talking and laughter.)

MAYOR BREWER: La Feria is a small city, we are not an entitlement community. Entitlement communities get money every year direct from HUD, they get a big check. I mean, like Brownsville, Harlingen, other cities in our area get huge checks; the City of La Feria does not. We do have the ability to do bond issues, but bond issues are primarily for street repair, infrastructure, and the money is spent very quickly. Obviously, we buy our fire trucks and things like that. We usually get pretty good deals from the City of Houston on our fire trucks. We just bought one, a 1999 fire truck in great shape.

MR. OXER: For the record, for anybody that doesn't know, let me point something out, and those of you who know about Austin institutions here, there was a fire about two o'clock this morning, and believe it or not, it was right outside my hotel, it was the Texas Chili Parlor that caught on fire. The best hamburger in town, they must have been cooking way too many of them.

(General laughter.)

MAYOR BREWER: We're a poor community. The city works hard on projects like this because this benefits us. With Hurricane Dolly not that long ago, we have a tremendous housing need. I've been mayor five years, it's been one of my top priorities to know about housing. And you learn about when you campaign and you're out there in office, but you realize the

need is tremendous.

We worked hard to support this program, and we've brought people from the school district which we work very closely as a small city with our school district. We meet once a month with the superintendent and his chairman of the board, and we work hard as a community. Our economic development corporation within our city has granted this project \$100,000 to show support, as well as the city passing a resolution in support of this project. It is truly a very important project.

I understand what we're asking is a difficult thing. It is well within your jurisdiction to approve this waiver and to do this. I certainly respect staff and I understand your concern. You know, having a first lien, second lien, I understand that. But we've got a property that obviously is going to be worth way more than that. We've contacted several institutions, as PNC is here today to talk about, and banking rules have changed and banking has changed. I know that we had a bailout but I don't think that money came down to banks down here, I think it stayed up in New York and up that way.

But we humbly appeal that you do grant us this waiver. We realize if you don't, we'll have to figure out another way to round it up, but we'd certainly appreciate your consideration. We are a small community in a very rural area. A lot of these other cities on that list that applied are not in our region. I mean, Raymondville is the closest one and that's 15-20 miles north of us. The rest of them are probably 100 miles out, so it's not really in our region in the Rio Grande Valley.

But we have a desperate need and we certainly have support in

the community for it, and we certainly appreciate consideration. Thank you very much.

MR. OXER: Thank you, Mr. Mayor.

Are there any questions from the Board? I think it's important for us to point out -- Mr. Mayor, did you sign in there?

MAYOR BREWER: I did.

MR. OXER: It's important to make sure that we're all clear that this affects the financing and the underwriting on the project, it does not affect the viability with respect to the Tax Credit Program. Is that correct, Cameron? Without this waiver, this project doesn't get terminated.

MR. DORSEY: Right. We would just be able to see if we can work out a structure that is more in line with the playing level which is the rule without using the waiver provision.

MR. OXER: Okay. Because offering waivers, we have a specific -- can you restate that? To offer a waiver, we have to show how it benefits.

MS. BINGHAM ESCAREÑO: The final risk has to be outweighed by the need of housing in the area.

MR. OXER: Right. And while I understand your position, Mr. Mayor, that there's a desperate need for housing, every tax credit project and location that we've dealt with here over the last year and a half since I've been here, has been dealing with a desperate need for housing. So we appreciate your position on that. We're not looking for projects, we're looking for money to fill projects, as opposed to the other way.



MAYOR BREWER: I would like to say that in our community I don't ever remember us in the past eons ever having a single family tax credit project ever approved in our region, in La Feria, for sure. And we certainly have the need and we certainly have the low to moderate income where people definitely can take advantage of it, and I feel totally confident it would be a success.

MR. OXER: Okay. Cameron, your point that this one hinges on the application of a second rule that's not in the QAP.

MR. DORSEY: That's correct. That rule is part of the HOME rules Chapter 53.

MR. OXER: Could we have a quotation on that or a citation on that, or do we have a citation on that?

MR. DORSEY: I do, I've just got to find it.

MR. OXER: For point of clarification.

MR. IRVINE: 53.81(f)(4) requires a lien position consistent with the principal amount of the loan in relation to the principal amount from other funding sources.

The issue here is simply whether the need in La Feria for affordable housing is so significant that it outweighs getting into a loan structure where you're potentially at risk for having to find \$2 million to repay HUD.

MR. DORSEY: Or we could go about trying to work out another option, and if we can't find another option, then we can at least come back to the Board.

MR. OXER: Let's do this.

MR. GANN: There's another speaker.

MR. OXER: We'll get there. All right. Let's have our other speaker and other comments here. But I have a thought on this because at some point, in the event that this doesn't -- let's say the appeal is not offered or the waiver is not offered, that doesn't kill the deal, it just gives you an opportunity to try and work something out and you can come back again later if necessary.

MR. DORSEY: That's correct.

MR. OXER: Okay. I just want to make sure we're clear on that.

Yes, sir. Please state your name.

MR. PHILLIPS: Chairman, Board members, my name is Sonny Phillips, and I represent the developer, the South Texas [indiscernible] Equal Housing Development.

This is truly a grassroots level nonprofit organization formed in the Valley to provide housing for a four-county area. In the state of Texas, rural entities are really rare doing these standup developments, so part of the reason this was formed was there's no interest in the rural areas for developers to come in, it is extremely difficult.

That would be the point, as Mayor Brewer said, two items. One, if you take the project [indiscernible], this project would qualify for a \$2 million tax credit. Because the credit allocation is very limited, there is only \$900,000 available, and that is all we have requested. Therefore, we need to

look into the option of how do you make the project work, and that's part of the reason we have asked for \$2 million from the HOME Program.

The second issue also is because of the poverty level and the need for housing, we have offered the lower income residents a higher percentage compared to any other project, so that we can accommodate some individual housing projects, because in a typical way, although there are low income residents, although there's a tax credit project doesn't mean that the very low income person will get access to it. So that's extremely important because we are offering something which is not typical of the situation.

Cameron mentioned that the garden-style project may be able to reduce the cost. If you look at the details where there's a single family, that seems to be the more viable, longstanding development there. We have usually \$87 per square foot with these for the garden style, this is not a \$97 cost for production there.

So you can see that we have maximized the access for the low income residents, maintained the cost per square footage also, and it is a rural area that is truly difficult. We are not the big players to leverage the [indiscernible] of the world to take a second lien position.

And the other point I want to make is, again, there is a lot of discussion about the risk involved. It is extremely important we do that. But when the Board takes the actions, the down payment assistance, issuing bonds and [indiscernible], that's what you do every day. And without an entity like this, low income residents will not have an option. So keep that in mind.

We are working with a program you will have collectively installed and try to maximize the best option, and so that's what we are providing. And again, this is coming from a grassroots level nonprofit organization, so we want your favorable consideration. Thank you.

MR. OXER: Okay. Stay there, Mr. Philip, for a moment.

Are there any questions from the Board for Mr. Philip?

(No response.)

MR. OXER: Okay. Do you have a sense, anybody who has spoken up here, if there was a change in financing to do this through this other -- Cameron, come up -- if they were to work out some other structure or function in this where we got our lien positions where we wanted them in there, what would that do the rents for the housing for the units? Would it run it up or down?

MR. DORSEY: I'm not sure. Juts in all honesty, I can probably think about 30 solutions to this problem if it were before March 1. It's just we're not at March 1 so we're pretty limited. I think underwriting is pretty concerned that they've kind of put themselves in a box at this point and we're not sure. We'll try to work the solution out, but we're not really sure there is at this point. I mean, it's not just that we can talk about the single family homes, we can talk about the number of units being too many, given the maximum amount you can request within the subregion. I wouldn't debate the need for anything. There was a deal approved in 2010 in La Feria, but that's not going to satisfy all of the need there, but there's need elsewhere too.

MR. OXER: I think everybody in this room is beyond

suggesting that we can satisfy the need for housing. That's why they keep coming back every year.

MR. DORSEY: That's right.

DR. MUÑOZ: You said that there was a project in La Feria in 2010?

MR. DORSEY: Yes.

MAYOR BREWER: It's multifamily, it's not a housing project.

MR. DORSEY: It's not single-family housing, but a ten-unit reduction in the number of units would enable them to use more of their eligible basis to increase their tax credit request and reduce the amount of overall debt that they would have had. I mean, there are multiple solutions here; it's just that we're beyond March 1.

MR. OXER: Okay, Tom, come back up here and let's hear this.

MS. JACKSON: I do have to say those multiple solutions do change our application and that turns into a situation that does become an application that is vulnerable for being terminated.

MR. OXER: Right, and we understand that, and that's why I'm asking. You said earlier that this is one of those things that you don't know it's going to happen until it happens.

MS. JACKSON: Right, because this is a waiver of the HOME rules in the Administrative Code.

MR. OXER: As opposed to a waiver of the rules of the QAP.

MS. JACKSON: That is correct, that is correct. And therefore, it is explicit that this is a Board waiver and not through staff, but the only way

we can ask the waiver -- I mean, we can presume it and come to you, but it is technically a waiver of underwriting, until we have the underwriting come back.

MR. OXER: Okay. You have a comment, Mark?

MR. McWATTERS: No.

MR. OXER: So let me summarize for my simple mind.

MS. JACKSON: And would you like to hear from PNC?

MR. OXER: Sure.

MS. CORMIER: Good morning. Janna Cormier with PNC Real Estate. We are the tax credit investor and proposed lender for this transaction, and as has been mentioned, it would be against our credit policy to take a second lien position, particularly to subsidized funding, but generally, we would not take a second lien position.

I know it has been mentioned that we proposed that on another transaction. It was one that did not move forward, it was also a for-profit developer, very high net worth, and we had a collateral agreement outside of the transaction, so it was a very different situation, and I would say an exception of that sort is probably more rare than a waiver from TDHCA for PNC.

MR. OXER: They're getting pretty rare up here, by the way.

(General laughter.)

MS. CORMIER: So there are probably several people who would agree with me on that today. But I'm definitely here to answer any questions, and I think all the good points have been made that with PNC as the tax credit investor, it would be very much in --

MR. OXER: You'd be shooting yourself in the head if you did this. Is that what you're saying?

MS. CORMIER: Well, to foreclose. Foreclosure has been brought up. That's about the last thing that we would want to do because of our fiduciary responsibility to our investors and for the tax credits. So we feel very strongly about the transaction, the need for housing, it's underwriting very well, it's a great investment for us, it's just that we have a practice of first lien position which is going to be not possible for us to waive.

MR. OXER: Well, you understand how we fit.

MS. CORMIER: Absolutely.

MR. OXER: So those paths go different directions.  
Stand your ground for a second.

MR. McWATTERS: I have a question now.

MR. OXER: Okay. Thank you.

MR. McWATTERS: You say you have an underwriting policy which requires the \$2 million be a second lien. That can't operate in a vacuum, so what types of changes to the economics of the first lien would you permit a pari passu or equal second lien? Would it be an interest rate increase by 25 basis points, would it be a third party guarantee, what would it be?

MS. CORMIER: As a financial institution, we're going to require a first lien position.

MR. McWATTERS: I've represented financial institutions for years, lots of them all over the world, and people always make deals, they

make deals based upon metrics like interest rates, value of the collateral, third party guarantees, and the like. But your position is simply you're first?

MS. CORMIER: Right. We have vetted this internally once the situation was recognized, and PNC is standing firm on a first lien, our credit committee is standing firm on that.

MS. JACKSON: And I think, Mr. McWatters, the question that you're really asking, and based on our conversations with other lenders, is the subsidized funding, so to take a second lien position behind like HOME funds or CDBG funds, that kind of thing, it's the subsidized funding. As opposed to if we have, for instance, two conventional lenders standing at the table, then they could work out something because of their regulations. That's the difference, and I think that's the distinction that you're asking.

MR. McWATTERS: Well, also, I mean, if PNC just has a higher rate of return they're willing to take more risk, and perhaps that more risk is having a pari passu lien on the property as opposed to a second lien on the property.

But the question I'm really asking is, and this is probably best to you, Toni, is did you look at other conventional lenders than PNC?

MS. JACKSON: Yes, we have. We actually submitted a letter to you from Wells Fargo, we spoke to Bank of America, Community Trust of Texas, we did start going down the road of seeking out other lenders.

MR. McWATTERS: Started going down the road, or did they actually come to you and say no, we won't do it unless?

MS. JACKSON: We put the information in front of them, we put



packages in front of these lenders.

MR. OXER: So you got a definitive answer?

MS. JACKSON: Yes, sir, we got definitive answers. We put packages in front of them showing them what the underwriting was, showing them what the structure was, and the definitive answer was they would not take a second lien position.

MR. McWATTERS: But I mean, this is not a unique fact pattern, is it? Aren't there other situations where you have conventional financing and HOME financing and there's not a second lien required?

MS. CORMIER: Usually, just from my experience, the transactions that I've seen that involve HOME funds, the first lien is a higher amount. I think just by the nature of this transaction being a smaller, rural type transaction, that the amount of debt that it can support, and you're looking at a difference in interest rates. Because I've worked on some where we try to balance out and find the right balance with the interest rates available that we have a viable debt service coverage that we need on the transaction, usually we see a larger conventional loan and a smaller HOME loan, and it's just the nature of this project.

MR. McWATTERS: But with a smaller conventional and larger HOME, you're in a better situation, so it seems to me you'd be less likely to need this the subordination because your loan is so small.

But Cameron, do you have a response? I mean, is this a unique fact pattern?

MR. DORSEY: For the Department it's unique because we

don't do second liens to a smaller first lien. We do a lot where we're the only lender involved or where there's another soft lending party in the transaction, we do a lot where we're a second lien to a much larger first lien, we do a lot of rural transactions like this. This is out of the ordinary, this is not pretty typical.

I mean, I can speak to the fact that I don't think I've seen certainly less than a handful where a conventional lender would have been willing to take a backseat to TDHCA HOME funds, but we sometimes wonder what you've laid out are other solutions to the problem but they tend to not be for whatever reason is a simple fact of the matter.

The only other thing I would say, I was just talking to Tom about your question earlier with regard to sale and foreclosure, when you're dealing with a situation where the bulk of the financing was a zero percent loan, the idea that it would sell at a foreclosure with some conventional debt being put on it, and unless there was someone else willing to give them zero percent money, then the value is not going to be the same.

MR. McWATTERS: So then there would be a loss on the second lien. What I'm trying to get at here is are we setting up a template for future fundings which, in effect, are going to bring in a lot of HOME loans, subordinate them, and put taxpayer funds at risk on a lot of future deals.

MR. OXER: Particularly on the rural deals which are smaller.

MR. DORSEY: This is something that the development community would love to be able to do across the board.

MR. McWATTERS: I'd agree with that.

MS. JACKSON: My position on that would be no, I did not think

this would be precedent-setting because the rules explicitly state that the Board may waive this rule on a case-by-case basis. That is the language of the rule, it says a case-by-case basis. So I do not see this as precedent-setting because it explicitly states that you have to make this waiver on a case-by-case basis.

MR. McWATTERS: I understand, but when I have to vote on something on a case-by-case basis, I have to be able to distinguish the cases, and if they're all these same basic fact patterns and someone walks up to the mike and the first thing they say: Well, back in September of 2012 you granted this waiver, why not grant mine, how is mine different? And chances are it's not materially different.

MS. JACKSON: Well, here you do have the rule component which, again, as we have spoken to, as well as the fact that you have a larger number of lower income units in the development, and that is also the reason why the numbers.

MR. McWATTERS: Can I ask just one other question?

MR. OXER: Certainly.

MR. GANN: Is there a way to bifurcate the \$2 million HOME loan where a million and a half of it is pari passu and \$500,000 is subordinate?

MR. DORSEY: We would be willing to work through such a thing but I'm not sure PNC could work through that type of thing.

MR. McWATTERS: Fair enough.

MR. IRVINE: It seems like what we're really trying to do is isolate the financial risk that's associated with the post-compliance period but

extended HOME use period, and it seems to me that I'm sensing an interest in fashioning some sort of solution. The words that PNC uttered were magical to me, and that was some sort of an outside collateral agreement. I mean, to me, the question only becomes is there some party or combination of parties that have the wherewithal to flange up and make the Department whole and safe on that risk.

