

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

10:15 a.m.  
Friday,  
November 12, 2004

State Capitol Extension  
Room E1.038  
1100 Congress  
Austin, Texas

BOARD MEMBERS:

BETH ANDERSON, Chair  
KENT CONINE, Vice Chair  
VIDAL GONZALEZ  
NORBERTO SALINAS  
PATRICK GORDON  
SHADRICK BOGANY

STAFF PRESENT:

EDWINA CARRINGTON, Executive Director  
BROOKE BOSTON  
CHRIS WITTMAYER  
TOM GOURIS  
ERIC PIKE  
SUZANNE PHILLIPS  
ROBBYE MEYER

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P R O C E E D I N G S

MS. ANDERSON: Good morning, and welcome to the November board meeting of the Texas Department of Housing and Community Affairs. Thank you all for being here this morning. The first thing to do is call this meeting to order and take the roll.

Vice Chairman Conine?

MR. CONINE: Here.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: Here.

MS. ANDERSON: Mr. Gonzalez?

MR. GONZALEZ: Present.

MS. ANDERSON: Mr. Gordon?

MR. GORDON: Here.

MS. ANDERSON: Mayor Salinas?

MR. SALINAS: Here.

MS. ANDERSON: All six board members are present and accounted for. We do have a quorum. As we -- as is our custom, we take public comment at the beginning of our meeting, and at your option, you may choose instead to comment after the board presentations at the actual item.

But the first thing I'd like to do this morning is call on Ms. Carrington to make a presentation.

MS. CARRINGTON: Thank you, Ms. Anderson.

This morning we would like to say goodbye to Sarah Anderson, Sarah Dale Anderson, who has been with TDHCA for eight years. Sarah will tell you she feels like she grew up at the agency. It is always sad to see one of our employees leave, and especially one of our senior staff.

As we -- as I told her a couple of days ago when we had a little ninth-floor goodbye for her, I think she's the first director to leave since I've been there. So for me, it may be a little bit traumatic. When we did our reorganization now about a year and-a-half ago, Sarah basically took on functions that were a reconstituted division.

She had been before -- her division before had been basically a research center, and what they took on were communications and public hearings and Texas Register and all of our publications, so a number of functions. And she took it on, and she did it just exceedingly well, and I appreciate that. She did it with energy and enthusiasm, and it's just served this department very well.

So Sarah, we have a plaque for you that says Recognition and Appreciation of Service. Texas Department

of Housing and Community Affairs proudly presents Sarah Dale Anderson this certificate of recognition and appreciation for all your hard work and dedication during your tenure at TDHCA.

Your eight years of service were invaluable in helping Texans achieve an improved quality of life through the development of better communities. So it is sad to see you go; we're sad to see you go, but we're very excited and hopeful for you as you go out, basically, on your great adventure.

MS. SARAH ANDERSON: You guys have heard enough from me in eight years. Thank you, everyone.

MS. ANDERSON: We will proceed now with public comment. If you wish to make public comment, you need to complete a witness affirmation form. I think they're in the back of the room or -- and then give it to Penny. The first witness is Tony Sisk.

And I'm going to also sort of say it to you all so we can keep this moving -- the next witness will be Jim Shearer and then John Garvin. And we're going to limit public comment today to three minutes per witness, and Ms. Groneck is the timekeeper.

VOICE: Want to turn this on?

MS. ANDERSON: Yes, please. Thank you.

MR. SISK: Mine will be about 20 seconds. Tony Sisk, Churchill Residential. I made some written comments on the QAP that were an outdated version somehow, so I respectfully rescind every comment I made.

MS. ANDERSON: That's a great way to start out. Some of you all might want to follow that model.

Mr. Shearer?

MR. SHEARER: Good morning. How are you all?

MS. ANDERSON: Good morning.

MR. SHEARER: I won't be quite that brief, but I'll be somewhat brief. Madam Chairman and board and staff, thanks again for the opportunity to speak with you today. I want to particularly thank Chairman Anderson for her efforts in pursuing all stakeholder concerns regarding the 2005 QAP. We're very grateful and appreciate your efforts.

My name is Jim Shearer. I'm a principal at Capital Consultants here in Austin, Texas. My purpose in speaking today is to discuss forward commitments. You may recall this fall I proposed an aggressive forward-commitment plan to deal with the many problems of the allocation realm.

After hearing many public comments requesting forward commitments, the board decided to do no forward



commitments. My suggestion is that the board reconsider that decision. My reasoning is based on the fact that many qualified applicants were on and then off the scoring list.

This created difficulties, not only for the individual applicants but the many communities that were eagerly anticipating new housing. In addition, you will recall the numerous letters of support from local communities and the elected officials.

In fact, there were so many letters submitted that the board could not read them all and simply submitted them for the record. These letters represented not only local officials such as mayors, city council members and local civic organizations, but state-elected officials as well.

We anticipate the legislature addressing these issues in the upcoming session and believe that some corrective effort should be made by the agency before they convene in January. Our specific suggestion is that the board direct the agency to develop a list of possible forward commitments that fall into the following categories:

Any application that was on a potential funding list during the cycle, any application that had

exceptional or unique community support, and any application that has an unresolved alternative dispute resolution experience with the agency.

It is our belief that by pursuing these efforts to address impacted application, that all housing stakeholders will benefit. Thanks.

MS. ANDERSON: Thank you.

Questions?

(No response.)

MS. ANDERSON: Thank you.

Mr. Garvin and Ms. Langendorf will be next, and then Mr. Henneberger.

MR. GARVIN: Good morning. My name is John Garvin. I'm with the Texas Affiliation of Affordable Housing Providers. Before I begin, I too would like to say how much we appreciated Sarah Anderson at the agency, and I'm actually glad she's leaving because now I don't have to be as nice to her as I did when she was there.

Just very quickly, I'd like to see if we could maybe take up the issue of some flexibility in the unit mix. Moving right along, the rural cap was -- it went from 96 back to 76, and we had an agreement in the working group to bring it to 80, so you could do five 16-unit buildings.

And Sox is on record at one of the hearings saying he's not against it, but we'd like that consideration kind of -- to bring it back to where it was.

We support the internet access as a threshold, but we think the proposed method is cost-prohibitive, especially for smaller city deals and a smaller number of units.

And maybe it should be moved into selection criteria and not made a threshold, because you can get internet access without doing this.

On signage issue, we read through -- this is a comment that came up that's new. It's -- you've got 14 days from when you submit volume 1 and volume 2 to get your sign up, and the signs requiring -- this is in addition.

The signs requiring TEFRA hearing information on it -- and we think -- like Mr. Bogany's idea was to make a good sign to get a rendering on it. And all that -- it takes a lot more than 14 days. Fourteen days will get you like a piece of, you know, plywood that will cause some neighborhood opposition.

So we're wondering if you can move that to 30 days and to take the whole thing about the TEFRA hearing off the sign, but to say for contact information about the upcoming public hearing please call, and put that on the

sign so that you've got some time to -- because a lot of times the Housing Finance Corporation has the TEFRA hearing in relation to their board meetings, and they plan them.

And we don't think the TEFRA hearing and the 4 percent credits should rule the HFC's board meeting schedule. I think that we should allow that to be up to them.

Next, we'd like to see a definition of local political subdivision, because if the applicants are going to go out and make the effort to work with these organizations, they should know beforehand that it's worth the points. To put it simply, just they want to make sure that the effort to forge those relationships has some points attached to it.

On the next one, the rent levels of the units, we like this proposal. However, we think that it should be ranges. From 91 to 95 percent, you get 12 points. Just so -- like if -- and I put them all out here. Just so that if you're in between, you still get the points, but you don't have to always be at 95 the whole time, because that's not going to happen.

Sponsor characteristics -- on the HUD -- we're not really going to get into that issue, except for if you

go with the 500-unit cap on experience, if the -- you could define developed as such units to have been placed in service. That's on the -- if you have done more than 500 units, you don't qualify for the points because you're not utilized I think the concept is there.

And then we'd like to see some points for community support from civic organizations.

MS. ANDERSON: Questions?

(No response.)

MS. ANDERSON: Thank you.

MR. GARVIN: Thank you.

MS. LANGENDORF: I will be brief. My name is Jean Langendorf. I'm with United Cerebral Palsy of Texas, and I want to let you know we're representing the Texas Coalition -- HOYO Coalition, and we're in support and very thankful to see it back in the plan that you're considering. It is worthwhile and has been a successful effort, and we hope we continue to partnership with TDHCA.

On another note, I wanted to let you all know we have been a recipient -- United Cerebral Palsy of Texas -- under your Capacity Building Program with the trust fund.

And I just wanted to give you all the good news that we were awarded -- because of this assistance,

because of the \$40,000 that you all invested in us, we have been approved by HUD for two Section 811 programs totally \$1.4 million, one project here in Austin and one in El Paso.

And we -- I can tell you as a small nonprofit, we would have never been able to undertake this. And we hope we'll be inviting you to those groundbreaking and to the actual openings of those units for people with disabilities and just want to let you know it's a --

It is a good program, and it really helped a small agency like ours to gain the capacity to move from doing home-ownership program to be doing some actual development in partnership with private developers. So we're doing condos, and we're doing some homes in El Paso.

So thank you all. I want you to know it's a good program, and I'm available for questions.

MS. ANDERSON: Thank you.

After Mr. Henneberger will be Mark Feaster, then John Wright, then Debra Guerrero.

MR. HENNEBERGER: I'm John Henneberger with the Texas Low Income Information Service. I have one issue regarding the QAP that I'd like to ask the board's consideration of, and that has to do with the prioritization of farm-labor housing as a priority within

the QAP.

The staff's response to our recommendation that farm-labor housing be a priority was that rehabilitation was an eligible expense. Yet there's never been, to my knowledge, a single farm-labor housing development in Texas that's been assisted under the tax-credit program.

This makes Texas unique among all of the states that have large farmworker populations. And as you know from the materials that we mailed to you last month on the problems that we've got among the farm-labor population in Texas, Texas has the second-largest population of farmworkers in the country.

Now, we have 1,500 units of government-sponsored farm-labor housing and a couple of thousand units of grower-sponsored farm-labor housing. About 25 percent of the federal stock is in dilapidated condition yet is still be occupied by farmworkers.

Probably a much larger percentage of the population owned by growers is in a dilapidated condition and is still being used by farmworkers. We need a positive incentive through the tax-credit program in order to be able to get funds into this important area, probably the state's most pressing area of housing.

Washington State, Oregon State, California,

Florida all have effectively used the tax-credit program to help the poorest citizens of the state, farmworkers, to be able to get decent housing. Texas has yet to do so, and unless we take affirmative action through the QAP, we will continue not to be able to assist these needy families. Thank you very much.

MS. ANDERSON: Questions? I have a question. How do other states do it? I mean, with the income levels -- you know, you've got to deeply subsidize the thing, and that doesn't at face value sound like the real intent of that housing tax-credit program. So how do they make it work elsewhere?

MR. HENNEBERGER: A combination of sometimes tenant-based rental assistance added onto, sometimes Section 8 certificates added onto. Washington has both a tax credit set-aside and a housing trust fund set-aside in order to pump additional equity into the developments.

You're correct; you -- it requires additional subsidy. I'm simply suggesting that we provide some points, and we see where this very creative industry in Texas -- see if they can step up and help us figure out a way to do this type of thing.

It may require additional TDHCA funds; it may require additional local funds, but I think if you provide



the incentive -- I'm convinced the creative people in this room, if it can be done, will bring a deal forward.

MR. CONINE: What's the difference between farm labor and anyone else working making the same amount of money in the state?

MR. HENNEBERGER: Well, the difference is that the federal government has a special category of housing under the United States Department of Agriculture for farmworkers recognizing that their incomes are almost universally insufficient to have decent housing and that their housing needs are often seasonal and located in areas of the state where there just isn't a sufficient supply of standard housing to begin with, even if they could afford it.

So it's just a -- it's a very specialized population need.

MR. CONINE: I know, but where do you stop, with people making \$10,000 a year or whatever the number is? Where do you stop? If you create a need for farmworkers, then the restaurant workers will need -- you know, special, and someone else will need a special.

Why not develop a program that still reaches those folks but not just strictly categorize it for the farmworker?

MR. HENNEBERGER: I am all for that. However, we have additional federal resources through the 514 516 program out there that can provide subsidy for farmworkers, and other states have coupled their tax-credit program with those resources to be able to help that population.

I'm all for it. You know, I mean, I'm all about helping the poor with housing. That's what my organization is --

MR. CONINE: I'm trying to see you up here, so --

MR. HENNEBERGER: We need a state housing trust. Is this what I'm supposed to say? We need a state housing trust.

MR. CONINE: And you gave us -- you sent us a -- you said you sent us some information last month --

MR. HENNEBERGER: Yes. Last month I mailed you all a little statistical outline and photographs of the conditions that many of the farm-labor housing --

MR. CONINE: Do you have a specific proposal in our board book today or not?

MR. HENNEBERGER: Yes, sir. I submitted a written comment, and it's addressed --

MR. CONINE: Okay.

MR. HENNEBERGER: -- in the staff response to the QAP.

MR. CONINE: I'll find it. Okay. Thanks.

MS. ANDERSON: I -- you know, you and I have talked about this before. You know, I'd really like to try to find some way to take advantage of these federal -- the USDA funds that are there, because I doubt whether just putting some more -- you know, putting six points on it in the QAP is going to be enough to make anybody --

Somebody's got to be pretty sophisticated to go figure out how to get -- you know, have a nonprofit, partner with the -- you know, to go chase the USDA money so that we get some federal ag money. You know, let's get our fair share of federal ag money in this state.

MR. HENNEBERGER: I agree with you. We had a farmworker housing summit the last -- earlier this week that your staff participated in. The good news is is USDA's allocated 4 million of additional funds for rehab for some of the housing.

The bad news is it probably won't solve but about 30 percent of the worst problem in that area. But again, other states, Washington, Oregon, California, Florida, all successfully use their tax-credit program to

produce farm-labor housing.

We have the second-largest number of farmworkers of any state in the country. We're a home base for the whole central region of the country for farmworkers. And I'm just suggesting -- I don't know all the answers. I'm not a numbers person.

But I think if the developers in those states can figure out how to do it -- and I know that some of those states have additional resources, but I'd like us to get started to see if we can't figure out how to use the tax-credit program in some way. Thank you very much.

MR. SALINAS: Can I ask him a question?

MS. ANDERSON: Sure.

MR. SALINAS: What part of the state are you talking about farmworkers -- I mean, throughout the state of Texas?

MR. HENNEBERGER: I'm concerned throughout the state of Texas.

MR. SALINAS: Are you talking about them -- farmworkers getting into an apartment? Are you trying to provide housing in -- providing them apartments through the QAP?

MR. HENNEBERGER: Yes, sir.

MR. SALINAS: I think the state agency here has

worked with the farmworkers -- labor by providing them assistance through the bootstrap program and through our colonia initiatives. One of the things that the farmworkers do want to have is have their own property, which I think most people do not understand.

You can offer them all kinds of housing, but what they're going to go do is purchase a piece of property and build their own home. Now, I think the state agency is doing that very well here. I don't know whether they would belong in the same area as the QAP.

And of course, we can try that, but I think the farmworkers that I know -- you are never going to stop them from owning their -- they want their own piece of property, a half an acre or a lot, and they want to build their own home.

And the only way we'll be able to help them is by helping them through the colonia initiative, and I think the state people that work for this agency can tell you how they work. And by the time you know it, they've already bought a lot, and they probably won't want your apartments.

It's hard for them to go live in a complex. They just don't want to do that. I'm telling you because I know the area. I know this area very well. But if you

can do that, that's fine. But I think that what he's trying to do is fine, but I just don't think you're going to be able to get them to go into any kind of complex.

They're going to go out there and buy their lot, and they're going to build their house, and without a permit. And by the time we know it, we have a bunch of them, and then we have to go through the rehab. That's what we need right now in -- through that program.

We need to do a lot of rehab in a lot of their homes, and we're real behind in that. But I'll do anything to help the farmworkers -- labor, but I think that through our QAP -- it might work, and that might not work; and I just don't think that it would work.

MR. GONZALEZ: When you refer to farmworkers, are you referring to migrant laborers --

MR. HENNEBERGER: Yes.

MR. GONZALEZ: -- or are you referring to --

MR. HENNEBERGER: I'm referring to both migrant and home-based farmworkers under the USDA definition. In the case of migrant laborers, I'm concerned about the existing stock of multifamily housing which they have access to, which either growers provide or the US Department of Agriculture provides, away from their permanent home.

And that is about -- probably in the nature of about 500 units of apartments that are out there now of which our survey shows probably a third or so of them at least are massively substandard. Now, as the mayor indicated, I agree that there's a substantial need for assistance in home-based -- for home-based farmworkers.

I think the department's done a very good job of -- with very little money setting up some models for how to address that, including the bootstrap program, but there is an especial need both for home-based farmworkers and multifamily.

Where they choose to do so, most will choose the owner-occupied route, but there are a number of people who will need that and, in -- particularly, multifamily for the migrant population. And particularly the area I'm especially concerned about is the Panhandle region.

MR. GONZALEZ: The Panhandle region?

MR. HENNEBERGER: Yes, sir.

MR. GONZALEZ: Because there's also a big need down in the border area also.

MR. HENNEBERGER: Yes, sir. El Paso has a tremendous problem with adequate housing for farmworkers. There's people living under the bridges we know.

MS. ANDERSON: Thank you.

MR. HENNEBERGER: Thank you very much.

MS. ANDERSON: Mr. Feaster.

MR. FEASTER: Good morning.

MS. ANDERSON: Good morning.

MR. FEASTER: Madam chairwoman and board, my name is Mark Feaster, and I'm with Continental Realty, and I would like to discuss ADR with you a little bit this morning. We're very disappointed in the ADR process as it is currently implemented and to the apparent lack of intent of TDHCA staff to work some resolution of issues raised.

I'd like to share some of the process that we've been through with you. We originally requested ADR on September 24 to resolve issues on three of our applications. We were contacted by Mr. Spearman and asked to come to Austin first to informally discuss resolving this problems.

We made a special trip in October to meet with three staff members and spent over five hours discussing issues with the applications of the Garden of Maybank, Burkburnett and Tye.

There was no resolution of any of the Maybank issues. And the resolution offered by staff to the applications of Burkburnett and Tai, which they did



consider impacted by a change in scoring at the end of the application process, was that we show up at the board meeting the next day and we request that the board consider a forward commitment for these two applications with no recommendation from staff.

The comment by one staff member that set the tone for the meeting for us was, You surely didn't expect to get all six applications, did you? You know, we don't spend 10- to \$15,000 an application hoping to just get one or two.

And the other thing I'd like to point out is that, you know, the total tax credits for our six applications equal about one or two of urban requests, so it's not like we're asking for an overabundance. After that meeting, we again formally requested ADR with Mr. Spearman, and a date of November 1 was agreed upon with the Honorable Judge Joseph H. Hart as the mediator.

Again, after much discussion on the Maybank application issues, it became obvious no progress was going to be made, and both sides agreed to disagree. The following discussion concerning the impacted applications of Burkburnett and Tye -- the following resolution was agreed upon between staff, Judge Hart and Continental Realty.

The staff would meet with the executive director and ask that she discuss with the chairperson of the board the fact that the applications for the Gardens of Burkburnett and Tye were impacted by the scoring changes implemented at the end of the application process and that the applications be put on the agenda for board consideration of issuing forward commitments for 2005 tax credits at the November 12 board meeting and that staff would inform Continental Realty within 24 to 48 hours of the outcome of their meeting with the executive director.

To date, we have had no communication regarding the meeting with the executive director, and it was obvious to us after reading the agenda that was published for this meeting that forward commitments were not going to be discussed.

Since the process hasn't worked, we are here as originally suggested to request that you consider the impacted applications for Gardens of Burkburnett and Tye for forward commitments at the December meeting. There appears a fundamental problem with the process as currently structured --

MS. ANDERSON: Sir, I need to ask you to wrap up, please.

MR. FEASTER: Okay. I'm just about

done -- that the staff involved represents that they can't make a decision and are reluctant to make recommendations to the board and that the board is the only one that can make the decision, but we can't have board members or the whole board present because of the ex parte rules.

You know, our focus is to bring affordable senior housing to rural Texas, and that's the goal of our company. We've been welcomed with open arms by the communities that we've approached, but the application process hasn't been quite as welcoming. Thank you.

MS. ANDERSON: Thank you.

Mr. Wright.

MR. WRIGHT: Good morning.

MR. CONINE: Good morning.

MR. WRIGHT: I have two issues I'd like to speak to today, and one very briefly, and that is the networking of data, a data system back to a central location and the threshold requirements. It doesn't say you have to run the system. It just says you got to put the wires in.

And if we work with the standard provider, such as Southwestern Bell, Time Warner and Grande Communications and others, they do not use this central location. It looks to me as if this would require the

owner to get into the internet business by providing a server and a T1 line, and I think that's not what we're here --

If you wanted to put it over into the elective and put points with it, that's one thing, but to require it as a threshold requirement I think is a mistake. I think it would be much more important to put -- show where the outlets go.

The second thing is the 504 issue when it -- as it relates to other than substantial alterations on new construction. It's a very cloudy issue, even with HUD, and I've been trying to come up with something and working with staff that would show how it's codified -- that the -- staff's determination of what they're doing is relevant.

And to date, I don't feel satisfied we've come up with that. Secondly, now it looks as if -- I saw some -- some suggested wording that they were going to move the compliance from the compliance section over to the underwriting section.

I don't understand why 504 compliance would have anything to do with the underwriting section. We ask the architect and the owner to certify that you meet 504. To me, that puts the onus on them. That puts the onus on

them to work with HUD and find out exactly what they're doing.

And to inject staff's concerns or staff's ideas about what it ought to be in there seems to be a little much. And I just ask that you look at that and review it.

It seems to be pretty clear to me, but it's always in the eye of the beholder, I guess.

And HUD was around having to tear out walls to comply because you changed the carpet. And partial compliance is that you put in some things like the kitchen cabinets that meet handicapped -- but then you don't put the doors -- move the walls to the bathroom, change the plumbing over, which is extremely expensive, in order to meet that.

I don't think that that's what was intended, and I've -- I'm working with -- I'm still trying to find out more, and I will certainly furnish that as soon as we find out more about how it's done. But there is -- doesn't seem to be a clear-cut way it's done.

But I have worked with HUD on HUD-financed projects that were not tax-credit, and they didn't require what they -- that staff seems to be interpreting this. I just ask that you look at that.

MR. CONINE: Stick around when that subject

comes up a little later on today.

MR. WRIGHT: I certainly will.

MR. CONINE: Okay.

MS. ANDERSON: And thank you, sir.

Debra Guerrero. Then next will be Jim Shaw and Ann Denton.

MS. GUERRERO: I'd like to defer my comments to the presentation on item 2A.

MS. ANDERSON: Okay.

MR. SHAW: Good morning, board.

Ms. Carrington, how are you?

My name is Jim Shaw. I'm the executive director of the Capital Area HFC. I'm here to speak with you this morning about the signage requirements. I just wanted to share with you that the TEFRA process and scheduling that process is an integral part of our management of these transactions.

And I would suggest to you and recommend to you that if that information is going to be placed on the sign that we put that on the sign 14 days prior to the hearing, which would then be in conformance with the federal-publication requirements under TEFRA.

We have no problem putting the information out there, but we don't typically schedule those hearings that

early in the process. There are certain milestones we want to see achieved by certain other parties in the transaction prior to scheduling that TEFRA hearing.

We respectfully request that you allow us to continue to manage that process the best way we know how.

We -- obviously we like to be in conformance with the Tax Equity and Fiscal Responsibility Act of 1996, but that would be our suggestion.

And we have absolutely no problems with putting contact information on the sign. If there are questions from the public about the process, we will welcome those calls as we are already working hand-in-hand with the local authorities and neighborhood groups on the projects.

I'll be glad to answer any questions. Thank you.

MS. ANDERSON: Thank you.

Ms. Denton.

MS. DENTON: Good morning.

MS. ANDERSON: Good morning.

MS. DENTON: My name is Ann Denton. I'm a member of the Promoting Independence Advisory Committee for the state of Texas. We're a committee that has been convened and appointed to look at transitioning people out of nursing homes -- people with disabilities out of nursing homes and other facilities.

It's as a result of a 1999 Supreme Court decision saying that the critically unwarranted segregation of people in institutions is a violation of the ADA. I also appear before you as a member of your Disability Advisory Committee, and I just wanted to do a couple of things.

One is I wanted to commend Sarah Anderson for her work on behalf of people with disabilities and for her work with the Promoting Independence Advisory Committee. She has put in more hours perhaps than Ms. Carrington would like working with us to look at how we can take the housing resources available to you in this state and to us in this state and knit them together with the required kind of service connections and make real integrated housing options available for people with disabilities.

One of my recommendations to you this morning and one of the Disability Advisory Committee's recommendations to you is that the agency itself take a look at how at the staff level you can continue your commitment to people with disabilities.

With Sarah Anderson leaving -- you know, unlike John Garvin, we are not, you know, happy she's going. We're going to be just as nice to her as we ever were before. And I am actually -- all kidding aside, I am



actually gravely concerned.

Sarah has really carried the water for us internally. She's tried to, you know, negotiate with different kinds of internal programs around what it is that we can do and really has resulted in a lot of compromise and a lot of commitment on the part of the agency.

Without her, I'm afraid -- I'm just a little bit afraid that this is one of those initiatives that's related to the person. And so I'm asking you to look at, at the staff level, how you can institutionalize her activity.

Many years ago we made a suggestion and a recommendation that this agency share staff with Health and Human Services Commission, that you share a staff position. I would like to revitalize and suggest again that you take a look at, internally and in the upcoming budget processes, how you can support a staff position that would cross agency boundaries.

What needs to happen for people with disabilities is we absolutely have to have your continued commitment around housing resources, because people with disabilities are very poor. We also need the interagency cooperation and commitment that Ms. Anderson brought us.

Thank you.

MS. ANDERSON: Thank you.

Mike Sugrue.

MR. SUGRUE: Good morning, Madam Chairman and board members and staff. My name is Mike Sugrue, and I'm here wearing three hats, I guess, over my spiky hair. I'm representing Guilford Capital, the tax-credit investor; TAP, Texas Affiliation of Affordable Housing Providers; and RRHA, Rural Rental Housing Association.

A couple of comments, brief ones, hopefully, on the real estate analysis. And you have a letter that TAP had given you dated today, although by the issues -- issue 3, Section 1.32(e)(4) talks about there -- the underwriter using final cost search for developments located in the same county, et cetera.