MR. OXER: From my perspective on this, the difference between year 15 and year 20 which is the real risk, that's not a crack, that's a chasm you can fall through if you're not careful, and even though the tax credit syndicator or the purchaser is the lienholder on this one, there's still an issue that you, I think, identified, Mark, and it's not just creating a precedent, it's an opportunity, and I don't want to create the opportunity for those things to exist where we've got a determined precedent. Okay? If we can figure out a clean solution to this, I don't want the deal to go away, that's why I want to make sure it's apparent that this is not a termination, this is we're tweaking the deal, so to speak, trying to figure out a way to make it work. But the deal is not at risk with respect to what we're trying to do. At least in my mind the deal is not at risk, this is a matter of how you make this work, but to protect that risk 15 years out, 15 to 20 years out.

I have bankers that I talk to that it's not just the 15th year, they want the 365th day of the 20th year covered, period, and that's what their concept of risk is, is zero if they can get it.

Hold on, Cameron. Did you have a comment?

MR. JOOMA: Yes, sir. My name is Noor Jooma, and I'm a

developer in the region. Good morning, Chairman, good morning, Board, and thank you for giving me the opportunity.

I'll be very brief. The rules are the rules. When we went to training it was clearly specified what the rules are, even though it's not in the QAP, it's in the Texas Administrative Code. Granting this waiver will be an unfair advantage to all the developers in the region, and I would respectfully disagree with the mayor, there are other applications in the Rio Grande Valley, and it would be a disadvantage to all of us that have followed the rules to the T and done the homework and made the correct application.

So I would respectfully urge, and I have been on the end where they are and we had to work things out. So that's all I have to say.

MR. OXER: Are there any comments or questions from the Board?

(No response.)

MR. OXER: Okay. While we respect that PNC's credit committee is holding firm on theirs, you're going to understand if we're going to hold firm on ours too.

Cameron, did you have a comment?

MR. DORSEY: I think there's an important clarification. Mr. Jooma is the application in line in this subregion behind this deal. Since this deal was funded out of the nonprofit set-aside, I can't guarantee that the money goes back to this subregion, back to the Rio Grande Valley. So I'm not exactly sure where the money goes right now because we're still working through some stuff there and still have some things to work through, but it will

follow the same regional allocation process.

DR. MUÑOZ: Well, it hasn't gone anywhere yet. Right?

MR. DORSEY: It hasn't gone anywhere yet. Right. So if the appeal was denied, we would try and see if there was an alternative. To the extent that there wasn't an alternative and ultimately the credits were rescinded as a result of this, I couldn't guarantee that they would go back to Region 11 Rural.

MR. OXER: Tom, did you have a comment from an asset management standpoint?

MR. GOURIS: Not unless there's questions.

MR. OXER: Any comments on asset management?

(No response.)

MR. OXER: There's a motion on the floor and a second to deny the waiver. What I would offer as a suggestion from counsel is to table this, send it back, see what you can work out, and we'll talk about this at the next one because this one is important enough with respect to the precedent, as you allude to, Professor McWatters. We have a bank structure that we're dealing with also and I think it's important that everybody here recognize that we have essentially a credit standard that we're trying to adhere to, and we don't see the deal at risk, we see the deal needing to be structure modified in some fashion.

Mr. Mayor, I understand your position. We recognize the need for the housing and that's why we're not -- I want to make sure that the deal is not at risk at this point with respect to what we're trying to do today.

DR. MUÑOZ: Mr. Chair.

MR. OXER: Yes, DR. Muñoz.

DR. MUÑOZ: Point of order, if we have a motion and a second, doesn't there have to be a vote?

MR. OXER: I was going to that.

DR. MUÑOZ: I'd like to withdraw my second.

MR. OXER: You withdraw the second, and the motion was by Mr. Keig.

DR. MUÑOZ: There would be no vote.

MR. OXER: And that's what I was going to suggest.

MR. KEIG: Move to table.

MR. OXER: You're withdrawing your second.

MR. KEIG: I'll withdraw my motion and move to table.

MR. OXER: He withdraws the motion. Motion by Mr. Keig to table this.

DR. MUÑOZ: Second.

MR. OXER: Second by DR. Muñoz. Is there any other comment?

(No response.)

MR. OXER: We've had considerable here. And I'd like it represented that we spent enough time on this because this is, again, one of those --

MAYOR BREWER: I'm in an unpaid position.

(General laughter and laughter.)

MR. IRVINE: I'd just like to point out that carryover is fast approaching so we would need to get this done quickly.

MS. JACKSON: And I was going to ask, also, was there any alternative to having to come back to the Board, or does that give us allowance to work with staff based on some instructions, or what I'm at least hearing from the table.

MR. OXER: Stay right there, Toni.

What have you got, Cameron?

MR. DORSEY: One thing, just a slight modification, but if we work something out such that it met the rule and didn't require a waiver.

MR. OXER: Okay. So here's where we're at so far, there's been a motion by Mr. Keig to table the consideration, second by DR. Muñoz, there's been public comment. Any other comment from the Board? There are none.

All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: None. It's a unanimous vote. So go back and get back to work and see if we can't make this work.

Mr. Mayor, we really do want to make this work, we understand the need for housing.

MAYOR BREWER: The reason I'm here. Thank you very much.



MR. OXER: Okay, Cameron. I think it's important for everyone to note that this is sufficiently esoteric, it seems esoteric at this point but it creates repercussions down the way because of the precedent-setting. Despite the fact that everybody thinks it doesn't set a precedent, it does, and particularly since this deals with a HOME rule and not with the QAP, we've got to deal with this fully and completely and as deeply as we can.

Cameron, the table is yours.

MR. DORSEY: All right. 6(a), these are six tax-exempt bond transactions. We are not the issuer, TSAHC is the issuer, we're here to issue determination notices for the 4 percent tax credits that were requested and are available as a result of these tax-exempt bonds. As I said, this is six different developments, it's part of a portfolio, though, we're dealing all of the same development team on all six, and it's kind of a package deal.

These are six rehabilitations of transactions that were prior tax credit deals and hit year 15 and are basically coming back into the program, they're re-upping. There is an opportunity after year 15 for many properties to basically go market rate, and this is the preservation of the affordability, at least to some extent, at least from a regulatory standpoint.

We have underwritten them, we've got the final amounts for determination notices, and I've got the determination notices here to give to these folks. We recommend approval and I'm here for questions.

MR. OXER: Point of order, question from me, we need to take these one at a time, I think. Can we take them all at once? Okay.

MS. BINGHAM ESCAREÑO: Mr. Chair, are you waiting for a

motion?

MR. OXER: Waiting for a motion.

MS. BINGHAM ESCAREÑO: I would move staff's recommendation to approve the determination notices.

MR. OXER: Motion by Ms. Bingham to approve determination notices.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Is there any comment apart from staff? Any comments from the Board? Any public comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous. Thank you.  
Good job, Cameron.

MR. DORSEY: All right. 6(b) is regarding a resolution to allow basically a modification to the existing bond indenture on a TDHCA-issued bond transaction. This is a 4 percent bond deal from '96. It's in a bit of a unique situation. It is an '06 deal that does not yet have its 8609s. It encountered some issues, there were some issues with the rehab. The rehab scope of work wasn't sufficient to really get the property up to where it needed to be. They also some issues with post-rehab accessibility that were fairly

major in scope. So we have been holding back the 8609s at this point while they have been working issues out.

They have been pretty proactive at this point in trying to work through these issues, and approval of this modification to the indenture would allow the property to basically refinance and pay off all of the bonds. This is an important resolution from a workout perspective, really. As I said, the transaction has encountered some just difficulty with the level of rehab and other stuff. They have done additional rehab, they put a good amount of additional money into it. The first lien that they want to refinance with is an FHA loan, a HUD loan, and they have standards with respect to the quality of the property and they've identified some critical repairs that need to be done prior to that closing.

In addition, our recommendation to approve moving forward with modification of the indenture to allow this payoff of the bonds is conditioned upon resolution of the construction inspection issues and anything else outstanding at this point so that we're not allowing this modification and kind of naming our tool chest over, so they have committed to try and get those things done prior to us actually executing any modification to the indenture. Staff recommends approval with conditions.

MR. KEIG: I move approval of resolution number 13-002.

MR. OXER: Motion by Mr. Keig to approve the resolution.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Are there any questions from the Board?

(No response.)

MR. OXER: Cameron, I understand your point to approve the motion. We're not giving anything up out of this.

MR. DORSEY: We're going to allow them to pay off the bonds that are outstanding and refinance with a piece of financing that has a 2.81 percent interest rate, so it's a pretty good deal to maintain the property as affordable housing and work the situation out.

MR. OXER: So it maintains the stock of housing at a more attractive economic cost to the potential renters.

MR. DORSEY: It's more likely to result in just sufficiently funding the reserve for replacements and not deferring maintenance issues and those types of things, rather than decreasing rents to the tenants. It's probably not going to do that, but will resolve these other issues that helps maintain the property's quality housing.

MR. OXER: That doesn't decrease the rent but it increases the quality of the housing probably, more than likely, maintains the quality of the housing.

MR. DORSEY: That's certainly part of it.

MR. OXER: Okay. And if they can pay our bonds off earlier, that's okay, as far as I'm concerned.

All right. Are there any other comments from the Board? Any public comment?

(No response.)

MR. OXER: Okay. All in favor?

(No response.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous. Thank you.

MR. DORSEY: 6(c) is another modification kind of going a different route here. Providence at Mockingbird was a 2005 bond issue, and it is part of a Centerline portfolio of transactions that are going through portfolio-side kind of restructure. We actually approved, the Board approved three very, very similar, very close to identical restructures I believe at the May meeting. We have kind of the same core parties involved, we're dealing with the same Centerline folks here. They've worked this deal out with Freddie and it's a really positive outcome to a difficult situation where the property just had difficulty converting to permanent.

So what we would be doing is bifurcating the interest rate into a must-pay component and then a contingent interest component. It's a partial redemption of the bonds, I think a pay down of about \$2.9 million or so, and those things help reduce the overall debt of the property, and we're going to get a new general partner in here that is going to provide some new blood to the transaction. So staff recommends approval.

MR. OXER: Motion from the Board?

MS. BINGHAM ESCAREÑO: I'll move staff's recommendation to approve.

MR. OXER: Motion by Ms. Bingham to approve.

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann. Any other comments or questions from the Board? Comments from anyone else?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous. Good job, Cameron.

MR. DORSEY: Thank you. We're going to item 7, which is the rules.

MR. OXER: I'm going to exercise the Chair's prerogative here since we are finishing that up and since we've been in our saddles here for going on two hours. We're going to take a break here, we're going to go into executive session, have a little bite. We're going to go into executive session and we'll be back after lunch at 1:15.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act, to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code.

The closed session will be held in the conference room in the cafeteria. The date is September 6, 2012, the time is 11:49.

(Whereupon, at 11:49 a.m., the meeting was recessed, to reconvene this same day, Thursday, September 6, 2012, following conclusion of the executive session and lunch break.)

AFTERNOON SESSION

MR. OXER: Okay. We are reconvening in open session. The executive session ended at 1:21. No action was taken and we followed the specified agenda.

I think we're on item number 7. Cameron, you're up.

And for the record, it is 1:31 that were reconvening the session.

MR. DORSEY: Cameron Dorsey, director of Multifamily Finance.

7(a) is basically an item where we're trying to just lay out what's about to happen. It's not an action, it's just a discussion time, so I want to kind of do an overview of the rules and how they're going to be presented today.

The rules are quite different than they have been in the past, both what the actual content of the rules are as well as the structure of the rules. We have taken what was kind of a scatter of different sets of rules and tried to combine them into kind of an overarching this is what applies to everyone who wants to get multifamily funds from us, whether it be HOME funds, whether it be 9 percent tax credits, 4 percent tax credits, bonds, or maybe some future source we haven't even contemplated at this point. We're hoping we can use this as a framework for any of those possible future funds that might come down.

As a result, we've got Chapter 10, it's a new chapter. Chapter 10 is basically from application, from the point you start contemplating doing a deal through 30 years of compliance, all aligned in one chapter of the Texas Administrative Code. That was a pretty big undertaking to do in such a short



period of time, but I think it's yielded a product that's a little bit easier to follow.

We've got all of the definitions in one spot. If you need to look up a definition for a scoring item that's not even in Chapter 10 but it's in Chapter 11, you can go to the multifamily definitions and you can find all the definitions that you need no matter what source you're applying for.

There's still a few little extraneous items that maybe we'll work in in one way or another in a subsequent year. We've got, for example, a rule in Chapter 1 that is related to integrated housing, it's the integrated housing rule, and it makes sense maybe at some point to work that in. But we've got the bulk right here. And we also within the rules kind of pulled stuff out, changed the way they're organized to follow a little bit more closely the development process.

So for example, in the prior year's QAP, for example, if you wanted to figure out how to pick a site, you had to look at all these different places: you looked in the ineligibility section, you looked in the threshold section, you looked in the site development restrictions section, and then over in the scoring section, and you kind of had to make sure you didn't miss anything.

And some rules kind of ended up being like a gotcha. There was this thing over here in left field that I didn't know existed and it seemed logical that it would have been located over in this other place, and since it wasn't, an applicant operating completely good faith just misses something. So we've tried to kind of eliminate, the best that we can, those types of things and tried to provide kind of an overall structure that helps reduce the

occurrence of those types of situations. So Chapter 10 will lay out, like I said, rules that apply to everyone.

Then we've got two other chapters. One is Chapter 11 for the QAP, and the QAP is basically scoring criteria, the allocation process, and a couple of other little things, but threshold criteria we moved over, it applies to everyone. Everyone is subject to the same set of threshold criteria. So the QAP itself is a lot shorter in form, although, obviously, if you're applying for a 9 percent tax credit allocation, you would have to follow both Chapter 10 and Chapter 11. Chapter 12 is the bond rule and so that has very bond-specific stuff in it, and so as a whole, those three chapters really kind of encompass this new structure.

It was a pretty tremendous undertaking, like I said. Th is involved different divisions in the department, it involved Multifamily Division, the Real Estate Analysis Division, the Asset Management Division, the Compliance Division, to some extent the HOME and NSP divisions. So this was a pooling of a bunch of different folks and resources to try and facilitate this outcome.

We have, for the purpose of the Board's approval, broken this into discreet kind of sections, and it helps with two things. One is who's primarily responsible for the implementation of this particular set of rules. For example, compliance rules, obviously I'm probably not the best to present and explain the compliance rules so that's under a separate item where Patricia can come up and explain. And the same thing goes for public comments, a little bit more organized to have public comment, folks concerned about

application requirements can all comment at the same time on that subject, so we're not kind of trying to manage public comment for just a huge set of rules all in one action. So that's why you'll see this broken out on your agenda in this manner.

So given this, what is the QAP? I referred kind of to it a little bit earlier, but it is Chapter 11 and anything else that applies to a tax credit deal is effectively what it is. It's a little bit of a changing. It's kind of a term of art in a way in that we've just organized it a little bit differently, but substantively it's still going to include threshold, you're still subject to threshold requirements, and we incorporate those requirements by reference in Chapter 11, what's called the QAP, to ensure that we're meeting the statutory requirements for inclusion of certain things in the QAP.

Opportunities for public input thus far. Thus far, we've had a pretty good amount of public input. We had kind of an initial roundtable back before awards were even made in July where we addressed some kind of basic issues and some overarching concerns or got a sense for what those were.

Then we went about working on this new draft, and as soon as we had kind of some ideas of what the scoring criteria could look like, we put those up in an online forum for folks to comment on, and we've got well over a couple thousand views of those items and over 180 or so comments. Staff commented as well. I think I had maybe around 30 comments, Jean and Theresa had some comments here and there, just helping clarify, helping explain where we were coming from. I figure if I can't defend a position, then

there's no reason why we shouldn't consider doing something else. So I tried to put out there rationale for any particular direction that staff was looking at going. So that was out there for a little while.