We just want to make sure that those cost searches are adjusted for inflation. It doesn't reference that there's any adjustment for that.

Issue 4, which is 1.32(e)(4)(a) -- it talks about marginal [phonetic] average quality versus good quality. Our recommendation is for good quality, and the reason for that is twofold. One is that many of the developers are committing to long-term LURAs, and we think good quality will allow the housing to last as long as the

LURA lasts versus being a little short of that.

And also the NIMBY issue -- the better-quality homes or housing will probably take away some of the NIMBY if we can compete and look more like the standard-market-rate housing.

Our issue 5 is Section 133. It talks about the potential requirement for the market analyst to do an impact on schools. That's not done for any other type of housing, and it will increase the cost of market studies.

We don't think it's fair that that be only for tax-credit housing if it is done.

Issue 6, 133(e)(1)(2), primary market areas -- it's interesting here that -- and I understand there's some need for -- to have some idea of a primary market area, but when we're talking about no more than 100,000 people in far rural Texas, you can go a long ways to find 100,000 people.

And a 36-unit may not need what a 76-unit needs, or it may not need what a 120-unit needs. So senior properties require a different market area. Rural properties require a different market area than family properties. Urban, exurban and rural all require different market areas.

It's very difficult, and I think that should be

left up to the market analysts and to the investors and lenders. We do not normally accept the market study that is given in the application. We always go back and get another one, and we make our own determination as to market and how far that market need to go, and can we attract the tenants from that distance.

Also in the same area, counting applications in a capture rate, we believe, is a little unfair, because many of these applications wind up in a trash can and have no impact on the real capture rate at the end of the day.

And if you adjust after the applications are in the trash can, it's kind of unfair to those applications.

An example would be two deals in rural versus six deals in Dallas. The six deals in Dallas will not have the impact that a second deal will have in rural.

Last but not least, comparable units in construction-type rental rates is not the proper comparison. They should include age, amenities and services. In other words, we want to do apples to apples, not apples to fruit. That's it. Thank you.

MS. ANDERSON: Thank you, sir.

That concludes the public comment here at the beginning of the meeting, and so now we are prepared to proceed with the agenda. Before I do so, I want to

welcome Jason Smith from -- where are you, Jason -- from the House Urban Affairs Committee. He was here.

MR. CONINE: Out in the hall.

MS. ANDERSON: Probably out in the hall. Okay. He'll be back. But anyway, we appreciate him being here, and we'll now proceed with our agenda.

Item number 1 is the presentation, discussion and possible approval of the minutes of the board meeting of October 14.

MR. BOGANY: So moved.

MS. ANDERSON: Thank you, Mr. Bogany.

Second, anyone?

MR. SALINAS: Second.

MS. ANDERSON: Any discussion on the minutes?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in the favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GONZALEZ: Abstain.

MR. CONINE: I abstain too.

MS. ANDERSON: Okay. Mr. Conine and Mr. Gonzalez abstain. We missed them last month.

The next item on the agenda is presentation, discussion and possible approval of department rules. I asked Ms. Carrington that we have the staff presentation on all the rules, you know, from housing tax credit to home to housing trust fund, et cetera, and then we will have all the public comment on this item.

Ms. Carrington.

MS. CARRINGTON: Thank you, Madam Chair.

On the first item for the board's attention this morning is two actions related to our tax-credit program. The first action that will be required by the board is to repeal the 2003 tax-credit allocation plan, QAP.

And then the second action that will be required by the board will be to adopt the new Title 10, Part 1, Chapter 49, which is the 2005 qualified allocation plan.

I first, from a staff perspective, want to thank the numbers of developers, syndicators, lenders, advocates, trade-association folks who participated for I think about six months in the working group to come up with recommendations and improvements to our 2005

qualified allocation plan. Those meetings were long. They were day-long meetings. I think there was a lot of good discussion.

I know that people came in and out of those meetings. We appreciate those of you who did come, who did volunteer your time, because it was certainly all volunteer, and worked with the department and the community, the industry as we worked to develop the qualified action plan that is good policy, that meets all the requirements of our legislation.

So I want to thank all of you all who did that.

There were certainly many of you all who continued that discussion and comment with the agency throughout our public-comment period. In September -- I think it was September 9 -- at the board meeting, the board did approve a draft 2005 qualified allocation plan, as we did all of our rules on that day.

And then all of those rules went out for a 35-day public-comment period. We had 13 public hearings around the state. Many of you all did come to those public hearings. We heard a lot about our proposed '05 QAP for the tax-credit program.

We also heard a lot about our other rules at that -- at those hearings also. During this period of

time, many of you all e-mailed to us. You sent letters to us continuing to comment about issues and concerns that you had about the qualified allocation plan.

The department really appreciates all the work that you all did related to getting the best document we could have for 2005. We have worked to incorporate as many of those suggestions and recommendations and changes as possible, and you will see that, I think, as we go through the document this morning.

The way we are going to move through this -- first, Ms. Boston is already at the table, and there are some administrative corrections that we need to lay out for the board and for the public. They have looked at the memo that was on our website and also the draft QAP.

Then they next thing we will do will be point out the changes that have occurred between the draft QAP that was approved by the board in September and the one that the board is looking at today. And then I'm assuming we'll do public comment, and then staff will have an opportunity to come back.

So the board has -- for your information, what you all have in your packet first behind the board action request is -- you have the staff memo, which is a 43-page



memo, and this is the format that we have followed for all of our rules.

And so we are -- we outline the comment that we've received from the public, and then we provide you staff's response to that. You will notice in that memo that there are numbers in parentheses after each one of the items.

Those numbers correspond to the commenters, and those commenters are listed. They are the very last page of the 43-page memo. So if you are interested in who number 3 is, you can go to this memo at the last right before the QAP starts, and you can see who number 3 was. And then after that is the draft blacklined QAP.

MS. BOSTON: Thank you. My name's Brooke Boston. I'm the director of Multifamily Finance Production. First, I was going to point out a couple administrative corrections. First, there are a few items that were reflected accurately in the memo and in the blacklined QAP language that was in the memo, but that did not carry over into the QAP inadvertently.

And we are going to make those carry through, obviously, so I wanted to point that out. And then obviously, as in the past, you know, we've gone through and fine-tooth-combed this again. And so in little areas

where we've caught like a grammatical mistake or a referential integrity, we're going to clarify any of those type of errors as well.

In addition to that, there are a couple other that I wanted to point out. The first is on page 27 of your action item. We are going to be adding language into the QAP, and this is something that we said we were going to do in the comments of the memo, that did not show in the QAP language of the memo or in the QAP itself, which is relating to the radiant barriers -- that it's specifically for rehab.

That's the only way that that's an option for points. So we're just going to add the words "for rehab."

On page 14 of the QAP we had -- we are proposing that the number of rural units go back to 76, and we -- it's referenced in two places in the QAP, and we had only caught it in one. So we're going to go back and catch it in both to be sure that we're consistent. And obviously, if anything with that is to change, we'll make sure they're both the same, whatever it ends up being.

The next item was page 17 of the QAP, and it's relating to notifications for preapplication. We'd been making every effort to make sure that the notification process at preapp and app was identical, and in doing so

we overlooked the fact that obviously the dates at preapp and app can't be identical, because the dates at app don't apply as early.

So what we're recommending is that as it relates to the date that the letter would go out to the local officials for the full app, it's at February 25, which is roughly about, you know, three or four days before the apps are turned in on March 1.

So the similar recommendation is that we move it to December 20 at preapp, keeping in mind that preapps are due January 5 this year. And then as it relates to the dates that the applicant needs to hear back from the local elected officials regarding neighborhoods, at full app it's February 25, and so for preapp we're recommending that that be January 1.

So we're just trying to back up the dates so that they're relevant to the preapp process.

Then on page 23 of the QAP in one of the scoring items where we tell people how many amenities they need to have depending on their number of units, we had covered up to 199 units. And then we said more than 200 units, so anyone who did 200 exactly -- it wasn't clear where they fell. So it's totally tiny little semantics, but we're changing it to 200 or more to be clear.

And then on page 41 of the QAP, this is where we're giving points, and they need to have at least 70 percent of the units as two-bedroom or more. We felt like there was a possibility for some confusion as that tied together with our eligible-building-type definition, that somehow people might feel like they didn't mesh, or that somehow gave them an opportunity to be waived from that.

So we're recommending that we revise it to say at least 70 percent of the units must have an eligible bedroom mix of two- and three-bedroom units. So it's a little bit clearer.

And then the last administrative revision is on page 43 of the QAP, and this is regarding leveraging that's for private, state or federal dollars. The language in 2306 indicates that this needs to be for extremely low income, and we had not specified that in the language.

So we are trying to make sure that it's as consistent as possible. So we're recommending adding one sentence, which would be, To qualify for this point -- because it's a one-point item -- the rent schedule must show that at least 3 percent of all low-income units are designated to serve individuals or families with incomes at or below 30 percent of AMGI.

And that would make the exhibit more consistent with the legislation.

So those are our administrative corrections, and with that I will point out some of the more noteworthy items that we have changed. I'm not going to point out some of the smaller changes, and I'm not going to point out things that we got comment on that we didn't change.

I guess one thing I wanted to note too, because this is always of interest, is the max score now is 207. So -- if you had figured out.

MR. CONINE: Are you getting ready to walk through the 43-page document on highlighted items?

MS. BOSTON: Yes, but I'm just going to touch on a few.

MR. CONINE: Okay. All right.

MS. BOSTON: Okay. I promise it'll be quick. The first item is on page 5 of the memo regarding -- to site and development restrictions, and this has to do with the units -- the maximum number of units for rural developments. We're recommending that it go back down to 76. This was based on public comment.

The next item is on page 11 of the memo. This is relating to the nonprofit set-aside, and we had received public comment recommending that we kind of

revamp the way we handle this, and we actually concur that it's a good new approach.

What we are proposing to do is that instead of taking the nonprofit deals kind of off the top statewide the way we have done for the past several years -- instead we would just make all of our -- you know, we'd go through the list and identify based on score alone -- and of course still meeting the at-risk and USDA set-asides, we would just allocate the funds and be sure before we brought it to the board that we had 10 percent of the deals being nonprofit.

But we wouldn't go out of our way specifically to target them ahead of time. And only if we were not at our 10 percent would we then go back, and at that point we would add it based on the high scoring statewide so --

The next change is on page 14 relating to the networks that were discussed earlier, the three networks in the units. We're recommending that it be only for new construction, based on public comment.

On page 16 of the memo relating to the language for Section 504, we are making revisions that we believe are making the federal regulations operational. And this would be that they are turning in cost schedules that show two different scenarios, and then we would determine if

it's feasible.

The next item is on page 26 relating to income levels of the tenants. Based on public comment, we expanded the set of options that people would have. We originally had had only three categories, and there is comment from multiple entities indicating they thought that we should have more categories, so people could kind of mix and match in different ways. So we've added some of those.

The next one is on page 28 regarding the commitment of development funding by local political subdivisions. We had gotten comments from several entities indicating that they felt like if their particular local government did not have the applications out yet that they were at a huge disadvantage, because they couldn't show that they had applied.

But indeed, as long as the awards were going to be made in time for the commitment deadline that we had, that they shouldn't be penalized as long as they were willing to sign a certificate of intent to apply and would indicate the name -- like the funding source, the amount of loan funds they're asking for, and the interest rate. And so we did add that language.

And then also comment was made that

people -- in this section people can get points for either doing kind of loans and in-kind funds or having vouchers.

And it was asked that people be able to mix and match, so if they could get six points under one and six points under the other, that they could get 12 instead of just being precluded to doing only one category. And so we added that language as well.

On page 30 of the memo relating to rent levels of the units, we got substantial comment not happy with the way we had proposed it originally, and so we were very open to revising it. And what we have put in instead was the suggestion of one of our commenters with tweaking it a little bit.

And so basically, the concept for rent levels is similar to the idea we used to have of mixed income. It's basically the concept of mixed-rent tenancy. Essentially there will be points for doing market-rate rents so --

The next items is on page 33 relating to development location. Initially all of these items had been for four points, and we are kind of splitting it out into two categories. Some are for four, and some are for seven.

If you flip to the top of page 34, it's



paragraphs G, H and I that would be the seven-point items.

G and H are the two items that relate to affirmatively furthering fair housing. And then I is a new addition, which is putting the exurban points back in, based on public comment, and those would also be a seven-point item.

On page 36 of the memo relating to sponsor characteristics, there was comment on the HUB points, that they thought we should take out the five-year, that you had to have been a HUB for five years to get the points. People actually thought just the opposite, that you need to be kind of a newer HUB who's trying to get their footing.

And once you have a certain level of experience, then you no longer should be eligible for the points. So we took out the five-year requirement, added some clarification that the ownership interest is in the general partner, and then added what we call kind of a graduation clause, which is that once you've had 500 units of tax credits, that you actually would not be eligible for the points, although you obviously could still apply. You just wouldn't get the points.

On the next page, 37, third-party funding commitment from outside qualified census tracts, we

emphasized that because third-party is the terminology in the legislation, we wanted to clarify a little bit what that might mean.

We indicated that it can't be a related party to the applicant or developer and that it can't just be your basic commercial loan that's on the deal.

And last is on page 40 relating to carryover, and this is that we're recommending that a carryover be -- deals that involve acquisition rehab not be required to buy down their land before December 31. That was kind of a latent requirement that used to be federal, and we never have taken it out.

And we actually -- there's another agenda item later in today's meeting -- are asking for a waiver of this -- '04 deals, because it's obviously a hardship on rehab deals, particularly ones that have USDA or HUD funding, and they're waiting for transfer approval. They can't get that before December 31 so --

And with that, I'd be happy to answer any questions.

MS. ANDERSON: Okay. We have several people that want to make public comment on the proposed QAP.

Mr. Robert Voelker.

MR. VOELKER: Good morning, board members. I'm

handing out to you my comments so you have them in writing as well. And I want to talk about two issues. The first one is rent level of the units. The second one is the HUB rule.

The rent level of units is really a market-rate unit issue. And I've summarized my comments based on the staff comments and then the proposed rule and then some analysis. Staff comments in three different places basically say that the purpose of what they're trying to accomplish here is to encourage or at least not to discourage market-rate units and to encourage mixed-income developments.

However, if you read the proposed rule, it goes exactly backwards of the way the rule has gone for the last four or five years. The more market-rate units you do under the proposed rule, the less points you're going to receive.

You get ten points for -- or 12 points for doing 5 percent market. Then you get ten points for doing 10 percent market. You get nine points for doing 15 percent market. So the more market-rate units you're doing, you're getting less points.

And last year and for the last four or five years that I remember, it was exactly the other way

around. The more market-rate units you did, the more points you got. So it seems like we're going contrary to even what staff's comments are in terms of what the purpose is.

We're now discouraging greater market-rate units. There's the technical issue that John Garvin spoke about, the fact that you can't really hit those numbers exactly, so we really need to do that in ranges so that we know that if we're at, you know, 94.8 percent, well, that's really what you want when you say 95 so --

There's a practical concern that I raised at the last board meeting, and this is, I think, critical. If we don't continue to have points for doing more market-rate units -- market-rate units are above and beyond the tax-credit program.

The TDHCA tax-credit program only funds tax-credit units. The extent that you give us more points to do more market-rate units, we do produce more housing which is affordable, even though they're market-rate units, because we still can't charge full market-rate rents for those, quote unquote, market-rate units, partly because of the area we're in, partly because we're a mixed-income community.

So if we cut back and we say we'll only give

you maximum points for doing 5 percent market-rate units, that's what the development community's going to do. We're going to do 5 percent to score the maximum points. You're going to lose 15 percent of the units that you funded last year when you try to fund this year.

Because we won't do that extra 15 percent, the market-rate units. We don't get any tax credits for those. Those are above and beyond. They create more affordable units for the development community, for TDHCA and really for the low-income people in Texas. So I'm concerned that we're going to end up funding 15 percent less units if we go with that rule.

The HUB rule -- you've got my legal analysis as to whether or not the HUB rule is really something that is legally enforceable. Hopefully you all have talked to your own internal counsel about whether that rule works. And Brooke didn't mention -- but I think at the very end in staff comments they actually pitch that back to the board and say, We're going to lob this one back at you all.

They do state that they, I guess, have done some analysis as to what other states do, and I guess no other state has it. I also gave you some analysis in here of the -- going back and forth between last year, we had

the HUB rule out and then in.

This year we say we want experienced HUBS, five years or more, and now we're saying, No; we really want inexperienced HUBs. So I'm not even sure we know what policy we're trying to go after with the HUB rule, plus the whole legal issue of -- as to whether or not that's something you all can do. I'll take questions if you all have any.

MS. ANDERSON: Questions?

(No response.)

MR. VOELKER: Thank you.

MS. ANDERSON: Thank you very much.

Next is R.J. Collins, then Ronni Hodges, then Michael Hartman.

MR. COLLINS: Thank you, Madam Chair. I think on my -- I put out 2a. Also I want to speak to 2d. I should have put that on there. The first thing I want to say is I'm glad to be here, and I think that the staff has done an excellent job, all the public comments and everything towards this QAP.

But there are three items that I'd like to speak to. One is the rural-development limitation, the size of development. I know we vacillated on that over the last several years. Seventy-six units have

been -- and then we -- last year we had it based on market studies.

And I think the working group came out with a recommendation of 96. There are some of us that have land under contract in rural areas that we're carrying forward for this coming year that -- if you cut it back from 96 to 76, our numbers won't work, and we'll have to rethink our projects. So I would speak to taking that back to 96, whereas it was -- our working group.

The other item, which basically is the cost of the square foot of the developments -- we wrote a letter back three or four months ago, put it in the public comments that you needed to increase the prices, and I am glad to see that that has happened.

However, the other part of that is the rules as to underwriting. In the underwriting rules, basically you go with Marshall and Swift average. My company has been hurt the last two years in that regard, exceeding cost in certain areas, and I would -- hopefully that you would change the underwriting rules from good to average at least.

And the last one I have is on sponsorship characteristics. I'm glad to hear that the staff is recommending that the five-year rule be eliminated.

However, it does say in here that 51 percent ownership -- and I think that needs to be changed.

We -- our company over the last five years had sponsored five different HUBs. We put them into our deals, and I brought them along and nurtured them, and now some of those are independent, doing their own deals. And I think to require 51 percent ownership requires them to have to guarantee, and most of them can't guarantee these loans. So I would ask that we change that 51 percent. Thank you very much.

MS. ANDERSON: Thank you, sir.

MS. HODGES: Hi. I'm Ronni Hodges. I am one of those HUBs that -- and I want to speak to two issues today, the first being the sponsor characteristics. I have been a HUB for the last four years. And I, after many years of being in real estate, decided that I wanted to expand into this area.

And I have been mentoring and working with a HUB very materially in three different areas, three different developments, and it's been a very -- a good learning experience. It has enabled me to become a rural developer.

And I'm wondering -- I'm kind of confused -- exactly the concept of the HUB, because I



think it's the only way that minorities can achieve any kind of understanding in this very complex affordable-housing arena if we are not encouraged to do so.

I am very pleased. I've been a HUB for four years, so I basically was hoping to continue. And that's good that that was changed. However, only owning 10 percent of a development does not really give you -- it's very hard to guarantee.

To the 51 percent -- would be very difficult to do, have an interest and make all the guarantees that syndicators and banks and construction firms want you to do. So I would say that that needs to be taken out of there. But I do look at this as a capacity-building process, and it has been very beneficial for me over the years and for other HUBs that I know of.

So the second issue is -- since I've become a rural developer, I've been very involved in looking at rural communities, and most of them are in dire need of all kinds of housing. And since the TDHCA came out with the mixed -- the need to have more blended communities -- this is very much in line with all of my market studies that show that market rates are needed.

And in order to keep a community viable, a small community, we really need extra units. So the 76

units are -- for many communities the market studies show much more than that, so I would encourage you to go back to 96 or as the market studies indicate -- would be a much better way to approach some of these small communities that are in such dire need of housing. Thank you for consideration of these comments.

MS. ANDERSON: Thank you.

And after Mr. Hartman, we'll have Rowan Smith, Debra Guerrero, Diana McIver, Barry Kahn.

MR. HARTMAN: Good morning, Madam Chair, members of the board. My name is Michael Hartman. I've been a developer of affordable housing under the tax-credit program in Texas since 1993. Prior to that I was a manager with the CPA firm of Reznick, Fedder and Silverman.

First of all, I'd like to thank the members of the board and Madam Chair in particular for devoting many hours of time to advance the cause of providing quality affordable housing to the citizens of Texas. You're doing a very outstanding job, and we thank you for the job that you do.

I am here today to discuss two items that were overwhelmingly adopted by the 2005 working group that are not included in the draft QAP that has been presented to

this board for approval. A couple words real quick on the 2005 working group, which I was a member of.

The 2005 working group was a large totally volunteer group of professionals. The group was comprised of over 100 individuals from all segments of our industry including syndicators, lenders, for-profit and nonprofit developers, nonprofit social-policy advocates, accountants, lawyers and market analysts.

These people devoted many hours to addressing the 2005 Texas QAP out of a sense of duty to do what is right for the people of Texas and not to advance their own interest. All positions adopted by the group were done by group vote after many hours of discussion and consensus-building efforts by the participants. Therefore, I would ask that the board take seriously the recommendations of the group.

The first group recommendation not in the draft QAP concerns the limitation on the maximum number of units allowed in a new-construction rural development. One part of the group believed that the maximum should be 76 units so that more communities could be served.

Another part of the working group believed that the maximum should be 120 units, because there are a number of rural communities such as Plainview; Nacogdoches

and Mercedes, to name a few, that need more than 76 units.

There was a lot of lively debate over the course of four or five meetings, and finally a compromise was worked out that arrived at the number of 96 units.

Therefore, I would respectfully request that the board change Section 49.6(e)(2) to reflect 96 units as the limitation for a new-construction rural development.

The second group recommendation not in the draft QAP concerns the definition of ineligible types. As currently drafted, the QAP takes the position that the same unit mix is appropriate for a family development in Dallas as is appropriate for a family development in Mercedes, that the unit mix appropriate for a Houston family development is appropriate for a Midland family development.

The 2005 working group voted with over 90 percent approval to remove from the 2005 QAP all limitations on the unit mix in family developments. In a republic as big and diverse as Texas with its separate regional needs, one size does not fit all family developments.

Therefore, I would respectfully request that the board change the definition of ineligible building types, Section 49.347 by removing subsections e and g.

Thank you for your consideration.

MS. ANDERSON: Thank you.

Questions?

(No response.)

MS. ANDERSON: Mr. Smith and then Ms. Guerrero.

MR. SMITH: Thank you, Madam Chair and board members. My name is Rowan Smith. I'm from Houston, Texas. And I had one comment that I want to -- I do a lot of work down in the Rio Grande Valley, as you well know. I've been doing it for years.

The first thing I would like to say is that I think that the QAP in general this year has -- is a lot better than it was last year in one aspect in particular, and I think that a lot of the things that caused a lot of confusion last year have been removed.

And that's a good step in the right direction, and I want to commend you all for that. And I think that you'll see that this year they'll be a lot less confusion.

I know that a lot of people here have some further suggestions that I think make a lot of sense, like the rural suggestion.

But one of the things -- I don't know what -- as of today where it stands, but in some of the draft comments are -- the QAP that I read that -- on some

of these fees. The compliance fees of setting a fee per unit has been the trend -- been the rule for the past several years.

And down in the Rio Grande Valley where you have the lowest median incomes and therefore the lowest rents, when you set a fixed rate like \$25 a unit -- based on the amount of rent that you're charging -- are able to charge, that's a high dollar amount versus in Houston where you have twice the amount of rental income to pay that fixed fee.

So I've been saying this for several years, and I would like to say it again, and that is if you could use a percentage-of-rent concept to come up with the amount for your compliance-monitoring fees -- would be more fair to the lowest median-income areas of the state.

It's basically a burden. It's a tax burden when you have to pay -- it is kind of a high fee based on the small amount of rents that you're getting. We're paying the same as they are in Houston, and it's just not fair for these projects.

And as these -- energy prices have been increasing this year, I can just tell you that utility allowances are going to start going up in the next year and the following couple of years, and that's going to

increase the problems that we're going to have in meeting our debt-coverage ratios and debt service on these properties.

So if we could look at that issue, I think it would help those areas be more equal with the bigger areas. With that, that's all my comments.

MR. CONINE: Do you have any suggestions?

MR. SMITH: Well, I don't know. I was just thinking, you know, if you're going to make it \$25 a unit in -- there needs to be -- in Houston or in Dallas on the -- for the largest median-income area, take that as a percentage of that maximum median rent and use that same percentage down here.

MR. CONINE: You know, the only concept -- I understand where you're headed with the concept and can appreciate it, but I guess we also have the fiduciary responsibility to cover the cost of compliance within our own agency.

And to have a predictable stream of revenue coming in when say rents across the state would be going down because of market conditions is not one that, you know, I would want to put myself in. So how do you balance the two issues?

MR. SMITH: Well, you got to remember one

thing. Over the last two years, the average -- the tax-credit amounts that have been given to the state have doubled. We were around 24 million; now we're over 40. You're having more and more units come on every year. A lot more --

MR. CONINE: Which means we've got more and more staff people to make sure the compliance issues are dealt with.

MR. SMITH: But they're not monitoring every unit out there every year. They're only doing so many -- a certain percentage of them every year, because they just don't have the staff to do them all. So you're gaining more momentum based on the number of units that are being built, but you're still not monitoring them as -- on a percentage basis of what you're gaining.

MR. CONINE: Okay.

MR. SMITH: So your financial situation is still going to be very lucrative for the state to -- in order to be able to do something with it. But I don't think this would be a burden on the financing of the department.

MR. CONINE: Okay.

MR. SMITH: But maybe there's some --

MR. CONINE: I'm not sure I'd call it lucrative



either, but --

MR. SMITH: Well, I'm -- maybe that's the wrong choice of words.

MR. CONINE: I understand your concept. Thank you.

MR. SMITH: Okay.

MS. ANDERSON: Other questions?

(No response.)

MS. ANDERSON: Thank you, sir.

Ms. Guerrero, then Diana McIver and Barry Kahn next.

MS. GUERRERO: Thank you very much. My name is Debra Guerrero. I'm with the NRP group out of San Antonio, Texas, and I'm here to speak about item 2a, the QAP. And really, there's two important issues that I want to address today, one being HUBs and the other being ineligible building types.

And I understand the need for -- this is actually my first QAP that I've been involved in, and it is pretty complex, and I respect Ms. Carrington and the staff for handling the complexities and the technical aspects of the QAP.