Based on that, we've tried to take that and incorporate a good amount of that into what we've called a staff draft of the QAP, and like I said, the form just had the scoring criteria but the staff draft was the whole enchilada, and we tried to incorporate, like I said, some of the comments we got via the forum and via the first roundtable into that staff draft, so we saw some change there in incorporation of public input.

And then after the staff draft came out, shortly thereafter we had a daylong workshop over here at the Capitol in a room just like this -- it might have been in this room, I can't remember -- where we spent basically from 8:00 to past 5:30, around 5:30. We broke the rules into discreet kind of pieces again. One topic we focused very specifically on was rural and kind of dealt with some rural issues and discussed them and how we might make accommodations for rural. Given the remedial plan and its incorporation into this document, I think we needed to spend a little bit of time figuring out how we make the appropriate accommodations for rural areas that might not be subject to the exact same characteristics or what-have-you.

And so we had that work group and we came out with the board draft that's in your board book today which incorporates a good amount of comment from that work group as well. So we've had a really good process of incorporating public input to the extent we felt like we needed to.

Now, where does that leave us right now? What we think we

have right now is not necessarily a final version, but we think we have a version that if approved, the comments that we receive during the official public comment period, a good majority we could incorporate into this draft as modifications before that final version. That, I think, is really important. I think we've got a little bit of a different interpretation and I think it's because of more recent case law, but of exactly what can change during the public comment period, and it's kind of based on this idea of what is a logical outgrowth of what is there and what public comment is received in response to these issues.

And so I think we've looked at what that standard is, what the likely outstanding issues are, and we feel like if the Board wants to make modifications today, we certainly can, but to the extent that there are some modifications we want to do some more research on, we can do that, and based on that research, hopefully incorporate those ideas into the final version.

The remedial plan. The remedial plan is incorporated in several areas. In some cases the remedial plan items were really threshold-related type of issues that we're applying across the board. An example is the undesirable area features which I think you'll hear some public comment on today. That is if you're effectively within a thousand feet of persistent recurring flooding issues, seriously dilapidated housing or other structures, those types of things, then you need to basically come in and get a pre-clearance, let us look at those issues and we'll give some written feedback that says: Yes, go ahead, we think that those are sufficiently substantive to prevent you from moving forward with an application. So that's in Chapter 10, applicable to

everyone.

Then we have certain things that are very scoring specific, such as the opportunity index, so that's incorporated in the scoring section. In your Board writeups that are in your board book, we touch on the remedial plan elements that are incorporated in each specific item for approval and how we address those within what we're proposing for approval.

I think the next question is how do we deal with this on a statewide basis because the remedial plan and the court's order is applicable to a five-county area. It's very difficult to parse that out from Urban Region 3, first off, and so what you'll see is that if it was applicable or if it was part of the order for the five-county area, we've applied that evenly to the entire Urban Region 3.

In addition, there are some limited areas where we have modified that for the rest of the state. The most notable modifications were done to accommodate rural areas. Rural areas are just completely different in character, you're generally not dealing with concentration type issues, in a lot of places these are relatively small areas and many times we've done maybe two deals there in the last 15 years type of thing, so just not really subject to quite the same things.

The other thing is if you take an item like the opportunity index, we apply this poverty rate, 15 percent. Well, that's great and all, but what do you do if you go to a county and there's no area within an entire county that has a poverty rate less than 15 percent? We felt like this should really be about relativity, we should deal in relativity when we go out to an urban area

so that we don't kind of end up with whole counties that don't even have the opportunity to get on to the opportunity index.

So the median income factor is something that we're proposing to continue to apply to rural areas of the state. It is a relative factor because it's based on taking the median incomes for each census tract within a county, ranking them and then the top quartile would get the highest kind of consideration under the opportunity index, and the second quartile would be just under that. But what that does is it means that for counties with four or more census tracts in them -- which is the vast majority of areas that we would be developing any deals -- there would be at least one area that would have a shot at being on the opportunity index. So that was an important kind of modification and accommodation we felt like was appropriate for rural areas of the state.

There are also a couple of areas where we've made modifications for certain regions or just outside of Urban 3. One is in the opportunity index for Urban 11 which is along the Texas-Mexico border and El Paso area, which is Urban 13, we've increased the poverty rate allowance to 25 percent. We did that for a similar reason, we felt like having it so that there were just a handful of census tracts within an entire region of the state that would qualify was probably overly narrow, and so we've made that adjustment so that it's a little bit more equivalent with what you might see as qualifying in another urban region of the state.

There's one place that has kind of the most differentiated or kind of discreet separation for Urban Region 3, for outside of Urban Region 3

but other urban areas outside of Urban 3 and then for rural, and that's in the community revitalization plan item, and we can talk a little bit more about that or go into more detail if you all want to.

I think one policy kind of question that needs to get addressed is whether we need to make other modifications to veer a little bit further from the remedial plan in other areas of the state. I know, for example, in the underserved areas point item, it makes a distinction between deals with age restrictions, serving the elderly population, and deals that can serve all ages, and so deals that can serve all ages is at a higher point value than deals that serve only senior households.

And so there may be some comments there about let's apply that there but let's not apply that elsewhere. We didn't feel that it was necessary to make that type of accommodation, we felt like the underlying policy there and issue was the same at a minimum in other urban areas of the state.

But that might be something that comes up during public comment, and I'll try to let you know yes, that was a remedial plan item, we are applying it in this way to the whole state or making these kind of accommodations, and so I'll kind of try and let you all know that.

The other thing is we tried to create a scoring system, we went back to the language in statute and basically copied and pasted it. It's not that we veered away, we took that and built from that language, and we tried to create more differentiation. Last year with all of the ties, if you all kind of recall, there were just these vast number of tiebreaker situations that we had



to deal with, and so what we did was we said on each scoring item what is the underlying kind of policy that is either implicitly or explicitly expressed by the underlying statutory language, and we tried to build off that and craft a scoring item that furthered that policy. And in doing so, we were hoping to create some items that resulted in some differentiation and scores.

That's a departure from how the ultimate outcomes have played out in the past, and that has been a little bit of a culture shock, I think. It's a change from I have to score max points under every single item to I have to be okay with structuring an application and spending money on an application that may not score the max points under this item. You know, I think it's a shift but it was always, in my mind, a bit of false security to be able to score high in every category, because at the end of the day there's still going to be something that says this one gets an award and this one doesn't, as long as you're oversubscribed.

So the goal was that that decision be driven by a package rather than coming down to kind of one item. If you put together a package that scores well under one, not so well under another, but kind of makes up those points in other categories, then that package, hopefully, will be able to compete with the packages that other folks put together that might have different elements or utilize different scoring items and further different policies.

I think the most evident area you will see this is in the tenant services item and the rent levels item. In those two items there's a slight point advantage for supportive housing developments. Well, why? It calls our

supportive housing specifically, and the reason is because those deals are incredibly effective at targeting lower income folks at the 30 percent level and structuring deals with no debt so that they can achieve that for a good period of time. Well, I would love for that to happen organically by just having a level that anyone could attain.

The problem is we felt that specifically calling out supportive housing there was a really important thing to do because there are some items just because of how they function and how they are that are kind of elective on the applicant's part, and once one guy dives down for 50 percent of their units at 30 percent of AMFI, it makes everyone consider how to chase that guy down. And so we wanted to have a tier that really furthered that underlying policy that supportive housing is so good at doing but not kind of compromise the rest of the folks who are participating in cycle and kind of force them to kind of dive after because we end up with a vast majority of people kind diving down there after those points.

The similar thing on tenant services, that's just a one point bump and it's because in our experience supportive housing provides incredibly robust supportive services that further that policy, simply stated in a general sense, better than other deal types, and as a result, there's a one point advantage that supportive housing can take advantage of, however, they may not score as well under some of the other items.

So that's kind of an example of how we kind of crafted this. It's a careful kind of balance, but that's what you'll kind of see in this overall new rewrite.

Do you all have any questions before we start hitting the items?

MS. BINGHAM ESCAREÑO: I do. Just first a comment. I'm just overwhelmed with wanting to commend you and the staff on this undertaking. Just your logic and what you're trying to apply to this, I know that you're working hard to do the right thing and it's really just overwhelming -- I mean, just to listen to it, much less to have to work on it.

(General laughter.)

MR. OXER: It scared her you talking about it, Cameron.

MS. BINGHAM ESCAREÑO: Okay. So first, I hear about what our opportunities have been so far to engage stakeholders. Initial roundtable, a new draft, an online forum, a staff draft, workshop to address some specific issues, and then right now we're at board draft, give or take some comments today, then put it out for publication and comment and see what happens. And what I heard you say is that your general thought is that as we go to publication and public comment, there should still be wiggle room based on what you hear for public comment.

Is there anything that legal counsel is concerned about that isn't modifiable, or do you perceive that there's some constraints or things that might need to happen today versus publishing en globo.

MS. DEANE: If the Board does have some items that they know that they're going to want to modify, I would suggest that you go ahead and do that today. There is limited opportunity to make changes from the draft that gets published at the meeting where you finally adopt the rule, and the issue -- and Cameron alluded to it -- is whether or not the changes are a

logical outgrowth of the draft that you published.

And the standard that's applied still kind of goes back to some of the older case law, though, and I think they'll look at things like are you affecting someone that was not being affected before, someone that wouldn't have had notice and wouldn't have thought to read the rule because they're thinking oh, that's not going to apply to my type of development, and now all of a sudden it does. So it's those kinds of things, or if it affects them in a completely different way that they couldn't have anticipated by reading the draft.

Because the whole idea is to get public notice so that those people that are affected by the rule know they're affected by the rule, they have an opportunity to comment on that rule, and so you don't want to blind side anybody. That's kind of the concept behind it.

MR. IRVINE: I would say that there may be ideas that anybody in this room has had that we've considered and we did not put them into the draft. Well, this might be an opportune time to look at whether you want to put them back in, because you put an idea in a discussion draft, it's out there for public comment, you can always adopt a final rule that doesn't implement that notion, but you can't go back and say, All right, now that we've got all this comment laying here, let's put a brand new idea in our final action.

Staff has no problem with ideas that we may have discounted being put back in so that they can be more fully vetted in public discussion.

MR. OXER: So the purpose at this stage, Cameron, is to make sure that all the sort of general big ideas that we're trying to work on are in the

discussion and we'll work and mill on those as opposed to coming back later and adding another piece to it.

MR. DORSEY: Right. There are certain things -- right, in short that's correct, yes.

MR. OXER: Okay.

MS. BINGHAM ESCAREÑO: Just a couple of other questions.

MR. OXER: Certainly.

MS. BINGHAM ESCAREÑO: And I know we all share the same concern and that is that whatever rules we put out there that some type of application falls in a hole or just isn't viable, like applications that we all want to be viable. I mean, you all have test scenarios in your head, right, just from everything you've processed over years and years. Do you run test applications through to see if like rural deals won't get done or small deals won't get done or combo deals won't get done? Is that part of the vetting?

MR. DORSEY: Absolutely, yes. On a lot of these items we actually looked at last year's cycle, how it would have affected last year's cycle, and those types of things. Jean has run a ton of data on those types of things to come up with some logic for why we're proposing a certain point tier or those types of things. And that's ongoing, as well.

In one of the items you might hear about the UPCS score, and we're still looking at the effect, but if it's in the draft, then we could bring back a final with a slight modification of that, if it's not even in there in any manner, then we would worry about being able to include it. So it's in there now, we're still looking at it and kind of vetting it with the hope that whatever we come

back with in final form is more fully vetted. So that's an ongoing thing.

MS. BINGHAM ESCAREÑO: Great. And then my last question was did you seize opportunities to reduce manual processes and move to more automated processes? Or are these just kind of rule-based things that you weren't looking at actual processes?

MR. DORSEY: We did a couple of things. We clarified, for example, this last year we had the process where we didn't review every application for threshold and eligibility, and we made clear that that's the process we're going to use. And in doing so we looked at kind of the repercussions of that and kind of issues that we dealt with this last year and how to make sure that we resolve any issues that came up as a result of that.

There are some more manual processes, though, as well, that we felt were really necessitated by the fact that this is a real estate program at the end of the day. And so, for example, we built into the section on definitions, if you feel like the definition of development, development site, new construction, rehabilitation, reconstruction, we took certain definitions that historically seemed to cause some problems because we can't contemplate all the different kind of variations under which we might be reviewing an application that's subject to those definitions, we built in a process where we can basically give them a predetermination on how we're going to review the application in relation to those definitions. It's the applicant's responsibility to ask for one before the application comes in, but we can kind of give them something that they can take to the bank is the idea there.

Because, I think, you know, in this last cycle there were folks

that operated in good faith on some issues, and when you're doing a deal that has a combination of reconstruction, new construction and rehabilitation, and how the rules apply to you whenever it might use rehab doesn't count here is kind of difficult to assess without staff kind of saying yes, this is how we're going to look at it. And so in some ways there's a couple of more manual processes involved here too to make sure that we're better accommodating those types of unique situations.

MS. BINGHAM ESCAREÑO: Appreciate it. Thank you.

MR. OXER: I want to exercise the Chair's prerogative here just for a minute and say hello to a couple of folks. We missed Don Jones, chief of staff for Representative Menendez, who came in.

Is former executive director, Edwina Carrington still here? Oh, she's behind Cameron; Cameron is in the way.

I'd like to say hi to Mike Gerber, former executive director.

Welcome back, Mike.

MR. DORSEY: Any other questions before we move on to the items?

MR. KEIG: Yes. You're talking overview right now, you don't want specific questions on specific rules at this time. Right?

MR. DORSEY: I can answer any question you've got. It might be I don't know.

(General laughter.)

MR. OXER: Good answer, Cameron.

MR. KEIG: I'll wait and see if it gets addressed, so go ahead.

MR. OXER: Actually, one of the things I wanted to ask and make sure of, has it been perceived by the staff that there were certain components of the law that had not had as much attention to it in the past as perhaps we might give it in the future? Or have we been missing anything?

MR. DORSEY: I don't think I would say we've been missing anything. We've taken a narrower take on some of this stuff, but it's not to say that there was any problem with the way we did it before, but, you know, we've got some new legal folks and they feel more comfortable with certain things than other things, and so we've got some of that naturally kind of built in here.

MR. IRVINE: I'd say we took to heart your mandate to burn it to the slab and start over, and the slab is 2306, and we really went back and looked at the statute.

MR. OXER: Tattoo that structure onto that and then build out whatever you need to make it work.

Okay, jump into it.

MR. DORSEY: All right. So item (b) is the repeal of several sets of rules, first of all, Chapter 1.1 which is the definitions and amenities that was previously applied to housing programs, Chapter 53 which is certain subchapters applicable to multifamily HOME, and replacing those with Chapter 10, Subchapters A, B, C and G. Why do we have that gap? The gap is because G deals with like fees and some kind of appeal process and some stuff like that. There's some subchapters in between C and G that other divisions have primary responsibility for, like REA, Compliance, Asset Management, so that's why it's A, B, C and G.



Subchapter A is the definitions section is primarily what is there. Subchapter B is the site and development restrictions and requirements, so requirements related to picking a site or structuring a development, what kind of development do I have to propose. And Subchapter C is what was formerly known as kind of threshold application submission requirements. So that is (b), and we recommend approval as presented.

MR. OXER: So for the purposes of process, we're going to go through these one at a time. Right?

MR. DORSEY: I think that makes sense to make sure we allow folks to make public comment on each component.

MR. OXER: Each component. Because we need to air each of these out in terms of detailing. So obviously since you wrote them, you're going to recommend approval. Is that right?

MR. DORSEY: That's right.

MR. OXER: Just checking, Cameron.

MR. DORSEY: It wasn't just me, though.

(General laughter.)

MR. KEIG: Move to approve staff's recommendation of item 7(b).

MR. OXER: Okay. Motion by Mr. Keig to approve staff recommendation on item 7(b). Is there a second?

MR. McWATTERS: Second.

MR. OXER: There is a second by Professor McWatters. Is

there any other comment from the Board?

(No response.)