But I know that you as a board are result-oriented, and we just need to make sure that the results

that you all have and the policies that are concerns of yours are not in any way hampered by the QAP -- and really specifically dealing with the HUBs.

I'm assuming and I'm hoping that the legislature and you as a board want to see substantial participation of historically underutilized businesses in these projects, and so I'm not sure that the original draft actually accomplishes that by requiring a 51 percent ownership.

If there is some kind of formula that can be created that will demonstrate substantial participation so that smaller, historically underutilized minority- and female-owned and small businesses can participate and get the experience they need in order to become a 51 percent general partner --

And then the added additions of the graduation rate of 500 units -- I'm not sure -- I'm sure we're not going in the right direction in that way. And so I would hope that as policy makes you would want to see a substantial participation and you would ask the staff to go back and look at how we can accomplish this other than what is stated.

With regard to the unit mix, I come from San Antonio, from South Texas, and I know I commented during

the comment period that one-bedroom-unit mixes in San Antonio are not as lucrative and marketable as they are maybe in Dallas and Houston.

And it was funny, because I was sitting in an urban-affairs meeting with city council just on Monday, and the councilwoman in one of the poorest districts in San Antonio on the west side asked, Why in your 4 percent deal are you putting one-bedroom units in so many of them?

And so she stated very clearly and concisely that families, single mothers with children -- those are the people that are needing the unit. That is the population that is in need of these types of units in San Antonio, of affordable units.

And so I would hope that we would not be penalized through the QAP because of our lack -- or our decision to put two-, three- and four-bedrooms instead of one-bedrooms in our projects. So again, I thank you very much for the opportunity to comment, and I hope that policy can win over process in this part. Thank you.

MS. ANDERSON: Ms. McIver.

MS. McIVER: Chair, board, my name is Diana McIver, and I'm pleased to provide comments on the QAP. First off, I wanted to say that I think that the board and staff has done an outstanding job in getting us to a QAP

that we think works.

I have a couple of comments though on some areas that I would like to suggest maybe some cleanup on.

One relates -- all of my comments relate to scoring, except a couple of technical corrections at the end. The first one deals with the rent level of units.

And I actually support the concept of encouraging some market-rate units in these by that 95 percent cap, but there are two development types that cannot technically meet that requirement. One is your scattered-site projects where the federal law prohibits them from having market-rate units, and the second is much more of a philosophy kind of argument, and that is transitional housing.

We're the developer for Seton Home Teen Moms, and there's absolutely no way we can find a market-rate teen mom to go into that project. So what I would request is that those two categories qualify for the full 12 points provided that they have met some low-income targeting requirements that are in Section -- or paragraph 3 of that section.

So as long as they are doing their best to have different income levels, then let those two groups have that 12 points without having the market-rate units. And

I actually, to make life easy today, provided some suggested language in your memo that accomplishes that, and I have also given it to staff, just in case you want to recommend that. Second issue is -- just in case.

MR. CONINE: You're about as subtle as a sledgehammer.

MS. McIVER: And moving right on to my favorite topic of exurban, I really -- I mean, I understand where we're going with exurban, but I do believe that by lumping it in with all of those other point categories that we're really not giving seven points to exurban.

And our problem area this year -- and this is not your fault, and it's not staff fault, but we have a QAP that is very oriented to big cities because of all the points it gives for my favorite topic of course, quantifiable community support, that you can only get from neighborhood organizations in big cities.

And then the other one is the points that you get for having local funds. Again, that only works in cities where you have HOME funds. So I really think we need to have some exurban points that have some meat in them.

And by combining them in development location, you're not getting that, because those very same projects

could also qualify for those points. So what I've also provided is some suggested language, in case you would like to take this recommendation, that basically takes those groups -- I think Barry Kahn is going to yield me some time.

Thanks, Barry.

MR. CONINE: I'll take that trade.

MS. McIVER: Thanks, Barry.

So basically what I'm asking is that that group -- everything be an either/or until you get to exurban, and then allow the exurban on top of the other categories to level that playing field.

Local political jurisdiction -- I really believe with the TAAHP comments that we need some kind of definition. At a minimum, we need to know whether a local housing trust, whether a council of governments, whether a housing authority are going to meet that definition.

Beyond that, there's a little bit of a technical correction. I think Brooke addressed part of it. But if you go back into the QAP other than just the staff comments, there's -- part a and part b probably both need that intent of -- to sign a certification of intent to apply for funding that the staff had brought up earlier.

But if you go back into the QAP section, there's confusion in part a, because it still says you have to have applied for it and then -- so I think we just need to clarify that particular section.

Sponsor characteristics, HUB -- basically I am a HUB. I really have -- as part of the working group, I have been opposed to points for HUBs. I think I'm a logical person to take that issue up. I don't think that being a special class makes your development any better.

And so I think that what we have done this year is go from something that was trying to get to a level of experience to avoid sham HUBs, and somehow out of that we came up rewarding inexperience. And that would be fine if we had something else like we did in the 2004 working group where we were actually giving points for experience, so that was an offset.

But I think it's just flat-out wrong for us to reward inexperience. I just -- you know, I think that the whole HUB -- if we could come up with something -- I just don't think we're there yet. And I know you've had a lot of testimony on that.

My recommendation, because we're not there, because we haven't figured out a good way to make the HUB points meaningful, is to use it as a tiebreaker. That way

you know you're down to the very best developments, and the HUB could be the tiebreaker -- to add that into a tiebreaker section.

Beyond that, I've got a couple of technical issues. One is on the small project size of 35, 36 units.

In staff comment it says we're taking that down to three points. But if you go into the QAP, it's still at five, so I'm assuming that's really a three.

There's -- needs to be maybe a little clarification there. It says if it's next to a project of greater size, but it seems like it should be equal to or greater size. I don't know about that clarification.

And then back into something really technical, in Section 49.5(a)(a)(e), there's a reference -- for example, a development -- this is that -- oh, I used Barry's time too. Anybody else out there? This is just technical. It basically is the one-mile rule, and it has an example that seems to be in conflict.

And I think that basically you just need to remove that example and, you know -- and things will go back to normal. So I can give you the section out of the book. And then that's really it, other than to put in another word for quantifiable community participation, the TAAHP comments, get that to civic organizations in areas



where there's not a neighborhood association.

And I know you've heard from me about 12 times this year so far on that, but I still support it. Thank you.

MS. ANDERSON: Thank you.

Questions?

(No response.)

MS. ANDERSON: We're going to take a ten-minute break, and we're really going to try to keep this to ten minutes. This is not our lunch break. We'll come back and have board discussion and have staff answer questions on QAP. Thank you.

(Whereupon, a short recess was taken.)

MS. ANDERSON: Okay. We have one more person who wants to give public comment, and then we'll close the public comment period.

Mr. Jimenez, if you'll come forward please.

MR. JIMENEZ: Board, thank you for letting me comment. Demetrio Jimenez with Tropicana Properties. I just want to quickly say that the way the HUB rule is written now doesn't penalize a minority start-up HUB as myself -- and I -- we fully support the way the rule's written now under the HUB. Thanks.

MS. ANDERSON: Okay. That is the conclusion of

public comment on the QAP rules. What is the board's pleasure?

MR. CONINE: Shall we get Brooke up here, and between she and Ms. Carrington we can get some questions answered. The -- let's start with the rural -- number of units. We seem to have dissension in the ranks as to how many really works and doesn't work.

We've been at 76 forever. Working group thought 96 might work, and then now coming back we've had more feedback that 96 doesn't work -- we go back to 76. And what -- staff's current opinion is to go back to 76. Is that correct?

MS. BOSTON: Yes, primarily based on the public comment that we got. The comment was received from Rural Rental Housing Association, and because they are the primary association that represents the rural developers -- then they requested that it go back to 76, we responded.

I definitely -- I'm very conscious of the fact that the working group had recommended 96. So I'm -- I guess I'm trying to say I'm kind of neutral on it. We were trying to accommodate the public comment, but --

MR. CONINE: If we approve the current recommendation of the staff, it'll be back at 76?

MS. BOSTON: Correct.

MR. CONINE: Okay. Let's talk about the -- this networking of internet, cable and -- cable TV and telephone, because I'm even a little confused on what we're trying to do myself and the home runs that it would require.

It is a -- it is now a threshold item as opposed to a scoring item. Is that correct?

MS. BOSTON: That's correct. It's threshold.

MR. CONINE: And what we're trying to do is to make sure that new construction units under the QAP are -- have high-speed internet access, something other --

MS. ANDERSON: Mr. Gonzales gives you your time, Mr. Conine.

MR. CONINE: Thank you, Vidal.

I can't wait to find out who did that.

We want them to have high-speed internet -- we want them to have internet access that's better than just getting it over a regular old phone line. Right?

MS. BOSTON: Correct. It's three networks --

MR. CONINE: And we want them to have access to cable or Direct TV or whatever the case may be. And what's the third one?

MS. BOSTON: It's that you'd have basically phone, cable and DSL.

MR. CONINE: But the home-run networking requirement would -- as the gentleman stated, I think, in his testimony, get the apartment owner or project owner in the business of the internet, and I don't think that's what we need to do.

At least that's my opinion. So in order to modify the language we currently have proposed that would eliminate the home-run but make sure we have phone, cable and internet, something greater than high-speed -- how can we change that language?

MS. BOSTON: I think you would just delete the clause that says networked from the unit back to a central location.

MR. CONINE: Okay.

MS. BOSTON: That's the part that seems to be the most contentious and that would cause the owner to need to kind of operate a system.

MR. CONINE: Was it John Wright that --

MR. WRIGHT: Yes.

MR. CONINE: -- testified -- would that take care of the problem as far you're concerned?

MR. WRIGHT: Yes, sir, it would.

MR. CONINE: Okay. I'm going to propose that as an amendment to the proposed QAP.

MR. SALINAS: I would second --

MR. CONINE: That's the way you want to do this, as we go through one by one?

MS. ANDERSON: That's fine.

MR. CONINE: Okay.

MS. ANDERSON: Discussion. I have a question about this. And, you know, this is new territory for us.

We also had some public comment with people concerned about the cost per unit of installing this, and I don't know if that cost is tied to the wiring back to the central location, if it lowers the cost dramatically if we eliminate the central-location requirement.

Mr. Wright?

MR. WRIGHT: Most providers will participate in the -- what they call a daisy chain going from building to building versus a campus where you bring it back to a certain location. And so the cost would be then part of putting in telephone and the other services so you go to the same, the whole business.

Under a campus situation, you've got different trenches. You've got to allocate space. It has to be air-conditioned 24 hours a day. Your internet agent has

to -- or tech has to be able to get in 24 -- when you get in that business. It's a big business.

MS. ANDERSON: So if we do this daisy-chain approach, then we have given cost relief to the developer. Or is it still \$1,200 a unit?

MR. WRIGHT: No, it would be much less than the --

MS. ANDERSON: Okay.

MR. WRIGHT: -- \$275 a unit because it would be part of other services.

MS. ANDERSON: Okay.

MR. WRIGHT: And yes, there probably would be some cost relief in that.

MS. ANDERSON: Okay.

MR. WRIGHT: But the main thing is it provides a much better service. And then the fellow talked about \$10. That's allows available in dialup. And I spoke with Time Warner, and they're starting to provide bulk rates. I mean, there's a lot of ways to resolve these issues.

MS. ANDERSON: Thank you.

You have a question?

MR. BOGANY: Not a question, just a comment. You know, when we were -- in today's world when you have kids coming home from school and the teachers out there

are spending all their time on the internet and requirement homework -- and I know with my own child I've got pages and pages of homework.

And if we don't have an internet access at my house, it makes it very hard for that child to do that homework. It's much more complicated now. And I've also seen the point of dialup services -- it's just not dialup.

If anybody's out there on the dialup mail, the broadband -- the bandwidth today is so -- it's so central that you have a broad bandwidth.

And I think we should give -- not one developer would build a new home out here today without putting these sort of items that we're asking to be put in here. And \$10 dialup -- that sounds good, but try getting on the dialup phone line and getting on the internet. You will be there forever.

And especially when you got kids downloading pictures and things of that nature, you can't get it through that type of width. And I'm okay with the suggestion Mr. Conine made, but I truly believe that we should be giving these children an opportunity to have the same as somebody living in a home.

And if their parents choose to pay for it, I would hope developers would try to work something out to

get them a cheaper cost or whatever. But I truly believe we should put these in. And I'm okay with -- myself personally with not having a home-run system, but just to say we don't and we can do a dialup system -- dialup is not it anymore. It really, truly is not.

And I think we ought to give these children an opportunity to be on the same level playing field as some parent that lives in a home, and I think that's truly what makes it be a home.

MS. ANDERSON: Any other discussion on the amendment?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Okay. Brooke, we had some discussion on the signage, I think, on the tax-exempt bond deals and a couple of testimonies related to that. I'm trying to remember -- I know we wanted -- we were saying we wanted the date and time of the TEFRA hearing on the



sign, and that seems to be tough to do under the 14-day rule. How -- what would staff recommend in that regard?

MS. BOSTON: We require it of our applicants who use us as an issuer, so we were just trying to make it equal for local issuers as well.

MR. CONINE: Well, I want to be consistent between what we're doing and what the locals have to do. I mean -- so we require 14 days under our --

MS. BOSTON: Right. We were already doing this for ours, and it worked fine last year. And I think one of the comment -- is saying is that they set their TEFRAS up differently, and they don't do as much advance notice as we do, and so this is more of an imposition.

MR. BOGANY: I'll make a comment. Brooke, what would be the disadvantage of taking it from 14 days to 30 days?

MS. BOSTON: It's just the sign is out for less time. That's the only difference. There's just like less notice to the neighborhood.

MR. BOGANY: Didn't TAAHP say they preferred a 30-day deal? Because I know if you go to signage company and print just black-and-white lettering, you can do it fairly quickly; but if you start trying to get a beautified -- something that doesn't be so obvious of a

red flag, it may take a little bit longer to put that sign together.

And so -- and if -- what I heard from the development community -- they want a little bit more time to be able to put that sign out and get the right-looking sign on there. And is it anything wrong with saying, For more information call this number? We're not -- are we not meeting any guideline if we said that?

MS. BOSTON: I think it would be an either/or. Maybe they would do the 14 days and then just say, For more information call, because then they could get it up more quickly. The primary thing, I think, was that they didn't have the information about the TEFRA hearing within 14 days of the reservation.

The flip side is if you want to give them 30 days, then I don't think -- they should be able to put the hearing information up at that point.

MR. BOGANY: Is TAAHP -- what is TAAHP requesting?

MR. CONINE: They wanted 30 days without the TEFRA hearing on there, I think, but just like for more information.

MR. BOGANY: Okay.

MR. CONINE: Now, Jim -- where's Mr.

Shaw -- you were saying that -- come back and tell me what you said.

MR. SHAW: The --

MR. CONINE: With the microphone.

MS. ANDERSON: We need you all -- if we ask you questions, if you all would come to the microphone, because we need to pick it up for the transcript. Thank you.

MR. SHAW: I'm Jim Shaw. My point is the signage issue is one thing, but I think the TEFRA's a separate issue. We manage that TEFRA hearing as part of our process of overall management of the transaction, and that is frankly one of the hammers we have over the developer.

And there are certain things I want to see in this transaction before I ever go to schedule a TEFRA hearing. It may vary from transaction to transaction. It may be site issues; it may be my review of the engineering and drainage plans; it may be architectural plans; it may be third-party reports; it may be any number of things.

But the point is that's one of the hammers that we hold over the developer, and we don't issue -- we don't schedule a TEFRA hearing until certain milestones have been met and I'm comfortable that everybody's on board and

we're ready to go do the transaction.

And we do tend to schedule those TEFRA hearings in conjunction with our board meetings so our bond counsel and everybody can be here for the hearings. We publish -- as you'll see in the letter, we publish in the American Statesman, because it's a publication of general circulation in the area. We also publish in all the local newspapers.

As I said earlier, I don't necessarily have a problem with putting the TEFRA information in the sign, but let's make that consistent with the federal TEFRA requirements. When we publish it in the paper, we can put it on the sign at that point.

MS. ANDERSON: Yes. I think -- my view is I want to try to do what works for you all, but I do want -- we have had a -- sort of a belief expressed on this board that signage is a more effective means of public notification than putting a legal notice in the newspaper.

So perhaps that -- what you just proposed is a way out of this.

MR. SHAW: There's no reason you couldn't do the sign and just have an add-on part. When we schedule the hearing, we come back and put something on the sign

that says, you know, time, place and so forth, and put the issuer's contact information on there.

If people have questions about the transaction, you'd probably just as soon they called me rather than you. So -- and that's fine. That's really what we want to do, because we do work hand in glove with the neighborhood groups and the local authorities, the taxing entities who work on these transactions.

So to me, that's -- I think that would be consistent with the federal requirements for TEFRA and would still achieve the goal of additional notification.

MR. CONINE: But then would -- if we did what he's suggesting, wouldn't we still have two sets of -- different sets of requirements the way it's currently drafted or not?

MS. BOSTON: Or you could allow it that for both issuers, both local and ours, that they just do the TEFRA as an add-on. I mean, you can make it for both.

MR. CONINE: I'm okay with that.

MS. ANDERSON: I am too.

MR. CONINE: Okay. So we go with 30 days, and we do the add-on for the hearing date for both state issues as well as local issuers. Anything else? I'll make that a motion to amend.

MR. BOGANY: Second.

MS. ANDERSON: Any other discussion on that item -- on that amendment?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Brooke, I'm really confused -- which doesn't -- probably doesn't surprise too many people -- on this level of -- the rent level of the units and the points and the market rates. We had testimony going both directions, and I -- what are your current thoughts now after hearing the testimony, I guess would be the best question to ask.

MS. CARRINGTON: Ms. Boston, would you reference the page number of either the memo or the QAP, please?

MS. BOSTON: It's page 39 of the QAP. I guess to just kind of summarize, the -- we got substantial comment indicating that they did not like the way we had

proposed it initially, which was going 10 percent below the original rent levels that would have been shown, and so there was concurrence almost unilaterally from the public that that should be taken out.

Unfortunately, we didn't get very much comment of what to do instead. And the -- pretty much the one comment we did get is what we went with and is the proposal that you see with a few tweaks. I definitely think that Bob Voelker's comments are very germane.

And I think that to keep the exhibit drafted as it is in terms of the language but flip the points so that you're giving the greater points for doing more market rate definitely make sense. And we just didn't -- we didn't have any comment like that that came in during public-comment time so --

MR. CONINE: Bob, could you come back up and --

MS. CARRINGTON: And what about adding the ranges --

MS. BOSTON: That's definitely a clarification we need to do.

MR. VOELKER: Yes, sir.

MR. CONINE: Okay. Could -- given those two comments, can you structure some -- a proposal that --

MR. VOELKER: Exactly what she says. Just take the points and start with less points for doing 5 percent market-rate units and then tier it back the other direction so you get more points when you're -- to doing 20 percent market.

MR. CONINE: And what sort of range do you think that we need in order to get these unit mixes right?

MS. BOSTON: Instead of just saying if 90 percent of the units are, you'd actually say if 86 to 90 percent, because right now we just have a number, and we don't quite say how that --

MR. CONINE: Okay.

MS. BOSTON: -- fits into the next tier.

MR. VOELKER: Actually, to make it clearer, it should say, If you do more than 90 percent but not greater than -- but 95 percent or less. You need to have it stated that way. Because you could have 89.5, and then you get into these weird things of where are you so --

MS. BOSTON: So we would word it so that it's definitely a clear bracket.

MR. CONINE: I move to amend.

MR. BOGANY: So moved.

MS. ANDERSON: We have a motion to second.

Discussion on the amendment?



(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Amendment carries.

MR. CONINE: Let's talk about HUBs for a minute, because we -- again, we got testimony both ways there. Last year we gave no points for HUBs. Is that correct?

MS. BOSTON: No. Last year we had points for HUBs.

MR. CONINE: We did. Okay. And we've gone from not having any points for HUBs to keeping them in there. Do we have any evidence either, you know, within what we see come across our desk -- that historically underutilized businesses would not participate in a tax-credit round or a bond round if they didn't get points for it, or have we seen -- continued to see the increase of their participation grow over time?

MS. BOSTON: I don't know if I can give you a solid answer. I mean, I can say that we continue every

year to have people get the points, which I guess means we're continuing to see that participation. Would they apply if the points weren't there? I don't know.

I would presume so, because, you know, these are people who tend to be tax-credit developers, but I can't speak for them.

MR. BOGANY: I have a comment.

MS. ANDERSON: Would you -- go ahead. I'm sorry, Mr. Bogany.

MR. BOGANY: I have a comment.

MS. ANDERSON: Go ahead.

MR. BOGANY: Okay. Brooke, you know, a couple of years ago this came up, and this same group of people seem to bring it up every year. But you -- we did -- you came up and you gave me a study of how many people or minorities that had actually gotten deals or the deals we gave out.

It was very few, I mean 5 percent of all the money that we gave out. Okay. And I think what I've heard is people not really understanding what historically underutilized business means. And what that means is that if you've not had an opportunity and nobody's ever given you a shot of getting in to do one of these tax-credit programs -- they are very complicated.

And what HUBs means is that if you're underutilized and -- I'm not going to make that comment. But I'll just say that if I went out and looked at the developers and who all on their team -- you could see an opportunity for somebody to be historically underutilized that would be on that particular team.

Their governor said -- I've been to meetings that he's been at saying that he believes in historical underutilized businesses getting an opportunity to participate in this economy, and he's gone out and made it a particular point that he wants that done.

We have historical underutilized businesses getting contracts for the state of Texas. And so my thought process is that this year -- in 2003 it moved from a little 5 percent -- it really went up. We got -- a lot of underutilized businesses got tax credits this year.

I personally believe that it should be a graduated program. It should be out -- if you've gotten projects and you've had some experience, I don't think you should continue to get points. But to sit here and say that two little points is going to keep someone from getting the HUB points -- that graduate into this program.

We did it. And we had some comments that, Oh, we're now getting people an opportunity that have very

little experience. That's what historical underutilized businesses have to do with is getting people who are not having experience.

I don't know. I could feel more with the working group and with their thoughts if they'd give me a solution to the problem. And all I've ever gotten from them, Well, we don't like it. But I've never seen at one time them give us a solution to the problem.

I feel that businesses, minority business should be given an opportunity. Once they get in there and they have 500 units or 300 units or whatever it may be, they graduate. It is not something that you sit on forever.

You come in; you get the experience; then you move on. And the 51 percent -- I'm all for that, because a person who got 49 percent can easily guarantee that 51 percent loan in that process. So I don't see that as being a real big issue out there.

I truly believe if we -- until we improve it -- and we've had complaints that people are being shammed. I've read that in some of these comments that you've got sham HUBs out there. We're trying to fix this, but it's been a work in progress.

We've been tweaking it and tweaking it. But if

everybody in this room thinks that everything is fair right here, it ain't. Okay. And I'm here to tell you it's not. And so we need an opportunity to get these businesses an opportunity to be able to get some of these HUB points.

And I'm all for these HUB points. I think -- I mean, I am seeing progress.

Beth, I just -- and Edwina, it's just not there yet. But we -- if we look at 2002 to 2003, you will see -- and 2004 -- you can see it getting better.

It truly has been -- the HUBs have been working, because we're getting more people involved. And -- but I believe in graduation. I don't think should be an ever loving deal. I think you should get it and move on.

MS. BOSTON: And if I could also make a point for clarification. In the comment about experience, our experience threshold in the QAP is the same for all applicants, and so whether a HUB or not, every applicant has to at least meet our threshold of experience. So we don't waive that.

MS. ANDERSON: What is your viewpoint on the proposed enhancement to the definition of developed, so we say develop more than 500 units -- that that would be

units placed in service prior to January 1, 2005?

MS. BOSTON: I guess my only comment is it's not always easy for the agency to track placement and service. We can track when 8609s have been issued, but --

MS. ANDERSON: And how far after placement and service is that, Mr. Gouris?

MS. BOSTON: It's all relative. It depends on how quickly we get the cost cert processed, actually, and whether it's been submitted completely. Because some people may place and service but not send their cost cert in -- we wouldn't know, and so that would be a hard spectrum to measure. I mean, perhaps --

MS. ANDERSON: Well, how do you intend to define the 500 units developed, then?

MS. BOSTON: I mean, I'm comfortable with defining it as 8609 or defining it as carryover or having an award. I mean, it's a great point that we do need to define it, because it wasn't specified.

MR. CONINE: The 500 units bothers me a little bit too, and I -- because if you've got a guy out in rural Texas and they've done three deals, they're experienced, you know? And that's 210 units or whatever it is. So I'm with Shad on the graduation, you know.

You go through graduation of ceremony, and you've won. Is -- if we took his concept, and this -- let's just say three deals in three successive -- well, three deals, and then if you get them all in one year or whatever --

As an example, it is -- is it going to be easy for the agency to identify that HUB if that HUB then change their name, you know, the fourth year or the fourth project? Is it -- because that's -- it's the -- as he said, the sham HUBs that I think we are trying to figure out a way to do something about --

Is that going to be something that the agency can easily track or do?

MS. BOSTON: I hope. I think because we're going -- it's my understanding that the way the HUBs are issued is that it's based on an individual, and so that would be the person who ends up being the principal. And because we can track in our system based on individuals, I think they would pop up.

And actually, -- Joe can correct me if I'm wrong, but, I mean, if we had an individual who was identified as the principle behind the HUB, we could put that person in the system and --

MS. S. ANDERSON: That is correct.

MS. BOSTON: Okay. So hopefully, even if they've changed their entity we would be able to track by the principal of the entity.

MR. BOGANY: I have a comment for Brooke. Brooke, what would be the best way for somebody who was doing HUB out in the rural community? Because, you know, Mr. Conine is correct. You know, 500 units -- you're out doing rural and you're doing three. Would it be better to give -- they've had three projects or four projects or -- projects versus the units?

MS. BOSTON: Either way. The way we handle it with the experience is we have a lower threshold of experience for a rural, so you could just scale it back. I mean, the 500 units in a metro area may just be two deals. So --

MR. CONINE: But once you've been through the process of applications, syndicating, constructing, borrowing, renting and so forth twice, you're experienced. Because the first time you're going to make a mistake; the second time you've learned your lesson, hopefully.

And so I guess I would lean in the two-project category but then graduate them, using Mr. Bogany's language, to get them out of there. And that way we would continue to bring new historically underutilized



businesses into the participation round, which I think accomplishes what you're trying to do or what we'd like to see happen.

Does that -- what would be your reaction to that versus the 500 units?

MS. BOSTON: That's doable.