MR. OXER: Is there public comment? And for the record here, you folks up here in the front are sitting in the comment seats, so I'm expecting you to say something. Okay?

Come on, Barry, jump in.

MR. KAHN: I only have one very simple comment.

MR. OXER: ID yourself.

MR. KAHN: Good afternoon, everybody. My name is Barry Kahn. I'm a developer in Houston.

In 10.202(l) there's a new rule which I think is a good rule overall as far as requiring disclosure of transactions where developers have been removed or terminated, and it doesn't have any type of time limit, and what I would like to suggest is that the disclosure is made for anything in the last ten years which is typically what a lot of lenders use. Unfortunately, some of us have had to deal with stuff in the '80s and we've survived and I think are probably better developers, and I'm not sure that's really mundane to the issue.

MR. OXER: So you're asking to limit the reporting period to within ten years.

MR. KAHN: Ten years. In other words, after the words "that has terminated" before "or plans" add the words "within the past ten years."

MR. OXER: Okay.

MR. KAHN: That's 10.202(l), the first sentence. Thank you.

MR. OXER: Comment noted. Michael, you're next. We're going to left to right for me up here. Okay?

MR. HARTMAN: Michael Hartman. Mr. Chairman, members of the Board, Tejas Housing out of Austin.

In this section I wanted to talk about one thing in particular which was undesirable area features, and I don't have a problem necessarily with what is here, but maybe a little clarity on the wording. If you look at it, one of the things that you've had to deal with a lot is appeals to the Board. Well, how do you define a history of significant or recurring flooding? It's not very objective and I think it's going to give you -- it needs to be clarified a little bit on what we mean by significant or recurring.

Same thing on number 2, significant presences of blighted structures. Again, significant presence, what is that to one person versus the other. And also, that kind of contradicts the idea of revitalization because a revitalization area by definition is going to have blighted structures in it.

Item (d), locally known presences of gang activity, et cetera, et cetera, that rises to the level of frequent police reports. Well, in a town like El Campo, what's frequent? I mean, that might be two times a month. In certain sections of larger cities, is it less than once an hour?

MR. OXER: Yes, twice an hour in Houston.

MR. HARTMAN: Yes. So again, I'm just saying it's not necessarily that these are bad items, but a little bit of clarity in the language might help there.

The only other thing, and I'll just kind of ratify what we already

said in our TAAHP letter, the civil engineering feasibility study, it does help in some ways but it definitely provides a barrier to new entry and for a lot of groups that might not be able to come up with the funds to do that. I mean, applications now are getting to be in the \$50- to \$60,000 range to file one, and this probably added more money in the last year than anything. So I think some of it is good, but we talked about maybe cutting some of it back, so I think you'll get a lot more comment on that from other people. Maybe having some of it done by the developers themselves as opposed to having to be done by an engineer, maybe addressing the same things but not having to be addressed by the engineer so it's not quite such a costly proposition

It is a good checklist, people should be doing this, I think a lot of your developers have been doing this. I have heard where some of the applications you got in the last few years didn't do this and they should have. And it's a good checklist, but again, it's just added a lot of costs in the process.

That's all my comments.

MR. OXER: Noted. Any questions from the Board? Cameron, you've got it?

MR. SIMONIANS: Good afternoon. My name is Bobken Simonians, and I'm speaking on behalf of Houston Housing Authority. First I'd like to thank you for all the efforts of Mr. Irvine and Mr. Dorsey. They made the process very transparent and we had the chance to discuss many issues. For that we are grateful.

Several issues remain that are concerning to us. One is what the gentleman brought up in terms of the undesirable sites. We have about

5,000 units, over 3,000 public housing units. Some of those developments were developed in the late '30s and early '40s. They are in locations where we have police activity, you have lots of issues that will deem undesirable if you want to take all the problems to those developments. The only tool we have in our toolbox is to try to disperse the concentration of poverty, bring some mixed income population to bring up the community. Having those conditions in there prevents us from doing so.

I realize the importance of it as a goal, and not to duplicate issues as much, one alternative may be, in a self-serving way -- I know it affects everybody else in Houston and other major cities -- is that we have to process our developments through HUD approval process which is probably as strict but it's guided by different goals. So if the recommendation is taken as if HUD approves these developments would be deemed approved by TDHCA may be a good change to the process.

The other comment I have is about leveraging. We are putting our funds in there, some of our developments the city is putting money in there, we're putting money in there, tax credit, bonds, but no mention is made of vouchers and ACC units. Those are not necessarily cash but they do help with financing and help promote the development. So I would appreciate if you add those in the leveraging process and we get points for it.

Having been in this position before, I don't envy you. Thank you very much.

MR. OXER: Thank you. Any questions? That does bring the question or point where we take away some of the questions about whether or

not we would have HUD approval, if HUD approved an application to start with, just a point and comment.

MS. DEANE: Can I make a comment just real quick?

MR. OXER: Certainly.

MS. DEANE: I know the Board wants to be responsive to a lot of the comments that have been made, and speaking of the undesirable site features just brought this to my mind, there are going to be some aspects that the Board may not be able to be as responsive as I know they would like to be just because of a recent court order that we're dealing with and a remedial plan that has been filed and adopted by the court. So there may be some of these that we will need to discuss in another context, it might involve some legal advice and so forth.

But if occasionally I interrupt and say something about that's a legal issue and it's related to our court order, I'm not trying to be rude and I know the Board wants to really be responsive to some of these comments and take them into account, but we are going to have some limitations on what we can do because of that, and I just wanted to bring that up.

MR. OXER: Don't let our quietude be indication of a lack of interest or concern.

MS. DEANE: Exactly.

MR. OXER: We're interested in those but we are constrained by other influences on this, legal influences. So thank you for that, Counselor.

Yes, next.

MR. JACK: Good afternoon. My name is Darrell Jack. My firm

is Apartment Market Data. I've had the fortunate opportunity the last few weeks of working with fellow TAAHP members and staff on TAAHP's comments towards the QAP.

There are two things I just want to address here separate and apart from that. One, in the last few days there's been a change in the opportunity index that changes some of the rules relating to schools in rural areas to where a rural area would not qualify for opportunity index points if any other schools were rated unacceptable. It seems like with this last revision that now what's acceptable in an urban area doesn't follow through with the rural, and in talking to Cameron at the break before this, it seemed like he would be agreeable to making a change that the elementary school can't be rated unacceptable and still have somebody claim those high opportunity points and do away with the issues over the middle and the high schools. Those are actually dealt with in the next section dealing with educational excellence and the additional points that they get for somebody there. But it just doesn't seem like rural areas should be really held to a threshold difference than the rest of the state would. So I just wanted to bring that to your attention.

The second area deals with underserved areas, and this just recently came to my attention as I was able to get some mapping tools from the state. Dealing with Colonias, the underserved areas, including Colonias, you get two extra points if you locate a project within the boundaries of a Colonia. As I've just recently discovered, Colonias are largely built out. The boundaries of Colonias fit to structures within that development area and I

have for you some aerials around the state dealing with those.

And my suggestion in accomplishing your goal of serving these residents in Colonia area is that: one, the definition also include state designated Colonia areas, and there's departments within the state that have done that and mapped that out; and second, that you also allow sites to be considered if they're located within 2,500 feet of the Colonia area. Effectively, you're dealing with the same demographics and same income of the area, but you're giving developers an opportunity to go in to an area that might not be within the exact boundary but it's going to serve those people because of the limitation the boundaries have and no available land within the Colonia.

I'll be happy to answer any questions.

MR. OXER: So how do you define, since you're not within a boundary, how would you define that proximity?

MR. JACK: Well, the Colonias have boundaries.

MR. OXER: But you're talking outside of those boundaries.

MR. JACK: Right, and so outside that boundary, I think you could simply add a rule that said that the site qualifies for those underserved area points if it's located within a Colonia or within 2,500 feet of a Colonia boundary.

MR. OXER: Okay. So you set a fixed distance from any point along that Colonia boundary.

MR. JACK: Sure. And I even have one Colonia here in Brownsville that has three high ranking elementary schools but no land within the Colonia to locate, but there's sites right on the corner of the Colonia where



you could locate a site and meet that underserved area requirement that I think the QAP tries to accomplish.

MR. OXER: Any thoughts?

MR. KEIG: I'm not sure 2,500 feet.

MR. OXER: Yes. I mean, how did you get 2,500 versus 5,000 versus ten miles, versus next door, adjacent?

MR. JACK: That's your discretion.

MR. OXER: We get all the easy decisions.

MR. JACK: That does give developers an opportunity to find sites within a reasonable area. That would be less than half a mile.

MR. OXER: Yes, basically a half a mile, more or less. Any thoughts? Cameron, do you have that?

MR. DORSEY: I've got it down.

MR. OXER: Then we'll put it in there. Thanks, Darrell.

Hi, David. I think Walter was next since we're going left to right, but that's all right. Are you okay with that, Walter?

(General talking and laughter.)

MR. KOOGLER: Hello. I'm David Koogler. I am a developer from Houston but I'm here before you on behalf of TAAHP, the Texas Affiliation of Affordable Housing Providers. I may have a comment separate from TAAHP but I'll just sit down and raise that if I decide to at the end so it doesn't confuse what are TAAHP and what are personal. Again, good morning, Chairman and TDHCA Board members. I appreciate this opportunity to provide some comments.

You should have a letter from TAAHP that provides you with our consensus comments. Deborah Guerrero and I are the co-chairs of the TAAHP QAP committee. We had a meeting of the membership on August 28 right after the TDHCA work group sessions here in the Capitol. We met and went over the QAP and developed consensus comments to the draft that was posted on August 23. We then presented those consensus comments to staff on August 31, and we want to thank the TDHCA staff for taking the time to listen to the comments and discuss those with us. It's time-consuming and we appreciate them making that time available.

The letter that you have before you is a pared down version of the letter that we discussed with staff and it contains recommendations that we'd like for staff to continue to consider. I think in many cases they're considerations that are acceptable to staff and in some cases they're considerations that staff may feel they're limited on for various reasons that have already been discussed.

So my purpose here is not to read that letter to you because I don't want to take up all of your time, but we do hope that to the extent that you can, those comments are incorporated into the draft that's published in the *Texas Register* so it can be considered for public comment or at least not excluded from future consideration because of the public comment process.

Today I'm going to highlight three of those comments for you, but before I do that, I wanted for you to be aware that TAAHP is only commenting on those matters for which there is consensus, and the TAAHP membership is quite diverse so there are many points that are very important

to the TAAHP membership but the TAAHP membership has different views on the best way to resolve those, and so those are points that I'm not raising before you, so the fact that we haven't covered something in the TAAHP letter does not mean it's not important to very many people in this audience and that participate in tax credit development.

Having said that, it's significant to note that there are quite a few points that we do have broad support for and those are those points that are in the letter.

The three items that I wanted to just highlight for you, and some have already been mentioned, are the maximum request limit. Well, actually, I should ask you do you want me to sit down and raise these because some of these relate to 7(d) and some of these relate to 7(b). Do you want to break that up? I have three, one is for 7(b) and two are for 7(d).

MR. DORSEY: If you want to make all three, I'll parse them out when I get up here and speak about them and say I'll talk about this one on 7(b) and I'll talk about this one on 7(d).

MR. OXER: Make all your comments, because we'll be milling this too much, it's going to be back and forth.

MS. BINGHAM ESCAREÑO: Mr. Chairman, can I ask David just a question just to make sure I was paying attention?

MR. OXER: Certainly.

MS. BINGHAM ESCAREÑO: So the TAAHP issues are reflected in the letter, and now you as a developer are going to.

MR. KOOGLER: No. I'm still talking on behalf of TAAHP. I'll sit down and come back later.

MS. BINGHAM ESCAREÑO: Okay. These are just the most key three.

MR. KOOGLER: Right. And we actually had more but then it got to the point where we were going to be reading the whole letter to you.

MR. IRVINE: Are you going to wear the same tie?

MR. OXER: You've got to change ties if you're going to come back up.

(General talking and laughter.)

MR. KOOGLER: The three that I'm going to highlight, if you're looking at the letter, it's recommendation number 8, it relates to 7(d), and it has to do with Section 11.4(b) and that's the maximum request limit, and that's where the QAP provides that your maximum request has to be limited by 100 percent of the amount allocated to that subregion or a million five, whichever is lower. And there's overwhelming support to increase that percentage to 150 percent. I think we've had that in the past. I know we had some issues in this current round. We believe that was primarily caused by the forward commitments which we don't have any longer and I think we've had similar provisions in QAPs for the long history and this is the first year we've had that type of an issue. So we would request that that percentage be increased from 100 to 150 percent.

The second item is our recommendation number 14, which is also 7(d). It's Section 11.9(e)(2)(B), as in boy, which deals with the cost per square foot point category. And I know staff made some changes to this provision from what had initially been posted on the 23rd to what's in the board

book, and I think those were good changes, but I think TAAHP's position is still that we would like to get away from this concept of deviation from a mean because it does give the developers a lot of discomfort. We do struggle with trying to make sure we spend a lot of money on these applications and we try to put one together that we think is going to be successful. You never know, we never knew before, but this category makes it even more uncertain because there's no basis going into the application to make a decision about how we would structure that development and make sure we maximize the opportunity to be competitive. And so in order for you to really remember this point, just remember that using a mean is mean.

MR. OXER: You get points for that one.

(General laughter.)

MR. KOOGLER: We'd like for that concept to go, and we think that there are some tried and true things in the past drafts of the QAP that shouldn't be thrown out completely, and you'll see more elaboration in the letter, but we believe what has been in the last eight QAPs has worked and is consistent, and maybe more consistent, in our view, with the statutory intent, so we'd like to go back to that.

And then the last one is our recommendation number 4 which does relate to 7(b), and that's Section 10.101(a)(4), undesirable site features, and I think others have already spoken on that and TAAHP agrees generally that we would really like to see some clarification on those points for terms significant flooding, that category. It would be very helpful to have a little more guidance on evaluating that as we look for sites.

That's it for now. So we hope you take a look at the letter and incorporate it into the *Texas Register* draft.

MR. OXER: Any other questions for David? I have a question, David. For a particular region you want to be able to apply for within 150 percent of what's allocated for the region under the Regional Allocation Formula. Is that right?

MR. KOOGLER: I'm sorry, I missed the question.

MR. OXER: The point is you would like to increase the allocation amount or the amount for which you can apply in a particular region beyond which it's allocated for.

MR. KOOGLER: Right, 150 percent.

MR. OXER: Okay. And when you do that, since there's nothing there and you appeal for more there so you can't win, so you're waiting for the statewide collapse, and then that puts you in the competition with everybody else in the statewide collapse.

MR. KOOGLER: Right.

MR. OXER: But it's on the record that you recognize that you're going to compete with somebody else in another region.

MR. KOOGLER: That's right.

MR. OXER: Okay. We don't want to hear regions say we didn't get any. Well, you applied for 150 percent of what was available, if you'd have applied for 100 percent of what was available, you'd have gotten it.

MR. KOOGLER: That's all right. There's only so much money, we do recognize that. I think it's the more opportunity to commit a

development that we think will be really feasible for the long term.

MR. OXER: And viable for the long term.

MR. KOOGLER: There are a lot of smaller developments out there, and a lot of them struggle, especially when we are in these roller-coaster economies.

MR. OXER: It goes up, obviously it goes down here so far.

MR. KOOGLER: But the 40-unit properties are tough to do and don't know that we should be encouraging more of those.

MR. OXER: Fair enough. Comments from anybody?

(No response.)

MR. OXER: All right. Who's next down there? Since you guys are stirring around, I can't go left or right.

MR. HOOVER: My name is Dennis Hoover, and I want to thank you for your service and take the opportunity to say what I believe about the staff of TDHCA. They're very hardworking and very proactive, and I've been around here since '87, and most of those years all this is true, but particularly in the last eight or ten years. They are very responsive, they try to get the deal done, they're very much not like the bad picture that you have of a public servant or a public agency, it's exactly the way that you would hope a public service agency would be in their desire to get the deal done and forward-thinking and proactiveness, as opposed to some other folks that I work with.