MR. CONINE: Well, do we have any lenders in the audience that can comment on the 51 percent/49 percent guarantee issue? Because I think that's something I'd like to hear, what the lender -- practical side of the lender side of this is.

MS. TERRI ANDERSON: Good morning. I'm Terri Anderson. How are you all doing?

MR. CONINE: Good to see you.

MS. TERRI ANDERSON: Good to see you also. As a lender, basically what you look for, whether it's a Fannie Mae or an FHA transaction, from a guarantee perspective, anyone who owns greater than 20 percent in any transaction is considered a key principle in a deal.

If you have a HUB that owns 51 percent of the property, you're not necessarily only going to look to them for any guarantees from a lending perspective. You'll also look at their 49 percent partner or anyone who owns greater than 20 percent.

So any individual, regardless or irrespective of their percentage in ownership -- as long as it exceeds 20 percent, they can meet the minimum threshold requirements for liquidity, et cetera.

MR. CONINE: Okay.

MS. TERRI ANDERSON: And net worth.

MS. ANDERSON: Ms. Groneck has a witness affirmation in front of you to fill out. Thank you very much.

MR. CONINE: So I guess the real question is then -- is where did we come up with the 51 percent? Is that something we've just done historically or --

MS. BOSTON: No. Actually, that's new. We have always historically just said materially participates. And in one of our efforts to try and get around the concept of the perceived abuses -- it was to say, you know, this can't just be someone who has a 10 percent interest and is someone's spouse or daughter or --

So we thought by making it 51 percent, they're going to have to be like a legitimate person that people really believe is an active participant in the development. So it was to try to get around the perceived abuses. And it was supported in public comment.

MS. ANDERSON: We heard supportive public comment on it this morning also. Well, we heard both sides.

MS. BOSTON: And opposing.

MR. CONINE: I'm going to move to strike the 500 units and go to the two-project graduation rule.

MR. SALINAS: I would go ahead and second his --

MS. ANDERSON: The motion to amendment has been seconded. Anymore discussion on the amendment?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Somebody else can go if they have a question.

MR. BOGANY: I'm going to tackle two issues. The first one is the -- having a developer determine what their mix is going to be in the project. And I know we've tried -- and I've supported this every time -- that we

feel that we need to have some one-bedroom units there, but I also -- you know, in certain areas I know two-bedroom units and three- and four- and whatever is more appropriate.

And I think if a developer's going out on the line to -- with a project, they should determine their own destiny by -- because they know based on their market study what the area needs.

I notice also, Brooke, that when I've gone to units where I had a one-bedroom unit that was priced at 680, and for \$50 more you could get a two-bedroom unit, and then you have somebody wanting to get a roommate so they could get the two-bedroom unit --

And it just seems as though the concept of what we're trying to do is make sure that there's some ones out there, but we're kind of losing sight that if I'm down in the Valley, a one-bedroom may not do me enough good. And it looks as though -- what would be the ramifications if we gave the developer an opportunity to do that or put restrictions in urban area where one-bedrooms may be a little bit more needed versus bringing them in the rural area?

What if we divided it out? I mean, I'm throwing this out because this seems to be a big concern

of a lot of developers about having the mix.

MS. BOSTON: I think there's a lot of comment that would support your idea.

MR. CONINE: Let me answer for her, if I might. I -- first off, there's been a little bit of jaded testimony toward the subject that we've heard today. One, market studies don't take an entire community and establish what the needs are for that community.

What they do is they take a proposed project and inject it into that community and say, Will it work or not, based on certain characteristics. So we don't really know what the submarket really is. All we know is whether or not that proposed project will work.

And I think the goal of the affordable-housing mission of Texas should make sure that all classes of individuals are taken care of when it comes to us putting projects around the state for affordable housing. I don't know of a community in the state of Texas that doesn't have single people in it. I really don't.

And to have a minimum requirement of 20 percent of a project to be one-bedrooms is not that sacrificial, and it protects a class of people that otherwise might not be protected. And some of the reasons for two-, three- and, you know, in the old days, four-bedrooms might not

have been totally market-driven.

They might have been driven by the amount of credit you can get, the basis going up in the project, and not necessarily market-driven. So for that reason, I've been -- you know, I've tried to create flexibility. One-bedrooms can be anywhere from 20 to 60 or 65 percent -- I can't remember what it is -- of the project depending on what market you're going in.

But -- so that you can have more two- and three-bedrooms if it -- if family or Valley or West Texas or wherever the case might be applicable. But it also says, Hey, you know, we do recognize that half of our citizenry of Texas is not married and might just want a single unit somewhere.

And to have a bunch of projects with just two- and three-bedrooms in my opinion's irresponsible.

MR. BOGANY: Well, I would probably -- and I'm just thinking, Mr. Conine, that -- how do we deal with -- if I'm doing a project down in the Valley, and then I've got a rule that says that if I have a female child over five -- and if I've got one bedroom for that person, and then I've got three or four boys that are over five, and I'm putting them all in one unit, a one-bedroom, and then that one-bedroom just has that one single female

in it --

And it seems to me as though we ought to have some more flexibility in regards to the one-bedrooms. Maybe it should be -- maybe the threshold maybe should be lowered from 20 percent to maybe 10 percent. I can't believe that in the Valley -- and I agree with -- there are probably single people that need a unit there.

But I would also believe that if I put out a unit, those two-bedrooms and threes are going to lease quicker than that one-bedroom down in the Valley. But in Houston, the single may be -- may lease even faster, the one-bedrooms.

Where -- looking from a developer's side, what I've seen is that if I go out to a one-bedroom and pay 680 and the two-bedroom is 725, that tells me that the developer's trying to make this work, and he's jumped the price all the way up.

And it's -- I don't know. I just -- it just seems weird to pay 685 when I can get a two-bedroom for \$40 more.

MR. CONINE: The subject came up a little earlier in the discussion, and you'd probably be interested to know that we have more vacancies in our two-bedroom stock across the state than we do in our one-

bedroom stock.

MR. BOGANY: Okay.

MR. CONINE: Because I happened to ask our portfolio managers, and we got -- and we get reports on that. So the evidence is not there to support what we're hearing.

MR. BOGANY: Okay.

MR. CONINE: It's just not.

MR. BOGANY: Well, I'm all for -- one for evidence. My second point, and this has to do with the --

MR. CONINE: Plus the fact -- let me -- I'll just say one other thing. It seems like we're still getting a lot of projects submitted for bond deals and 9 percent credit deals. I haven't seen a diminution of projects coming in for approval.

MR. BOGANY: Okay.

MR. CONINE: And it seems to be working. I -- you know, I talk to these guys all the time. And sure; I hear a little bit of the agitation, but the bottom line is, Yes, we can still make it work.

MR. BOGANY: Okay. My second point, Ms. Chairman, is the -- and I guess I'm going to ask for some help from Ms. Carrington on this. The \$25 a unit



compliance fee -- it just makes sense to me that we ought to do that on a percentage or base it on the population of a certain area.

And it just makes good sense that if somebody's down in the Valley with much lower rents paying the same amount as someone in Houston or Dallas or whatever -- is there any way we can stay profitable and stay aboveboard in this and give the people that have lower percentage rents a lesser cost on compliance units?

MS. CARRINGTON: We certainly recognize the argument that Mr. Smith made about properties that have lower rents. It's more of a hardship on those properties.

My comment back would be that it costs us no less as an agency to monitor a property in the Valley than it does a property in Dallas or in Houston where the rents are higher.

So from an agency-cost standpoint, our costs are going to be the same, because we're going to treat all of those units the same regardless of where they're located. However, we are certainly, as an agency, sympathetic to the issue and the concern.

MR. CONINE: What was the answer? You wanted to leave the flat fee is probably what you -- was your answer.

MR. SALINAS: But let me give you an example. If you buy gasoline in the city of Austin, it's probably \$1.90 a day. If you go to the Valley, it's \$1.76. Now, I've never been able to understand that, but it's -- you find higher gasoline prices in San Antonio -- in the Valley -- I mean in Austin and the rest of the state.

But you'd always find cheaper gasoline in the Valley, but it would cost you more to get it over there. Now, I think, simply because of the income back -- and I think it makes a lot of sense that you all would kind of work in trying to bring that cost maybe --

MS. ANDERSON: But I think also you have to consider that to do so would cost-shift to, you know, urban and exurban developers that are not in those areas. So -- you know, so you -- I sort of have an equity concern about that.

MR. SALINAS: Is the rent structure less over there than here?

MR. CONINE: Because the median incomes are less in South Texas counties as opposed to urban counties, I still have some sympathy for what Mr. Smith put forward. Let me ask you this, because it's going to be too complicated to figure it out here today:

Can we add some language where this board could

consider an adjustment to that compliance fee in the year 2005 or its subsequent meetings so that we can have a little more time to study it and deal with it? You can't add a phrase that says, Or anything else the board decides to --

MS. CARRINGTON: Ms. Phillips, would you maybe come up and -- oh, okay; Mr. Wittmayer, are you going to address that?

MR. CONINE: That way we don't have to wait a full year for --

MR. WITTMAYER: Chris Wittmayer. The general counsel will be -- will require you to submit the QAP to the governor for his approval, and I don't know that we could have kind of a blank in it when we do that. We -- one option would be to consider this issue for next year, study it and see what we might do next --

MS. ANDERSON: Why do they have to be in the QAP and not in the compliance rules where we could then -- you know, we could amend the rules next month so that you get it out of the governor's signature and all that stuff.

MR. WITTMAYER: We decided this year to also forward the compliance rules and the underwriting rules to the governor for approval.

MS. ANDERSON: Well, but that -- you didn't answer my question. If you get them moved out of the QAP into the compliance rules, and the governor approves all of them next month, what would prohibit -- is there a prohibition against this board taking action in two or three months to amend and put up for public comment amended compliance rules? Is there a prohibition, statutory or whatever?

MR. WITTMAYER: The only issue would be whether or not -- what action we would take vis-a-vis the governor's approval of that amendment.

MS. ANDERSON: Well, we're not providing the various rules to the governor because we have a statutory obligation to do so. We are providing it -- it's more than a convenience, but -- I mean, I think his signature on the QAP is statutorily mandated.

MR. WITTMAYER: Correct.

MS. ANDERSON: And the legal threshold on the rules is a little different. We're giving them to him for more than convenience or courtesy, but I -- does it have the same statutory weight? Is there a prohibition on doing what Mr. Conine suggests? Taking a look at --

MR. CONINE: Well, he -- really, he didn't answer my question either. My question was can you add

language in here to give us the flexibility to change later on in the year. Or maybe the better question is we can amend the -- this board can amend this QAP at any time during the course of the year, can we not?

MS. ANDERSON: We did last year.

MR. WITTMAYER: We amended it because we were required to by the AG opinion. It raises an issue about the status of the governor's approval, which is required by statute.

MR. CONINE: Well, we'd send a -- if we amended the QAP, we can send it over for his approval. And we could also vote to make it subject to his approval on any amendment, could we not?

MS. ANDERSON: That's why I'm thinking getting it out of the QAP and getting it into the compliance rules puts us in a different legal threshold, and that's the cleaner way to handle it. We're not demanding his signature on the compliance rules. The legislature doesn't demand his signature on the compliance rules.

MS. CARRINGTON: And this, for the board's information, is on page 73 of the QAP. This is the section where we address the compliance-monitoring fee. It's in the section of all of our other fees, and it's item G at the top of the page.

MR. CONINE: Would you like a few minutes to huddle and think about this and come back?

MR. WITTMAYER: Okay.

MS. ANDERSON: Okay. Yes. They are saying yes, they would.

MR. CONINE: We would like a suggestion from you on how we can amend either the QAP -- how we can amend the compliance fee, either in the QAP or in the rules, at some later meeting after further study, and to be totally copacetic about doing it.

MR. WITTMAYER: Okay.

MR. CONINE: That's what we need a suggestion for.

MR. WITTMAYER: Yes, sir.

MS. ANDERSON: Thank you.

I have sort of a suggestion that is really a correction of an action that I took in -- I think it was September when we voted the draft rules. And in response to public comment at the draft-rule stage, I moved and the board approved that we put back in the negative points for negative site characteristics.

However, when I did that, I inadvertently put in -- put back in negative points for being within 300 feet or yards or something of an interstate highway

system, which the QAP working group had determined was not a negative site characteristic.

And so I move to amend this QAP to take -- to remove the 300 feet by an interstate highway system -- that would no longer be subject to negative site-location characteristics.

MR. BOGANY: So moved.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Amendment carries.

MR. CONINE: Brooke, it's evident by, you know, the way we've structured our point system that we would like to encourage the development community this year to try to do -- put more of credits into rehabilitation of projects instead of new construction.

I think it -- you know, you could argue, even though my builder friends in the audience will kill me,

that we've got plenty of new construction around the state. The markets are soft virtually everywhere.

So we want to try to encourage more projects submitted that would take an older project -- not an at-risk project; this is totally separate and apart -- but take an older project that maybe was built in the '60s or '70s or '50s or whatever and see if we can rehab it to affordable-housing standards.

One of my concerns is this -- is the paragraph on, I think, page 25 of the QAP dealing with the application of the 504 standards as it relates to rehab. And I guess creating the two scenarios and bringing them into the agency and so forth, wouldn't it be simpler if we just left the compliance of the 504 application to the sponsor and the architect and engineer and so forth with the projects rather than us trying to go through the two different scenarios? Wouldn't it be a little easier thing to do?

MS. BOSTON: Yes. It would be simpler.