MR. OXER: And for the record, we've asked them to reach out to you to find out how we can make this work smoother as opposed to

standing back inside the fortress and keeping the door shut.

MR. HOOVER: The transparency of how TDHCA does business is wonderful, is great.

MR. OXER: I've got a number you can call. It's 512-463-6000, ask for Rick, and tell him that too.

(General laughter.)

MR. HOOVER: The baby shouldn't be thrown out with the bath water.

MR. OXER: Thank you for your comments.

MR. HOOVER: I'm here to represent the Rural Rental Housing Association and the QAP committee, which the common denominator of the Rural Rental Housing Association of Texas is that everybody that's a member has borrowed money from USDA for a 515 multifamily development sometime in the past. Most all of these properties, and there's 729 properties statewide and almost 26,000 units, most of them being in very, very rural areas, small developments, we have a lot of housing authorities that are members that built these 515 properties back in the '70s and '80s and '90s. The average age is probably at least 20 years old, maybe 25. A lot of them were built along with tax credits.

Almost all of these USDA properties are members, probably 95 to 98 percent are members of the Rural Rental Housing Association, and both myself and Ginger McGuire are addressing different points on the QAP committee's comments here, a lot of which have already been addressed since the 23rd, so our comments are going to be short. In fact, out of six



things I was going to speak about, three of them have been changed since then.

MR. GANN: I've got a question. What size units are you talking about?

MR. HOOVER: Average is probably 30 or 32 units.

MR. GANN: Okay. Thank you. We get that and different people are talking about different things sometimes.

MR. OXER: Small means different things to different people. If it's under 2,000 units, David doesn't want to do those.

MR. HOOVER: We had the same conversation, we promised never to do a 24-unit and under. The smaller they get, the harder they are to do, the smaller the town, the poorer the town, the harder they are to do. It's not that there's not a need there for housing, there is.

MR. OXER: It's hard to make it work economically and viably financially.

MR. HOOVER: The economy of scale is just not there. These things need to be done, they need to be rehabbed, but there's only a handful of developers that will tackle any of these things, even though the need is huge because where these things are located, they are the small towns, the poorest people, the hardest to serve, and in the most remote areas, typically. Not all of them. Some of them are built in Georgetown and Cedar Park that were built 30 years ago, but that's probably the exception rather than the rule.

MR. GANN: I probably need to state it, I'm supporting your position, I'm from a rural area myself, and it's important to have those 30 units

and et cetera, so I support some of your comments.

MR. HOOVER: And I want to echo what Darrell Jack said about the Colonias. He's exactly right. A lot of our RD units were built in Colonias in the Valley, and what we found out real quick, you can't really build in a Colonia. The definition of a real Colonia means it doesn't have any water, sewer or services. You can't build there. You can build right beside it, maybe, where the city has brought in streets, water and sewer, but if it's got streets, water and sewer, it's no longer a Colonia. So if you're getting right up next beside it, you're still serving the same population.

That's been changed since the 23rd. The cost of development per square foot, we echo TAAHP's comments or a lot of our comments are the same as TAAHP's to go back to the 2011 plan.

There was one comment particular to USDA deals. Most of ours are just particular to rural deals, and this is compliance administration. Our USDA deals, by federal regulation, when we have an applicant come in, we have to prioritize somebody who is a 50 percent applicant, 50 percent income, over that of somebody who is 51 or above. In these rural towns you need more financial flexibility, and it would be great if the commitment that we've made to rent to 50 percent income tax credit people, if we've got nobody on the waiting list, we've got no 50 percent but we do have a 60 percent, it's a bigger financial consideration for a 28-unit or a 24-unit, if we could rent those 50 percent units to a 60 percent person when we've got nobody on the waiting list.

We are also looked at by USDA. We have Affirmative Fair

Housing Marketing plans that we do for them, and they come and look and we have to do our advertising. The Department there would be protected by another federal regulation that we would be able to. This wouldn't happen much but occasionally if you're sitting there with a vacancy and you get a 60 percent income person and you have nobody on the waiting list that's 50 percent or below, it would be great to be able to rent it.

MR. OXER: That improves your occupancy ratio in the absence of somebody who matched the criteria that you're ostensibly restricted to. Just as a sort of procedural question, how would you deal with it if you wound up renting to somebody and they rented the last apartment and then six months later somebody showed up that matched the criteria.

MR. HOOVER: It would have to be a year-to-year lease.

MR. OXER: Okay. Good point.

MR. HOOVER: It creates a compliance problem, I understand that, but I'm more concerned with the bottom line of some of these deals that are struggling. And we have some that do great, some are in the middle and some of them are just --

MR. OXER: It's going to be much more important for the smaller deals, apparently. Right?

MR. HOOVER: Smaller and poorer.

MR. OXER: Right. Good point.

MR. HOOVER: And my other comments have been addressed by some of the changes. So thanks for the hard work.

MR. OXER: Great. Any questions?

(No response.)

MR. OXER: Who's next? Walter, you've been patient. Bobby, I saw you sneak in over there.

MS. McGUIRE: Good afternoon. My name is Ginger McGuire. I'm also speaking on behalf of the Rural Rental Housing Association, and I would like to again say thank you to staff for setting up an opportunity for the rural groups to come in and talk about specifically rural issues, for staff listening, for them hearing, and reacting to some of the points that we've made. The Rural Rental Housing Association did submit a letter and I'm going to speak about some of the points from that letter, but some have been addressed in the latest draft that staff has out.

MR. OXER: If I might ask or request you and anybody who follows, if points that you're making have been addressed in the current draft that we're working on, it would probably go a little smoother and a little faster this afternoon if you're satisfied with those points, there's no reason to reiterate those here if we want to get to the points that are contentious or that still in flux, so to speak.

MS. McGUIRE: Yes. I would like to mention a few of those, and I would like to ask, particularly where the remedial plan is concerned, that our association members have the opportunity to look at some of the responses. There have been quite a few responses to the remedial plan in particular in rural areas, and I think we'd just like a little more time to look at some of the changes that have occurred and then possibly comment later.

MS. DEANE: And there will be a 30-day comment period

anyway. This isn't even the formal comment period, so there will be plenty of opportunity to comment.

MS. McGUIRE: And we may have some more comments, we'd just like a little bit longer. It's a lot of information and so we'd like to absorb some of that information..

MS. DEANE: I think the problem we're up against is the deadlines in order to get a QAP in place and get it to the governor, so that's one thing, we're kind of working against the clock, so apologize for the huge amount of information in such a short period of time, but we're kind of bound by statute, so we're trying to keep it moving. I know everyone wants to make sure there's plenty of comment.

MS. McGUIRE: And we appreciate the responses that we've had so far.

I would like to make a few comments. We do believe that the applicants should be able to request up to 150 percent of the credit amount available in rural subregions. It's very hard in some of the rural subregions to make a deal work at 500,000, and there are a few subregions that only have that amount. It's hard enough at 750,000.

MR. OXER: Understood, as long as you recognize that you're getting in a bigger pool with a lot more sharks in it.

MS. McGUIRE: Understand. There's also the collapse issue and there may be an opportunity in the collapse issue to utilize more credits.

MR. OXER: Right.

MS. McGUIRE: We would like to see the rural rescue set-aside

remain and we would like to see a maximum credit amount there of 500,000 so that it would be usable.

And then I'd like to just mention one more item, and that is in the underserved areas, unless the Texas Water Board can provide positive identification of economically distressed areas with clear boundaries throughout Texas -- which they are not doing at this point -- then we believe that that should be removed from the scoring criteria.

MR. OXER: Let's have it. Come on, Cameron.

MR. DORSEY: It's statute, and statute is what it is, and it references EDAs and then who defines EDAs, that's the Texas Water Development Board, and that statutory definition specifically provides Board authority, it's not just an objective definition that we can kind of adopt and implement. So if someone is able to get a determination, then that would be great and you would qualify, but if you're not, we feel like we need it here to accommodate our statutory requirements.

MR. OXER: He said statute.

MS. McGUIRE: Those are the comments I have. Thank you very much.

MR. OXER: Great. Thanks.

Walter.

MR. MOREAU: Walter Moreau, the director of Foundations Communities. Thanks for the chance to comment. I haven't spoken to the Board in a year, so that's pretty good.

I want to just bring up one big issue and it's in this Subchapter

B, I think on page 5 under common amenities, and I think it's something that really is a Board-level, it's something that you care about and needs your leadership, and that's green building. This program builds a half a billion dollars, give or take, of physical property around the state.

Affordability really is rent and utilities. So you've got green building as a threshold item on page 5, but if threshold works as a menu, as long as you get a certain number of points, you meet it. So if we could meet LEED Platinum and get four points, or Enterprise Green Communities or National Association of Homebuilders, but I can also build a gazebo with a horseshoe pit, a barbecue and playground and get the same four points. So the green building goal is really watered down and not very meaningful.

I don't know how you can address it this year with the draft you're about to put out for public comment. We've got to address this some year, this is just too important for a program of this scale in Texas that affects rents and utilities. Maybe there's a way within the existing threshold criteria to elevate the point scoring for that, and I think it's going to take your Board leadership to say this is important, this is a threshold everyone ought to play around. Wise developers that are owning for the long run are already adopting green building practices. My hope would be that it would become common practice everywhere.

MR. IRVINE: Could we have a proposal that a certain number of the threshold points come from the specified threshold items relating to that, to the green items?

MR. MOREAU: I think so. What seems to be a lot of states

are adopting are the Enterprise Green Communities practices. They don't have all the costs associated with LEED certification, they're really designed for multifamily affordable.

MR. OXER: And that's one of the things we were trying to get around too, Walter, because the application, the filings for the LEED, there's a cost associated with that that can be incorporated in a building standard if we just simply use that building standard and say these are to be built to the standard and incorporate those what's considered green building practices.

MR. MOREAU: And I would recommend the Enterprise Green Communities has become the standard that most states have incorporated in their QAP and that has become a common practice.

MR. OXER: It's a very good point. I couldn't agree with you more. Over the long term, the overall cost of operation on this has an impact on the rent, which you've got to plan for that early on in the design and construction side of it. So noted.

MR. MOREAU: Thanks.

MS. RICKENBACKER: Donna Rickenbacker, Margue Real Estate Consultants. I too haven't been up here in a long time, I'm happy to say.

I first want to echo some of the prior speakers. Staff did a tremendous job rolling out this QAP, a complete rewrite in record time, and being very responsive to everybody in the workshops and on phone calls and separately. I just can't say enough about the effort that's been made thus far.

I am going to limit my comment to this one agenda item. It's



one request, it's under undesirable site features. It deals with adjacency to railroad tracks. Right now if you're within 300 feet from an active railroad track, that's considered an eligible site. I would like to carve out if an applicant is proposing to mitigate in accordance with the HUD environmental criteria and standards that they be allowed to locate the development close to a railroad track. You are allowed if you are using CDBG HOME money, you have to mitigate and you are allowed to use those funds and it's basically based on noise attenuation. Others can speak to that, but I'd like to see if there's a willingness to support that effort.

MR. KEIG: TAAHP has covered that in their letter, by the way.

MR. OXER: Good. Thanks.

Tamea, it looks like you're up next.

MS. DULA: Good morning. Tamea Dula with Coats Rose.

I am here to second an issue raised by Bobken Simonians for the Houston Housing Authority, and that has to do with the undesirable area features element of the definitions.

If you are in Houston and you're not flooded, then you're in one part of town that's blighted. You would have to have a pre-clearance of every application.

MR. OXER: If you're in Houston and you're not flooded, that means you're in Conroe, doesn't it?

(General laughter.)

MS. DULA: And this means that either the staff is going to make a determination which can be an iffy question that's controversial at the

least because you have all these other applicants that are hoping that this particular project is going to be ineligible. So that means it comes to the Board and the Board has to make a determination and has the opportunity in the public comment for all the NIMBY-ism and the opposition from other applicants.

And it seems to me that, as Mr. Simonians suggested, offloading this onto the HUD environmental site assessment evaluation which any project that takes HUD funds, like CDBG or HOME funds that they're using in order to get the local unit of government points, on those they have three different checklists, and the blight is considered the presence of hazardous or flammable situations is considered, flooding is considered. You have a mechanism here that I think if you utilize it can streamline this quite a bit. And that's my suggestion.

MR. OXER: I have a question. Do you have a sense of how long it takes for HUD to go through the evaluation to get a ruling?

MS. DULA: It takes a long time, however, I would suggest --

MR. OXER: That means you'd have to have a lot longer lead time on your project development

MS. DULA: -- I would suggest that you require that either in the pre-app or the application, whichever point you think it's appropriate, that this intent to base your eligibility status on the HUD ESA process is stated, and then if you don't get your ESA approval and a funding letter from HUD, you're out, you are ineligible.

MR. OXER: By what time, by what point in the process?

MS. DULA: Well, they have to get that funding by, I guess you would probably need to have a deadline that would be on the order of whatever time tax credits have to be returned to be re-utilized.

MR. OXER: Here's where I'm trying to get to. I don't want to have to unwind something that got wound up with the expectation it's going to get it, and then it doesn't get that and you start swapping. When it gets to the point of the pre-application, you need to know whether or not it's going to pass that hurdle or not.

MS. DULA: Well, remember that the applicant is probably relying upon these CDBG or HOME funds anyway for the project, and so if it gets to the point that it doesn't pass the HUD ESA, it's going to lose those funds anyway and your project is no longer viable. So all you're doing is saying that if HUD says it's okay and you pass the environmental site assessment, then we agree that it's okay and it's not an undesirable area.

MR. OXER: So it essentially becomes a contingent award.

MS. DULA: A contention?

MR. OXER: Not contention, contingent.

MS. DULA: I'm sorry. Yes. So it's an element that has to be met, but you don't have to address it unless and until the tax credits come back -- which they would do anyway unless there is some other ready source of available money which there usually is not.

MR. OXER: Which we recognize. Just clarifying.

Any questions? Lowell?

MR. KEIG: No.

MR. OXER: Okay. Thanks.

Granger -- wait, wait. Bobby, you're up.

MR. BOWLING: I'm Bobby Bowling. I'm a developer and builder from El Paso.

I wanted to, first of all, again, like the others have said, I really appreciate the opportunity to have the roundtable discussion and the forums that staff has put out. I think it's allowed for a lot of fruitful exchange and feedback and discussion.

I wanted to talk about three items just real briefly. One is in the TAAHP letter but it wasn't spoken about orally, but as the last couple of days have gone by, I think it merits being drawn out of the letter. It's the last item, it's a point deduction where staff is proposing to take a point away if an applicant has sought a point and eventually does not get it. This would be a new point item, a new deduction. I've been doing this program since the year 2000 and we've never had a point item like that. And I would say if we're going by last year's rules, something that we're all very familiar with, I'd be okay with that, but since we have such a complete and total overhaul of the QAP, I think there's a lot of uncertainty with what is being presented.

MR. OXER: So you don't want to be penalized for overreaching at this point when you're using a new set of rules.

MR. BOWLING: Right. I mean, I think we're all earnest and we're all doing what we think is objectively meeting the criteria, but there's a lot of subjectivity out there with the remedial order and some of the other things that have been brought to your attention already today, things like area or

around, and things like that.

The Colonia issue for one. You know, in the Colonia definition, I wanted to point out as well -- Darrell did a good job of presenting that to you -- you have in that definition there's an or it can meet this item, and it says, "a location that meets the physical and economic characteristics of a Colonia as determined by TDHCA." So that's an item that I think most of the areas in Region 13 and Region 11 probably meet a lot of the characteristics, but that's one that I would maybe go for the points and then have an appeal and I lose it, and I didn't just lose those points, I also lost another point on top of it, and then maybe my pre-application points.

Anyway, that's my thoughts.

MR. OXER: Your point is made. Keep that point, you made it.

(General laughter.)

MR. BOWLING: And then the other thing I wanted to comment on is the Regional Allocation Formula. It's not a specific agenda item but I think it falls under the QAP so I think it's germane to speak about here. Correct me if I'm wrong.

But anyway, I really appreciate the simplification of that formula. I think that staff has gone down the right track with that. There's actually a discussion forum on the RAF as well, and there's not 180 comments on that one, so if you all have a chance, I would really encourage you to look at that one because there's only like five or six comments on that one and it's pretty easy to follow.

MR. OXER: Do you have a summary of them?

MR. BOWLING: Basically, the staff has made it four criterion now make up the formula, and those four are poverty, cost burden, overcrowding and vacancies. They actually have four different options that they're looking for comment on, and in two of those options they take the overcrowding so they just leave poverty, cost burden and vacancies as the three factors, and I wanted to speak towards those two options, as opposed to the overcrowding. I put some comments on there, as did Walter Moreau, about how we didn't really understand the objectivity of that, and maybe it's not as important as recognizing the amount of poverty in a region, as well as the amount of rental cost burden in a region. We felt that those factors were probably -- those four in one of the versions were treated equally with weight, so we were pushing for the one that would actually remove that from the fact or lessen it.

And then finally, unless there's any questions, the only other point I have is I wanted to draw attention to something that is in the staff draft because I think it's important and I support what the staff language is. This is on page 23 of 33 in the supplement or on page 5 of 8 in the little notes that staff did, and the point item is 11.9(d)(3), and it's the commitment of development funding by the UGLG. And I support what staff did and they took a lot of comment during the roundtable about this and I think they listened, and I just want to commend them for doing that.

The points in this item have changed from last year and from previous years where there were kind of nominal levels to achieve, I think we had to get \$2,000 per low income unit to get max points. Well, they've

changed those point criterions greatly to where now max points is \$15,000 per door per low income unit. And regardless of where that is, if that's the case, the comment they got at the roundtable from me and some others was that if a unit of general local government is coming into a round as an applicant, then they shouldn't be allowed to give themselves that money to obtain those points.

And I think this language is statutory but I don't think the statute back in 2003, the authors intended for that point item to be gained. So I think staff is sensitive to that and I just wanted to point out that they have some language in there that would not allow like a PHA, for example, to just take money from one pocket and put it into the deal and get max points, where the rest of us private developers can't put our own money from some other entity that we may control and get those points. So they're just leveling the playing field with that language which I appreciate very much.

And then I wanted to comment to the gentleman from the Houston PHA that wanted to put vouchers in there, again, I don't have a problem with that, but if the Houston PHA is an applicant, I don't think they should be able to give themselves their own vouchers and then max points out. If they're standing on the sideline and saying all Houston developers have an opportunity to respond to an RFP or an RFQ and have access to our vouchers, I'm fine with that, but when they're in the game and there's 20 other private guys that don't have vouchers from HUD, well, then they shouldn't be allowed to just give themselves those points.

MR. OXER: Can't wear a uniform and a striped shirt at the

same time?

MR. BOWLING: That's one way to put it, yes, sir, Mr.

Chairman.

MR. OXER: All right. Okay. Thanks. Any questions from the Board?

(No response.)

MR. BOWLING: Thank you.

MR. OXER: Okay. Granger, we're going to let the ladies go first here. Sarah.

MS. ANDRE: We're on 7(d) but it seems like you're mixing it up.

MR. OXER: Here's what I want to do, I want to hear comments from you, you and you, those three, and then we're going to take a break here and take a few minutes out just for the afternoon, and then get back to it. So what have you got? Good afternoon.

MS. ANDRE: Good afternoon. I'm Sarah Andre, and I am here as a consultant and I represent numerous different developers.

First, Cameron, get out your smelling salts, I actually have something nice to say. I love the new program manual and the consolidated multifamily rules. I've reduced from like four different binders down to one.

MR. OXER: You're a hit, Cameron.

MS. ANDRE: Thank you so much. It's going to make it a lot easier to look at other funding sources and to combine sources, really, like that.



So I'm here today to talk about the sponsor characteristics. The current draft of the QAP has got a section on sponsor characteristics and I believe it's designed to provide an incentive for projects that are proposed by capable, experienced developers, and in this case, with Texas experience. And what I've been told by staff is that they're aspiring to correct problems with current developments where they've had projects that have been awarded over the past several years that they're having issues with cost certification or compliance or reaching 8609. And I think it makes a lot of sense to attempt to correct that, but not by rewarding sponsors who are already in the pool of participants that are presumably causing the problems that they're trying to correct. That just doesn't make sense to me.

There are many, many examples of experienced developers who are in the Texas program now and have been that won't be able to meet the criteria, they don't have three 8609s, and of course, there are developers out there who have three Texas 8609s but haven't participated for five or ten years, and they would be able to meet the criteria but they haven't kept up with changes, so I'm presuming that they may have issues that staff are trying to correct. So it's really my strong feeling that this experience incentive isn't reasonable, it's just rewarding Texas experience.

And I think that staff has offered a solution to that which is to partner, but without the ability to prorate your credits across deals, there's no incentive for someone who meets the experience criteria to partner with an inexperienced developer and use up part of his or her credit limit cap on a deal when they can do their own deal for more money and less hassle, they're not

teaching someone new. Or you have this option to use a HUB which, frankly, would benefit me. I have a qualified HUB and if I have a developer that doesn't have three 8609s, they could partner with me.

But I feel like the prescriptions to get the points, it's overly prescriptive. You've got the staff dictating what the terms of that agreement should be. And I'm not arguing with materially participating, that's IRS and I think it's very crucial to maintain the integrity in those partnerships, but to say what the cash flow should be just seems very prescriptive.

So I stood before you last year discussing this same issue and that when the experience criteria explicitly stated that applicants needed to be from Texas, and I know you don't want to hear me repeat my speech about open competition and the governor's policy of recruiting businesses from outside the state to Texas, but I really feel like this is a veiled attempt to enact that same policy and to reduce competition in Texas. I very much understand why the people sitting in this room behind me would want that; I cannot, for the life of me, understand why staff would want that.

You know, there's compliance scores lawsuits, resumés, years in the business, all sorts of ways to measure experience, and I encourage TDHCA to look at those types of experience and come up with a bar that doesn't involve where you got your experience to provide that incentive. And so for this year I really urge you to remove the language awarding a point to a developer with three Texas 8609s.

MR. OXER: Very good point. And I have a comment on that because one of the things that I wanted to have considered in the evaluation

of the developer was something that I've run into, I do a lot of defense contracting, DOE contracting, DOD contracting, or have, and one of the things that they have, we're not looking for experience so much as it's history. And so my interest would be not to award somebody for being here but to penalize them for being here and screwing up which is where I was headed with all that.

Now, there maybe other comments from the Board, but my sense is if we have whoever it is and somebody comes along and wants to be problematic on a deal or can't make it work or doesn't have enough drawbar on their tractor to make it work, then the more we do this, the more we recognize it becomes problematic.

So just like Chief Murphy back here, you know, if you screw up with her you get bounced for three years before you can come back. Okay? So what I'm looking for is something that gives us if you have a problematic history with the TDHCA, it's not a matter of experience so much as it's history.

MS. ANDRE: I think that would be an excellent solution and would support it.

MR. OXER: Cameron, pass me those smelling salts, will you.

(General laughter.)

MR. OXER: Thanks, Sarah.

Okay, one more here. Got a comment?

MS. KAPLOWITZ: This is the first time I've ever spoken in front of all of you. My name is Stacy Kaplowitz.

MR. OXER: Welcome. Take a deep breath and tighten up that

bulletproof vest.

(General laughter.)

MS. KAPLOWITZ: So I wrote this incredible little talking point and Sara just took most of my really good points, so it's not going to seem as mind-blowing. But I just want to make the point that I'm here in Austin, I work for a development company that's been competing in Texas since 2011. However, we have more than 6,100 tax credit units throughout eight different states, with 14 additional multifamily affordable projects in construction. Of our 50-plus properties, we have continuously maintained favorable compliance scores with all of our state housing finance agency partners, and we would love to show TDHCA that information and get credit for being a good sponsor, but the way that the sponsor characteristics scoring item is written right now, we would not be able to get credit for all that work.

So I guess the point I just wanted to make was that I understand the intent and I just feel that the way that it's written it really goes away, it goes against the spirit of what the state is really trying to achieve with this new QAP which is leveling the playing field and encouraging innovation and successful development of high quality, affordable multifamily housing from experienced developers who understand the nuances of the Housing Tax Credit Program.

Additionally, for the HUB point that's been added into this scoring item, I feel that it's over-prescriptive -- which is my word and Sarah used it -- I feel that it's over-prescriptive for the QAP to dictate the financial terms of that arrangement, and if there was a way to define material

participation, to hold the HUB accountable for being more involved, that makes sense, but to dictate the financial arrangement seems a little overreaching.

So to conclude, I ask that you consider the possibility of that this scoring item might unintentionally dismiss credible developers with great track records. TDHCA's compliance rules are stringent, and for good reason, and to the extent that these rules are clearly laid out and well documented, it seems that any developer with a good track record for adhering to Texas's or any other state's compliance rules should have the opportunity to be recognized or rewarded sponsor characteristics points. So I respectfully request that you consider removing the requirement that the 8609s all be from Texas, and that the dictation of the financial terms of the HUB arrangement be removed. Thank you.

MR. OXER: And tell us your name again. I'm sorry.

MS. KAPLOWITZ: It's Stacy Kaplowitz.

MR. OXER: Thanks, Stacy.

I happen to agree that anybody that's capable, back a long time ago, this state was settled by people who came here looking for opportunity, so as long as you're capable, you can play in the game, we want to see you here. That said, the sponsorship characteristics are not about just being able, we don't want you to be penalized for not being able, so it's the inverse of the rule, if you understand what I mean.

Okay. Granger, hi.

MR. MacDONALD: How are you?

MR. OXER: Good so far.

MR. MacDONALD: I'm Granger MacDonald, developer from Kerrville, Texas. This is my 15th QAP which speaks only to my perseverance, not my age.

MR. OXER: You used to have hair when you started this game. Right?

MR. MacDONALD: And weighed 180 pounds, I might add.

(General laughter.)

MR. MacDONALD: On sponsor characteristics, there's one point that I think has been missing, and that is that Grace Robertson, head of LIHC at the IRS in Philadelphia, holds this state up as the one with the finest and highest compliance.

MR. OXER: Big shout out to the chief over here.

MR. MacDONALD: Absolutely.

(General talking and laughter.)

MR. MacDONALD: And because of that, the compliance issues that we have in Texas are more scrutinized than a lot of places. I'm familiar with two other states where the compliance doesn't even hold a candle to Texas, and I can have 8609s in those states and waltz into Texas and meet your criteria and I think it could be a potential problem. You've had a lot of good developers work real hard to get their compliance right and to keep it right.

Also, in this same note, you spent 45 minutes this morning talking about a project that was having trouble with some very simple rules, and it was their first attempt at doing a tax credit deal, and had they partnered

with someone else that was an experienced developer, they may not have been in the jam that they're in, potentially losing credits. And I think there really needs to be something done here that really approaches the sponsor characteristics.

Second item I want to discuss is the maximum request limit on 11(4)(b). Obviously, the 150 percent is a real necessity for the rural areas, primarily because you can't operate a project of 45 to 45 units in the out years. Your staffing requirements to run a project right and to meet Patricia's compliance requires you to have at least one maintenance man and one manager type person on the project. You can't do that with 40 units, you've got to get up toward 80 units, you can't be financially responsible in the out years. You can get it built, you can get your developer fee and you can hit the road, I'm talking about what happens in year 15. And so we need to have that 150 to get up to a size that we can have.

The alternative to that would be to come up with a RAF formula that would allow you a \$750- minimum in every region. I don't know how in the hell you can figure that out.

MR. OXER: We're back to there's 13 regions and twins in each of those and there's only so much money and you slice it thin enough, the numbers get pretty small.

MR. MacDONALD: And I think you've got to let people take and run the risk on the 150 percent set-aside and I think that without forward commitments that problem is self-limiting, and I would highly encourage you to do that.

MR. OXER: Okay.

MR. MacDONALD: I also support the TAAHP recommendation to award the same two points to elderly and general. This is under 11.9(c)(6)(B). That's really important to level that playing field between the elderly and general population properties. It's not right to create that disparity. Again, especially in rural communities whereby to make our management work we will try to build a general population and an elderly population reasonably close, if not next door to one another, so that we can have efficiencies of scale of management.

Also, in that same recommendation ask that you change the never received an allocation to received an allocation within the last five years. I think that's a little more reasonable and also takes in account you may have a community that's got a 20-unit TxRD project that was done eight to nine years ago and that would be blocking to a new successful project.

Thank you for your time.

MR. OXER: Sure. Any questions of Granger?

(No response.)

MR. OXER: All right. Here's what we're going to do. We're going to take a 15-minute break. Oh, Diana. I'm sorry.

MS. McIVER: I can do one of two things, I just checked with Cameron. My comments are really on (d), the QAP, but you're hearing so much QAP that if you want me to wait till (d), I will.

MR. OXER: Let's have it.

MS. McIVER: Or get it over with.



MR. OXER: Diana, welcome. Let's do this. How long do you expect your comments to take?

MS. McIVER: Five minutes.

MR. OXER: Okay. You're on the clock. I have a clock right behind your ear there.

MS. McIVER: Okay. Diana McIver, DMA Development Company.

And first off, I really want to say that I really appreciate what the staff has done this year on the QAP. We have focused in on four core values, and it really allows, I think, the development community to get their arms around the QAP finally.

One of those core values is producing quality housing, and as you've heard from others, within that is sponsor characteristics, and I totally agree that when you have an experienced developer with a good compliance record, that does contribute to the quality of housing. However, within that there's an A and a B and a C, and the C, to me, does not contribute to the quality of housing, and C is the one you've heard about where the HUB is involved. So A and B involve an experienced developer, but then you can get the same point by simply having a HUB, not an experienced HUB, but simply having a HUB involved in your deal.

I'm a HUB, I think that my deals are good deals, but they're not good deals because I'm a HUB, they're there because I'm experienced. And so I really think if it the direction of the Board that you want to get HUBs involved, then we need to do that in some kind of meaningful way with

capacity building, some kind of incentive maybe with a joint venture, but you are not building higher quality of housing because you simply allow someone to go out and add a HUB -- it could be a florist shop, female-owned florist shop -- to their development team. It's not fitting in that component. I'm happy to work with you on ways to do that, but I just see that as standing out in that category.

Second one is the one Granger and others have recommended on the underserved area, and so you understand, in this particular area why we're asking for senior to be equal with family is because these are going to be your rural communities that we're dealing with. These are only for communities that have never had a tax credit deal. So we're now setting a situation where Texas's senior population increased by 18 percent in the last ten years, Central Texas alone, the growth in the senior population was 55 percent in the last five years, so that is part of the value of community support and engagement, why not allow communities to decide that, and you do that by treating general housing and elderly housing the same within that category. I'm not talking about Houston, I'm not talking about Dallas, I'm simply talking about underserved areas.

My third one, and I think this is an oversight, under community revitalization on the QAP, pages 25 through 27, there's a set of criteria for community revitalization plans in Urban Region 3, there's a set for CRPs in urban areas other than Region 3, and then there's a set for rural. Well, what is missing is that in order to meet the criteria outside of Region 3, your CRP has to be part of a plan you did with a CDBG and a HOME allocation. We have

got hundreds of communities out there in Texas who are not rural areas but they are not participating jurisdictions, they do not get CDBG and HOME funds.

So what we need to do is what we've done in past years and allow those -- they're called non PJs -- allow the non PJs under the rural set of rules so they too can compete with those community revitalization plans. Otherwise, we've totally discriminated against one segment of city that I don't think you intended to discriminate against.

My fourth and last comment is one of the values is the efficient use of the tax credit, and within that there's a point for projects that are 50 units or less. And what I would ask is that this be 50 tax credit units, and this is consistent with the fact that this idea of this section is to promote efficient use of the tax credit, so if we make that 50 tax credit units or less, then someone could do 60 units in a rural community or any community and still qualify for those points, but they would not be impacting the tax credit allocation.

MR. OXER: So they could have ten market rate units.

MS. McIVER: Right.

MR. OXER: So that would increase the financial viability of a deal in a smaller rural area.

MS. McIVER: Exactly. But to get the point for small projects, then it would be 50 tax credit units.

And those are my comments, and I thank you very much.

MR. OXER: Okay.

DR. MUÑOZ: Mr. Chair, I'd like to say something before we go to break.

Just about I think it was your second point regarding HUBs, I'd just like to have introduced into the record, I appreciate the spirit of your comment, Ms. McIver, and your example of a female-owned florist, but small businesses are hard to be successful and being a minority- or a woman-owned business, as in your case, even in some cases more difficult. Your comment presupposes a certain amount of ineptitude, and I think the presence of HUB vendors and HUB, I presuppose their exceptionality. And so I think the staff can ferret out in those instances where something is maybe trying to be manipulated versus those instances where you have credible, highly accomplished HUB, historically underutilized businesses involved.

MS. McIVER: And I agree with you on the use of HUBs in a very positive way, but I will tell you that there have been many abuses of people simply buying HUBs to get a point in this application process. And if you go back several years, about the time I think that you were joining the Board, we did have a way for HUBs to be involved in a capacity-building way. We had also something similar with inexperienced sponsors and a lot of HUBs obviously start out as inexperienced sponsors.

And so what we need to find is a way to make that meaningful and to not just throw it in as a way that someone can buy a HUB to get a point. We need a capacity-building program, we need something with some teeth to it, not the way it's worded right now. And that's just in my opinion. I'm more than happy to work with staff.

MR. OXER: Much like we're doing on the qualified community support programs.

MS. McIVER: Exactly. And I'm more than happy to work with staff and the Board to come up with something, because I do support, obviously, historically underutilized businesses, and I think they can be a meaningful player in this program, but what we're doing is allowing, I think, for abuses instead of a meaningful training program.

DR. MUÑOZ: Well, I mean, Cameron is here and so try to find some accommodation. But I just would be concerned about any sort of position or discourse that dilutes the importance of involving these participants into the process, and whether or not in the past there were abuses and people conscripting HUBs for the purpose of one point, well, be advised, Cameron, detect it. But you know, if we come up with some sort of alternative that further erodes the limited opportunities that these small businesses of people of color and women to insert themselves and to become experienced vendors, I think that's where wrong-headed.

MR. OXER: Very good point, and with that, we're going to take a 15-minute break. Let's be back in our seats at 20 of by that clock.

(Whereupon, at 3:25 p.m., a brief recess was taken.)

MR. OXER: All right. Let's get back in our saddles here, folks, and get going.

MS. FISHER: Good afternoon, Board members. Bill Fisher, Sonoma Housing, Dallas.

My comment is really related to the commitment for funding for

units --

MR. OXER: Hold on, Bill. We were quiet enough to listen to everybody else.

MR. FISHER: This category has changed materially and particularly for the Board members who represent smaller community areas. Non PJs, Cameron County, smaller cities outside of Lubbock that don't participate in the HOME program, we've always gotten our HOME money from the state because that's who administers the money for HUD for the non-participating jurisdictions, so if we had an application in Cameron County or outside of Lubbock, we applied for HOME funds, we had to get a resolution from the county or the city we were in, and those funds counted for these points. They don't anymore, and that's 13 points.

And I don't understand the change. I understand there's an argument now that what we've been doing for nine years isn't statutory. I think the change is really ill-advised, it's eliminating enormous areas of Texas. Frankly, the non-participating jurisdictions are shut out of 13 points.

I think the other thing I want to make sure the Board is aware of, your remediation plan, a lot of your target areas in your five counties are non-participating jurisdictions. So if, for example, I was able to rally some community support in Allen or Sunnyvale or North Lake over in Fort Worth to meet one of your remediation plan areas, I'm not going to get 13 points. They're non-participating jurisdictions. In the past we would simply have applied for the same amount of HOME funds if we were in Dallas we would apply for in Dallas, we'd apply for from you because that's where those HOME

funds come from. In this current draft, those communities are not eligible for these points and it is an enormous difference maker and it really undermines your remediation plan.

Since it's an area of the statute, I know that's a concern, the same thing has been in place for nine years, I've never heard one complaint from a legislator about the TDHCA HOME funds with some affirmative action from the county or the city you're in counting those funds for these leveraging points, and this year, of course, they're huge. So I'd certainly ask the Board to reconsider that and certainly allow those areas that are non-participating jurisdictions to count the HOME funds that those areas are eligible for from you.

MR. OXER: Okay. You got that, Cameron? Okay. All right.

MR. NORTH: I'm Joel North, representing the City of Houston.

I appreciate Tim and Cameron and Tom for visiting with us and meeting our concerns. They've done a great job of working with us.

I'll just make one point because most of the other points that I have, have already been covered so there's no point in going over that. One thing that we'd like for the Board to consider is adding boost points in revitalization areas. You might have a QCT that may get boost points for being in a revitalization area, and so one of the things that we would like to see is if we could get boost also for the non-QCT areas in a revitalization area. So the City of Houston is working with one of the state offices in creating, carving out revitalization zones, and you might have a QCT that's inside that zone that would get boost, we would like you to consider just maybe making

the whole area eligible for boost points is one of the things that we would consider.

This past year the City of Houston did not receive any non at-risk tax credit allocations, and so most of the products that we're dealing with, they're out in the county or they're either elderly product, and so the City of Houston is really advocating, trying to create more family deals inside the city limits of Houston. And so that's just one of the points that I would like for you to consider.

MR. OXER: Okay. Thank you. Noted, Mr. North.

Hold on. Barry, just sit tight for a second. Did you have something else, Joel?

MR. NORTH: No. I'm done.

MR. OXER: For the record, if you're sitting up here in one of these seats, that means that I assume that you've got something you want to say, so if you have something to say, we haven't heard from you yet, and the others we've heard from at least once. Good afternoon.

MR. APPLEQUIST: My name is Chris Applequist. I'm with the Miller-Valentine Group. There are two items that I wanted to address on the 2013 QAP.

The first one I feel Sarah Andre addressed it fairly well regarding sponsor characteristics. As it's written now, this excludes some very competent developers out of state. One of them would be Miller-Valentine. Right now we are, as of this year, the tenth largest affordable developer in the United States by volume, and the way this is written, we would be excluded,



even though we had two awards this year. So we feel this item needs to be rewritten and there needs to be some attention given to it.

The second item, Mr. Fisher, I think he explained it fairly well, the commitment of development funding by unit of general government. We feel this excludes some large portions of Texas, especially some areas that really need affordable housing. It excludes non-participating jurisdictions, as well as cities that just simply don't have funds to allocate towards affordable housing. So we'd like to see that revised.

A good example is Fort Bend County. Our development group, we got a deal in Fort Bend County this year, I think it was the first family deal in ten years to get a deal in Fort Bend County, and with the rules as they are now, that wouldn't happen. So we feel this should be revised to really open up the state to put quality housing where it needs to be most. Thank you.

MR. OXER: Good. Thank you.

Any questions from the Board? Mark, did you have something you wanted to say regarding HUBs? We'll get that in, make sure it's on the record.

MR. McWATTERS: Yes. Before the break, DR. Muñoz made a comment about HUBs, and I just want to state for the record that I concur with him fully. These are fragile enterprises, many of them, many of them are startups, they're struggling. I don't think that we should do anything to discourage participation from HUBs in the process. If there is a clear intent, it's apparent to somehow game the system by using a HUB, I think we should be mindful of that, but in writing any rules to that fact, we should err, at least in

my view, on the side of supporting the HUB. Thank you.

MR. OXER: Good. We have three more here, we'll go left to right. Michael, you're up. It's my left, your right.

MR. HARTMAN: Good afternoon again, Mr. Chairman, members of the Board. Michael Hartman, Tejas Housing. I had two other items for the QAP which I was going to do under 7(d), but I figure I'll just get them out of the way now and be over with.

The first one had to do with the leveraging of private, state and federal resources. I can understand that we want to spread the credits as much as possible, get as many units as possible out of the credits. However, one thing that this causes me to think is that everybody who is in a non-PJ is going to apply for \$2 million a home so then that way they get their debt leveraging up and they can reduce their credits to get maximum points under here. Thinking of how that would work, I would say --

MR. OXER: How this thing turns out with this inverted lien position we were talking about earlier.

MR. HARTMAN: Well, even without that, I think you'll still have everybody doing it, I really do, because they're going to say that's how they're going to get these three points. And let's say we have \$26 million of HOME again, I think that will probably get us about maybe three, four more deals under the 9 percent program which might get us another 400 units. However, if instead we were using that HOME on bond deals, I think we get another 13 to 14 bond deals out of Regions 3, 6 and 7, and especially now that we don't have a 252-unit limit, I think you could generate probably 4,000 more units

with that \$26 million if it went to bond deals. So just consider that when you're thinking about the leveraging. I just think that's going to be an unintended consequence of the leveraging points.

The other thing I'd like to say real quick is that in continuation of what Bobby said, we have a lot of changes in this QAP, we're going to be applying for points, and to have a one point penalty on top of a determination that you didn't qualify for the points, that means everybody will be up here asking for a board ruling and an appeal, because not only did they not get the points but then they had a penalty of another loss of a point. So I think we could be looking at, in that case, you'd be having week-long board meetings in June and July, I really fear that. So I just think it could be an unintended consequence of that.

And that was really it.

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

(No response.)

MR. OXER: Okay. Thanks, Michael.

MR. OXER: I happen to agree with transitioning to a new system like this it will take a little time to get everybody up to speed on how the points work.

Okay. You're back.

MS. RICKENBACKER: Hello. Donna Rickenbacker, again, with Marque Real Estate Consultants.

My first scoring concern is with respect to the opportunity index. As you all were made aware through Cameron, in order to meet the

opportunity index you have to have a certain percentage or less than a certain percentage of poverty, and for the Valley, which is Region 11, it's less than 25 percent, as well as Region 13 which is El Paso. I'd like to see if we could increase that percentage to 35 percent.

First, I want to point out that the only way you can get the 30 percent boost in an urban area is if you're in a high opportunity index or you're in a qualified census tract. In the Valley, Region 11, you cannot do anything if you don't have a 30 percent boost, whether it's rural or urban. If you limit it to less than 25 percent, I've looked at the data that was recently released by Cameron -- thank you so much for releasing that -- and it's been updated, of course, with the current data information he's used for purposes of determining the poverty and the median income.

If you look at the two largest counties in Region 11 which are Hidalgo and Cameron counties, on Hidalgo County there's a total of 113 census tracts and if you use the less than 25 percent poverty level, you've got only 28 census tracts that qualify, or 24 percent of the total tracts. If you move that up to less than 35 percent, you're now qualifying 41 census tracts, or 36 percent of the total census tracts. It's similar in Cameron County, by the way, which less than 25, you've got 16 tracts that qualify, and if you move that up to less than 35 percent, you're now qualifying 39 percent of the census tracts.

I'm hopeful that you all will look at that data and recognize that we really do need to do all we can to encourage, obviously, housing in higher opportunity areas, but for the Valley the recognition that you need the 30 percent boost to do anything and we really do need to strive to encourage

development in more census tracts.

Lastly, I have to echo what some of the prior speakers have spoken to with respect to commitment of development funding by units of general local government. This is a statutorily imposed point category that's worth 13 points, and for all practical purposes, an applicant who doesn't receive these points is not going to be competitive. There are, in my opinion, very much unintended consequences of the way the scoring item, I feel like, is going to roll out and who ultimately is going to be successful.

The way you get these points is if you receive a loan from the city or the county, and cities that are in participating jurisdictions and receive HOME and CDBG dollars can qualify if you're able to get a loan to the extent of the maximum amount to receive the points. That's, or course, in my opinion, going to push more of the housing into the larger cities, Houston, Dallas, San Antonio and Austin, who have these dollars that can be allocated to transactions.

Now, please be mindful that those dollars are usually based on targeted areas. A lot of these target areas which are HUD-approved target areas in these larger cities are not necessarily in higher opportunity areas, and the cities should have every right to target the areas that they choose to define and put their dollars. But if we can't get some mechanism for expanding other funds and allowing non-participating jurisdictions, urban non-participant jurisdictions to qualify for TDHCA HOME money, TDHCA administers those dollars for these non-participating jurisdictions that don't have the capacity to administer those funds on their own. Those are local dollars, it's just that

they're being administered at the state level.

I took a look at Region 3 and I took a look, actually, at the five-county remedial area, and I broke out how many of those cities, urban cities are in non-participating jurisdictions, and there were more than 50 cities. Now, these are fairly large, obviously not the size of the major cities, but fairly large cities that have no affordable housing, exactly where the remedial plan is wanting us to go, that have low poverty and high median incomes and good quality schools.

These are the areas that we are looking and I assume that the judge is wanting us to look and try to get affordable housing on the ground in those communities. They can't make a loan to these transactions. Most cities don't have loans that they can provide to these types of transactions, and certainly not at the size that will allow those applications to maximize the points.

I really encourage the Board and the staff to take a look at this and at least open it up such that TDHCA administered HOME and CDBG monies do qualify if you're working in some of these urban areas that are non-participating jurisdictions.

Lastly, on community revitalization, I echo what's been said by the City of Houston. My only additional comment to that is with respect to the points, how they're awarded. They're awarded based on the amount of dollars budgeted for those revitalization areas, and in order to maximize your points, you need to be able to prove up that at least the \$6 million is budgeted for revitalization efforts in those areas. Well, that might be easy to do in the

City of Houston, but \$6 million in the City of Houston in a revitalization area is achievable, but \$6 million in San Juan, Texas which is an urban area isn't achievable and wouldn't be allowed to maximize points in that category.

So I think we should probably look at that scoring and make sure that it is based on population, I think -- no, it's not based on population -- but take a look at the budget amounts and see what we can do to make them work in more cities in order for those cities to maximize the points.

Those are my comments. Thank you.

MR. OXER: Good. Thanks, Donna.

Any questions?

(No response.)

MR. OXER: Okay, Barry.

MR. KAHN: Good afternoon, Barry Kahn with Hettig-Kahn. I've got a couple of quick comments.

As a resident of Houston, Texas, I'm very concerned about assuring the families in Houston get the benefit of the LIHTC program. This past year all Houston and Harris County deals were senior properties. We need to look at a way to make sure family deals are equalized.

Mr. North made a suggestion that we get a 30 percent boost in all the revitalization areas. In last year's QAP we had language in the non-qualified elderly development, not located in QCP that received some CDBG or other funds, distributor missed or local jurisdiction -- well, I'm not sure -- we had revised it and then we had a different interpretation. But anyhow, bottom line is that we put in the 30 percent basis boost the same language that was in

last year's QAP for areas that, you know are not HOAs to qualify for the boost.

And again, in order to equalize family deals with elderly, I would like to make a suggestion, at least as to Region 6, because we aren't facing some of the issues that Dallas is facing, that the educational excellence points be deleted. And the reason is somebody can go into an HOA, get five points and then get three points in educational excellence. In revitalization it can't be matched. So really what we're encouraging is senior deals in HOAs to the disadvantage and detriment of families in the 60 percent or less area median income category, and that's who the program is targeted for.

A few years ago in Congress we tried to get low income dropped from the name because of the NIMBY-ism. Congress gave us a no, and the reason was they said it's for low income, not a high income program.

So I would like to make those two suggestions to equalize the playing field, and I strongly recommend the TAAHP recommendation of going to a dollar limitation per square foot rather than this mean formula. Some people are going to second guess themselves, they're going to put a lesser amount in for cost per square foot for fear that they'll be too high over the mean, and at the same time weaken the projects which will weaken the longevity of the projects. And I think if you want deals as strong as possible from a financial perspective and longevity with the program, that you don't do anything to weaken them by suggesting that people use a lesser amount than what they actually need.

Thank you.

MR. OXER: Okay. Thanks.



Walter, anything else?

MR. MOREAU: Walter Moreau with Foundation Communities. I spoke before about definitions, but I have a couple of QAP items that I think are important for the Board to consider that haven't been mentioned yet.

Three things. There's a balance in the QAP now between high opportunity index points but still an opportunity in the community revitalization area that you can get some points. I think your intention is that they're somewhat mutually exclusive and you might consider saying that in the scoring, because I'd hate to see gaming of the system where a developer goes to a high opportunity municipality that's small suburban and then somehow gets them to pass a community revitalization plan.

Second item that I don't think staff could put in the QAP because it's controversial and it's a Board issue, I probably shouldn't even bring it up, I'm going out on a limb, but do you want to think about forward commitments or not?

MR. OXER: Not. What's your next point?

(General laughter.)

MR. MOREAU: Cameron is super smart, you've got a great crafting of scoring items here. Myself and the other developers are as crafty as we can be, we have unique real estate circumstances, you can't get it perfect, so is there any boundaries around which some board discretion is actually really wise. I'll leave it at that.

MR. OXER: That's an excellent rhetorical question and we'll leave it at that.

MR. MOREAU: The third item which may seem really minor but it's something that I've got to bring up -- well, first let me say that we've had a busy summer. We opened Arbor Terrace with NSP funds. The dedication is November 14, it's 120 supportive housing units, the property is beautiful. It pre-leased before we got our CO because the need is really significant. We couldn't have done it without TDHCA. We also finished Sierra Vista which is our family property in the St. Elmo neighborhood. It has a 7,000 square foot learning center, the school three blocks away. Because of our work in that neighborhood for 20 years, it's 90 percent low income but it's exemplary rated. We are extremely proud of our track record. We have 17 communities, ten learning centers, they shine, they're beautiful. We have waiting lists everywhere, we win neighborhood support because people see our properties.

Having done all that, we cannot qualify as an experienced good developer in the sponsor characteristics the way they're written. We have to have three projects with 8609s, which we do, but they don't have an 85 or above inspection score. And I can go into the weeds on that, and that sounds bad, but the inspector comes out once every three years, is paid to find stuff, they write you up for furniture in front of windows which residents place, and I could go on.

I've tried to work with Cameron and Patricia. I think there's probably some alternative measures, but there may not be good measures to really fairly say who's a good developer and who is a bad developer. There are some measures for really bad material non-compliance. I understand the

value of this criteria. New Hope Housing does supportive housing in Houston, beautiful properties, they don't have three that have gotten through the 8609. So two of your best nonprofits cannot get this point.

For-profits have always in the past been able to set up a HUB or partner with a HUB. We can't do that and stay in the nonprofit set-aside, and we have the exact same problem we have with the QAP this year. So as it's written, you would not have a nonprofit that could get this point and be in the nonprofit set-aside. I know it's only one point but it gets right to what our reputation is and the quality of what we do, and I want to stand up for that and hope that staff will be able to take a good, hard look at that whole section. You've heard a lot about it.

Thanks.

MR. OXER: Good points. Thank you.

Okay. Remind us who you are.

MR. DORSEY: Cameron Dorsey, director of Multifamily Finance.

I think if you all want to approach this in a different way, then please, by all means, I will do that, but I think maybe what I'll do is try and run through the comments that have been made thus far that are directly applicable to (b) which are the minority of the comments, actually, most of them were on (d), and then we'll get this agenda set and approved or do whatever we want to do with it, and then we'll move on to the other ones and I'll talk about those issues that were brought up at that particular item.

Just so that I understand, is there anyone that was also going

to speak on (d) now that we've had most folks speak on (b)?

MR. OXER: Yes. Since we had everybody up here speaking, is there anybody else that wants to say anything on any of these?

(No response.)

MR. OXER: Okay. It's yours, Cameron. So let's get (b) out of the way. Leave the deck clear out there. Okay?

MR. DORSEY: We had a comment on 10.202(l) regarding a ten-year kind of cap on the number of years considered for the termination of involvement in previous transactions, and I think that that's an acceptable limitation to apply. So I would add that to staff's recommendation, if Tim is all right with that.

And I'll come back through these when we actually do the motion.

On the undesirable area features, we heard a lot of comments about this and clarification of it and other things. We've been a little bit standoffish at this point about going into too much detail about clarifying each of these items. It's verbatim what was in the remedial plan. We're looking at ways that we can clarify this, everything from clarifying it in the rule itself to having an email address set up so that can email any question about this to that email address and we'll give you some guidance on the specific scenario that you're encountering. We're looking for ways to do that, they're just not completely gelled yet. I certainly don't think we can gel clarification right now, right here.

MR. IRVINE: I say we publish it as proposed and actively solicit specific language to clarify any or all of the points.

MR. KEIG: I wanted to see how the comments came out, but when I read them, the high frequency crime area was a problematic definition for me.

MR. DORSEY: It's problematic for me to implement. I personally don't feel comfortable implementing it because I feel like I'm not, frankly, educated enough to this subject to make a determination either way. And so, like I said, it's verbatim what was in the remedial plan and what we're going to do going forward is make sure that what we have at the end of the day we can implement and that we have strategy for any clarification, questions that might come up regarding specific situations and what-have-you.

MR. KEIG: I guess my question would be is tweaking that definition a logical outgrowth of what we might publish.

MR. DORSEY: Yes.

MR. OXER: And let me offer something else up here, too, Cameron, because just from process standpoint, I worry about us losing our quorum here, DR. Muñoz may have to go here in a bit, and I just want to make sure that if we can take whatever is there and the comments that have been made today, adjust it as far as we can incorporate those. What I'm trying to say is just take all those comments and say we're going to publish this with the idea that those comments will be incorporated as much as possible without specifics, necessarily. Because I think trying to come up with the exact wording on those each is going to be --

MR. DORSEY: Well, that's right. And actually, most of the comments are logical outgrowth comments because they're just tweaking

what's already there. So I could just say that staff will give very, very serious consideration to all of the comments made, I've got all of the comments down on a piece of paper. A lot of them we've heard already, and if they would fall under the logical outgrowth standard, then we won't address them at this moment but during the public comment period.

MR. OXER: All right. Hold that. Do I hear a motion to that effect?

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Okay. Motion by Ms. Bingham.

MR. KEIG: We do already have a motion on the table to approve 7(b).

MR. OXER: For 7(b). And so that's what we're saying is all the things that has been said constitute --

MR. DORSEY: Not everything. Well, I guess I'm just saying a lot of the comments we make the change without incorporating the verbatim language now. There are a few comments that might be prudent to go ahead and incorporate, so I'll just touch on those.

MR. OXER: Do those first.

MR. DORSEY: All right. I'll just note that the green building threshold item would fall under the logical outgrowth.

MR. OXER: Because we have a couple more items on the agenda apart from this, I just want to make sure we get through your part, a few minute to deal with that before we get crunched down too tight on time.

DR. MUÑOZ: Cameron, are you sure you wouldn't want more

time with that list?

MR. OXER: When do we have to publish on this?

MR. DORSEY: We were going to send it to the *Register* on Monday.

MR. OXER: Then this is his time.

MS. BINGHAM ESCAREÑO: Excuse me. Is it fair to ask legal counsel if any of the proposed changes are material enough that they affect parties that otherwise wouldn't have been aware, or whatever you said, Barbara, the last time in terms of making material changes?

MS. DEANE: Well, I'm not sure what Cameron is going to say he intends to change. I would also mention, too, that there are different ways that we can address it that may not necessarily involve a rule change, and for example, the items that are in the remedial plan, I know there's some concern about what does significant mean in terms of significant crime and so forth. We can also discuss the possibility of leaving that in accordance with what's in the court order and fleshing out how we define that perhaps in guidance. There's different ways of approaching it, maybe a pre-clearance or so forth. And those are things that we can look at as we go through the process and then bring it back. I know there's a concern on those issues.

MR. OXER: Tim.

MR. IRVINE: Just another bizarre idea to offer, and that would be instead of specifically approving the particular items, you would authorize the publication for comment of the items with additional changes to address the comments that have been raised today, as reviewed by and found

acceptable to whomever you might designate. If you wanted to designate one or two of your members as a sign-off body as to the acceptability of those.

MR. DORSEY: I'll just say real quick I think everything that was commented on this particular item that's before you right now, none of it was so substantive that we couldn't make it.

MR. OXER: So 7(b).

MR. DORSEY: I think 7(b) is clear. It was almost exclusively the undesirable site features and a couple of things on amenities and how the points are parsed out.

MR. OXER: Okay. So the existing motion, we could address that without having an impact on this logical extension concept.

MR. DORSEY: That's correct. I feel pretty comfortable with that. Barbara has the ultimate say on that, so I can tell you that I haven't discussed each item with her, but it's primarily related to the clarification of how the undesirable area features item reads, and that, I think we've already established, is subject to the logical outgrowth.

MR. OXER: Well, from the Chair's position, I can tell you that I didn't hear anything new brought up, so much as it was all a clarification on each one of those items, so that's my contribution.

MR. DORSEY: Most of it was on (d), as well.

MR. OXER: Right. Given that that's the case, and we have a motion to approve with a second, is there any other comment? I'll call the question on 7(b). All in favor?

(A chorus of ayes.)



MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, that's unanimous.

Is there any way you can take the rest of these -- I'm trying to see if there's anything that accommodates itself to --

MR. DORSEY: (c) is the bond rule, and we had no comment.

MR. OXER: Well, that was easy. We'll take that one in a group.

MR. DORSEY: Staff recommends approval as presented in the board book.

MR. OXER: Okay. Any other comment?

MR. KEIG: My one question is was there any concern about the addition of the pre-application inducement questionnaire, an additional step. It looked like something that would really help us in processing these but it is more work.

MR. DORSEY: Yes. It's a pretty short questionnaire, and the idea is that when we're going to induce a bond deal, we should know a little bit more about it than maybe we have in the past, and so we've introduced this and our executive team should certainly know what we're inducing. We start getting questions, and as happened at a prior board meeting, we get questions and public comment before the app comes in, but at the inducement stage and pre-inducement stage in some cases, and this is a helpful way to understand some basics about the development.

MR. OXER: Okay. So with respect to that, staff position is?

MR. DORSEY: Recommend approval as presented in the board book.

MR. OXER: Okay. This is 7(d).

MR. DORSEY: (c).

MR. OXER: 7(c).

MR. GANN: I so move.

DR. MUÑOZ: Second.

MR. OXER: Motion by Vice Chairman Gann, second by DR. Muñoz to approve staff recommendation on item 7(c). Is there any public comment? There's none. Any comment from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. That's unanimous.

MR. DORSEY: Do we want to come back to the QAP since the vast, vast majority of the comments -- I think there was one comment on the compliance rules, none on the real estate analysis rules, so we could probably take those.

MR. OXER: There appear to have been no comments on (e) through (h).

MR. DORSEY: There was one comment that Mr. Hoover made with regard to allowing you to lease to a higher income tenant if there wasn't a

lower income tenant in line.

MR. OXER: Which one would that have fallen under? I can't tell right offhand.

MS. BINGHAM ESCAREÑO: Which agenda item?

MR. DORSEY: Are you saying it wouldn't fall under yours? I think he was commenting with respect to deals going forward.

MR. OXER: Come on up, Patricia.

MS. MURPHY: Patricia Murphy, chief of Compliance.

In regard to Mr. Hoover's comment, if an existing property agreed to lease a specific number of units to households below 50 percent of area median income, or whatnot, there's an existing agreement in place that establishes that, and we have a process that's now in the asset management rules where if you want to change your existing agreements, the process that you need to go through.

And I've encouraged Mr. Hoover if he runs into this situation to call me and we'll look at his existing residents because especially in those rural development deals the incomes are way below 50 percent and most of the households receive rental assistance, so the rent is way below 50 percent as well.

So he's not been able to present me with a specific scenario where he was running into this problem and I could walk him through it, so I don't think we need a change to any of the rules. And if he really does need to amend an existing agreement, there is a process to go through.

MR. OXER: There exists now a process to satisfy his need on

his existing deals.

MS. MURPHY: Correct.

MR. OXER: Okay.

MR. GANN: Would you like a motion on (e), (f), (g) and (h)?

MR. OXER: I believe that would be appropriate.

MR. DORSEY: Staff's recommendation is to approve as presented in the board books.

MR. OXER: (e), (f), (g) and (h).

MR. GANN: I move staff's recommendation.

MR. OXER: Okay. Motion by Vice Chairman Gann to approve staff recommendation in items 7(e), 7(f), 7(g) and 7(h). Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. God bless your sweet heart. There's no other comment. Right?

All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, and that's unanimous.

So we're down to the last one here, Cameron.

MR. DORSEY: Okay. Just off the top of my head, I'm guessing 15 to 30 minutes to get through this 7(d). Do we want to go through that or pursue kind of an alternative type of option that Tim was mentioning with regard to picking a couple of Board members.

MS. DEANE: I think there's a concern we could lose our quorum by that time, and because of the statutory deadlines that we are under with regard to the QAP, we have really got to get something out for publication, get it approved today. So the extent to which the Board would be willing to give some flexibility in terms of changes that might end up in the rule proposal, I think that would be very important.

MR. IRVINE: And you could do that flexibility grant either where you designated one or more of your members to review it, or you could simply say to staff publish something that contains such changes in the language as are necessary at least to put out for discussion and comment all of the ideas that have been raised in public comment today. And that way you would have the legal flexibility upon final adoption to say we want to adopt that particular change or we don't want to adopt that particular change.

MR. OXER: So essentially, what you're saying is put it all in that was brought up today and we'll take out what we need to?

MR. DORSEY: Well, I don't think you need to put it all in, it's just the items that exceed that logical outgrowth standard that we would make sure were sufficiently encompassed in the rule as published in the *Register* to incorporate the final draft, if necessary, or remove if the Board so chooses.

MR. OXER: I would offer that up from my perspective that that would be a good outcome and a good process, so I'd recommend that we have a motion to that effect to give you the latitude to put that in as needed, Cameron.

MR. DORSEY: There was one staff-proposed modification to

the recommendation to approve, and that was, let's see, it's Option B under the community revitalization plan. When we developed it, we didn't intend for it to be as expansive as it ultimately appears that it would be, and thus, I would suggest that that item be limited to just deals that receive CDBG Disaster Relief funds under CDBG Disaster Relief plan that meets those criteria. That's the only modification I would suggest making right now.

MR. GANN: I'll move to that effect.

MR. OXER: Motion by Vice Chairman Gann on item 7(d) for staff recommendation with amendments as recommended currently by staff for details that do not exceed the logical extension criteria.

MR. DORSEY: That do.

MR. OXER: That do include the logical extension criteria.

Right. Okay.

MR. GANN: That's the motion.

MR. OXER: That's the motion.

MR. DORSEY: For inclusion of concepts that would exceed the logical outgrowth standard.

MR. OXER: Correct. That's what we're looking for, Counselor?

MR. DORSEY: As made in public comment. Right?

MR. IRVINE: Well, what that really amounts to is that all of the ideas that are either in the staff proposal or that have been raised in comment would one way or another be out there in play for comment prior to final adoption.

MR. OXER: That's the right outcome.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Is there any other comment from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Are there any opposed?

(No response.)

MR. OXER: And there are none. Good work. It's 4:30.

Last item, DR. Muñoz, recommendation?

DR. MUÑOZ: I'd like to make a motion to move that the chair of the Audit Committee complete the annual review of Internal Audit and be responsible for the completion of that process.

MR. McWATTERS: Second.

MR. OXER: Motion by DR. Muñoz, second by Professor McWatters to complete the annual review process for our Internal Auditor Sandy Donoho.

MS. DEANE: So just a clarification, to delegate to him and he does not need to bring that back.

DR. MUÑOZ: That's right. To the chair of the Audit Committee.

MR. OXER: Right. Any questions? All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. That's unanimous.

We come to the point -- don't everybody get in a hurry -- if there's anybody who wants to make public comment now on any item that has not been mentioned, this is your time to do it. If you have a comment or wish to make one, raise your hand.

(No response.)

MR. OXER: And there are none.

That said, I'll entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: Move to adjourn.

MR. OXER: Motion by Ms. Bingham to adjourn.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. All in favor?

(A chorus of ayes.)

MR. OXER: And there are none opposed, that's unanimous.

We stand adjourned at 4:32.

(Whereupon, at 4:32 p.m., the meeting was concluded.)



CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: September 6, 2012

I do hereby certify that the foregoing pages, numbers 1 through 161, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

09/12/2012  
(Transcriber) (Date)

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