MR. CONINE: It would create a whole lot of stress -- less stress on our employees, I think, and still create the onus on the sponsor and professionals with the project to be in compliance with 504. So I guess I would move to strike that language on page 25 that deals with



the two scenarios.

MR. GORDON: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote.

MR. CONINE: Hang on. Does that do what I think I'm trying to do? I don't want to miss anything here.

MR. GORDON: I have one comment. I think -- there's -- the 504 -- I think there was some issue about whether or not the 504 would cover town homes or something, and so there could be -- if you just said you have to comply with 504, there could be -- I'm not saying it's a loophole, but you wouldn't cover a class of property that you may intend the 504 rules to apply to.

But just by definition, they exclude town homes. Is that kind of --

MS. BOSTON: I think if you propose to delete everything that we've added as new language, that would also capture your concern, because the town home language we actually hadn't touched, and it would stay in there.

MR. GORDON: Okay.

MS. BOSTON: So it would keep that in, but you would be deleting all of our new -- added clarification, and it would go back to just saying 504.

MS. ANDERSON: Developer does the certification, and that's --

MR. SALINAS: Are you talking about old projects --

MR. CONINE: Yes, some older projects.

MR. SALINAS: -- that housing authorities would build back in --

MR. CONINE: You know, I think if -- Mayor, if you were on the city council there in your town and a new tax-credit project would come into an area of town and fix and rehab some of those units that are sitting around, you're going to be a little more happier probably with us as a state agency than maybe if we'd built new projects.

MR. SALINAS: Well, the reason I'm asking is because they're all over the Valley. I mean --

MR. CONINE: There's plenty of opportunities.

MR. SALINAS: Those were built back in the '60s. Edinburg has a bunch of them. All the way to the Valley -- the old housing authorities needs to rehab. So this would indicate the private developers to go in and help and get them done.

And I'm sure you're going to get called, and I'm sure cities are going to be asking us to help.

MR. CONINE: I think the motion's on the table.

MS. ANDERSON: Yes, it is. Other discussion on the motion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: The -- Ms. McIver talked about the exurban points and the -- kind of a weakening. Can we address that issue just for a minute? Can you -- maybe just a -- give us your viewpoint on that?

MS. BOSTON: I think it's an excellent point. She's correct. Last year we had had it in that list but had said you could get that in addition to the other items, and this year as we were putting it back in we didn't clarify that.

She's right that right now the way it's crafted the exurban points essentially would only kind of net you

three points, because if you could have gotten one of the other four points, then you really only get the additional three. And so I think it's a very valid comment.

MR. CONINE: So are you okay with her language that she proposed in her not-so-subtle way?

MS. BOSTON: Yes.

MR. CONINE: Move for adoption -- or amendment; excuse me.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

Given the hour and the fact that the hot line closes in the cafeteria at one o'clock, we are going to take our lunch break now, and then we're going to come back and finish the amendments to the QAP and vote on it.

I'm sorry that's sort of the way the timing breaks.

And we're also going to make -- probably after

we -- we'll probably also adjust some -- the order of some of the agenda items. I think we ought to try to be back at 1:30. Thank you.

(Whereupon, the meeting was recessed for lunch to reconvene at 1:30 the same day, Friday, November 12, 2004.)

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

MS. ANDERSON: We were discussing the exurban points. Okay. I think my motion would be to break out exurban points as its own scoring category with seven points and remove paragraph i from the development-site-location section so that you just -- you have all the remaining stuff left under development site, which you either get four or seven points for, and then we have a separate category for exurban points worth seven points.

MR. BOGANY: So moved.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Amendment carries.

MR. BOGANY: I have a question of Brooke.

MS. ANDERSON: Yes.

MR. BOGANY: Brooke, in the neighborhood -- and I wanted to deal with this in the QAP to see if we

could -- and now, when we get in these rural counties and they don't have neighborhood organizations and things of that nature, is there any way in the QAP to have -- where if you're in a rural county that a Lion's Club or any of these other groups that cover the whole county because of the size of the county could be considered neighborhood groups?

Is there a legislative reason we can't do that in rural areas?

MS. CARRINGTON: Either one of us can answer that question.

MR. BOGANY: Okay.

MS. CARRINGTON: In our reading of the statute, a Lion's Club, a Kiwanis Club, a Boys and Girls Club, a Rotary Club does not meet the definition of neighborhood organization.

MR. BOGANY: Okay.

MS. CARRINGTON: So again, while we're sympathetic, we don't believe it meets the statutory definition.

MR. BOGANY: Okay. So what happens with a county -- so in other words, it has to be changed in the legislative -- in the next session for us to make a change there.

MS. BOSTON: Well -- and I do think the one option -- and I think we talked about this at the September board meeting as well -- would be to make a separate item that's below the 9, somewhere under there, that you don't call neighborhood organization; you don't call it QCP -- and is support from civic organizations.

And you give it, you know, three points or four points or six points. And indeed, something like that might count as long as you don't try and kind of muddy the water and make it be related to QCP at all, which is --

MR. BOGANY: Okay.

MS. BOSTON: -- truly legislative. I think that would be the alternative.

MS. CARRINGTON: And I think the difficulty that we also identified with that is we have worked very hard to only have our points -- point items in the QAP be those that are statutorily required, either through our legislation or through Section 42 of the Internal Revenue Code, and that this would be inserting something else.

And so that would deviate from the philosophy that we've taken this year.

MR. BOGANY: Okay.

MS. ANDERSON: I have a question, Brooke. In Ms. McIver's memorandum -- I don't think we dealt with



this -- on rent levels where she's talking about scattered-site housing and transitional housing and, you know --

MR. CONINE: Exempting.

MS. ANDERSON: -- exempting those -- still giving points if they have low-income targeting, even though they don't have market-rate units. Would you comment on that item?

MS. BOSTON: I think it's definitely a very valid comment, particularly related to the scattered-site, because that is federally legislated that they cannot do market-rate, and I think for them to try and be competitive -- I think it's a very good argument.

And transitional -- even though that's not legislated, I could see that generally you wouldn't have those have market-rate units. So I think it's a very good comment.

MS. ANDERSON: And are you comfortable with the suggested language in her memorandum?

MS. BOSTON: I actually thought it was a little wordy, no offense.

MR. CONINE: Where'd she go?

MS. ANDERSON: Where'd she go? I think she's back there. Oh, there she is in the corner.

MS. BOSTON: I think you could just take the salient sentence as, Developments that are scattered-site or transitional will receive the full 12 points provided that they have received points under paragraph 3 of the subsection. And I think the sentence before and after that are somewhat unnecessarily.

MR. CONINE: So move.

MR. BOGANY: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: She also mentioned in her testimony, but it's not in the written memo here, something about the one-mile rule and examples used. Do we need to -- what do we need to do on that?

MS. BOSTON: I think that would be an excellent correction. We -- in the one-mile three-year rule -- let me find it real quick. It is on page 11 of the QAP, and

in paragraph e of that we give an example where we give kind of an age difference.

We say, For example, a development whose credits were approved on such-and-such a day could have another deal within three miles by another date. And actually, the example only addresses kind of the age of the existing deal. It doesn't address the age of the application, which has -- is tied to the application round.

So I think it's correct to delete the "for example" sentence, and I think the remaining language is fine.

MR. CONINE: So move.

MR. BOGANY: Second.

MS. ANDERSON: Discussions.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Counselor, do we have any language

on our compliance-fee issue? Counselor?

MS. ANDERSON: Maybe Ms. Phillips might --

MR. CONINE: No. If I wanted Ms. Carrington to answer, I would ask Ms. Carrington. I do what my legal counsel tells me.

MR. WITTMAYER: Chris Wittmayer. We could have a more candid discussion on this issue if we went into executive session. There are statutory constraints concerning the board's required approval of the QAP by November 15 and the governor's approval by December 1, along with the required rule-making procedures concerning public comment and the minimum 30 days.

So one option that the board could take if you'd want to consider a percentage fee would be to approve the QAP without any change; then consider whether or not as a policy matter it would want to go to a percentage-fee basis; and then consider an amendment to the QAP.

MR. CONINE: So the way the QAP's worded, we have that capacity, is what you're saying, already built into the language in the QAP.

MR. WITTMAYER: You could amend the QAP after -- it would require a 30-day public comment, and then we'd have to see how the governor wanted to handle

that as well.

MR. CONINE: Okay. I'm happy with that. Thank you.

MS. ANDERSON: Other discussion?

MR. CONINE: Brooke, the -- we heard some testimony on the average versus good on the Marshall and Swift, but is that in the QAP, or is that in the other one?

MS. CARRINGTON: That's in the real estate analysis rules. That will be Mr. Gouris's question.

MR. CONINE: We'll wait and skewer him later then. I think I'm done, Madam Chairwoman.

MR. GORDON: I think we had some clarification on the 504.

MR. CONINE: Oh, yes. There was some language there. Do we want to call Mr. Wright up to listen to his comments again on the 504?

MR. WRIGHT: I'm John Wright. In listening to our discussion on 504 a moment ago, I heard the resolution as they struck the new language. Carrying over from the last board meeting, there was some existing language in the old QAP that was being used to -- was being interpreted different.

And my question is that would it not be just

simple to state, as you had said, that as the -- as Section F says -- is pursuant to 2306 -- since we have to certify we're 504, and that the applicant and applicant's architect, with an opinion from a third-party accessibility specialist, must provide a certification that the property meets 504 -- and just leave it at that?

MR. CONINE: Do -- are there third-party accessibility specialists out there?

MR. WRIGHT: Oh, yes there are. There are --

MR. CONINE: Plenty of them?

MR. WRIGHT: -- a lot of them. Yes, sir. In fact, if you do HUD financing, they use third-party specialists for exactly this --

MR. CONINE: Okay.

MR. WRIGHT: -- and don't get involved in making the call. Then -- I spoke to one this morning, in fact, to get that clarified.

MR. CONINE: Brooke, are you okay with that language? Did you see anything --

MS. BOSTON: I guess I'd just like to clarify it. My understanding from looking at his marked-up version is that it would be -- they would really like you to take the first few sentences of ours, tack on that extra sentence about the certification, and delete

everything from there on.

And that would involve deleting our town-home language, which we've had in for several years, because we didn't want to see those exempted. So I would still want to see that kept in.

MR. WRIGHT: Could I speak to that? After you brought that up with me, I've read it.

MR. CONINE: Sure.

MR. WRIGHT: I know in the past when we did projects that had town homes in them, we also did flats of each unit type that provided the accessibility. And when it was -- and that's how that's met. I think this -- while Fair Housing may exempt those, 504 does not exempt those types of developments, and it still has to be met.

But I don't have any reservations about how that's said, other than if I'm -- if I've got some two-story units that don't have something on the first floor, but I've provided a similar-type unit next to it that's all -- a flat, in other words, one level -- that's what we used to do -- then I've met the percentages, and I've met the requirement of each unit type. And that's getting too technical.

MR. CONINE: Isn't the issue though on town

homes on new construction versus rehab, because rehab would be --

MR. WRIGHT: Yes, sir, it is.

MR. CONINE: -- difficult. So in light of the splitting of those two subjects, do you need to change that sentence any to reflect --

MS. BOSTON: We specify that it's only for new construction town homes anyway.

MR. CONINE: Okay.

MR. WRIGHT: It's not a big issue with me. It's just --

MR. CONINE: So we're going to add back in then the town-home sentence. And you're -- you'd be okay with that?

MS. ANDERSON: And delete the other.

MR. CONINE: And delete the other.

MS. BOSTON: Correct.

MR. CONINE: So move.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the amendment please say aye.



(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Madam Chairman, I move for the adoption of the 2005 QAP as amended. Let's get it on the floor -- have you got something else?

MS. BOSTON: I have three clarification issues.

MR. CONINE: Okay.

MS. BOSTON: Is that okay?

MR. CONINE: Go ahead.

MS. BOSTON: Relating to the rent levels where we talked about scattered-site and transitional, can we clarify that that's 100 percent transitional, so if they're only doing like 15 percent transitional, then they obviously could potentially do market rate?

MR. CONINE: Yes.

MS. BOSTON: Okay.

MR. CONINE: I'm okay.

MS. BOSTON: And this is actually on a clarification that I had asked you all -- that was part of one of my original comments -- was that on the 70 percent of the units must have an eligible bedroom mix of two- and three-bedroom units, John aptly pointed out to me that

since we allow four-bedroom units on single-family design and transitional, that we probably don't want to limit it only to two and three. We probably just want to say two or more.

MR. CONINE: Okay.

MS. BOSTON: And then the last comment was when we were back talking about the HUB points, and we were talking about having a defining period for when they're considered graduated, whether it's placement and service or carryover, we actually never voted on anything for that.

So I've had a couple people ask me if we could revisit that.

MR. CONINE: Repeat that again. I'm sorry; I wasn't focusing.

MS. BOSTON: For the HUB, when we had the 500 units, and you all ended up approving it as two developments -- and so with that would you say --

MR. CONINE: We didn't vote on that?

MS. BOSTON: Well, you voted on the two developments, but --

MR. CONINE: Okay.

MS. BOSTON: -- indeed, how would you define the two developments, from the date of award, from the

date they carry over, from the date they cost-certify or that we issue 8609s? I think everyone wants to know kind of when are those two developments attributed to the principal.

MR. CONINE: Well, you haven't been through the process until you got your 8609s, pretty much. I mean, that's the full gamut of -- you're up and running and constructed and ready to go, so that would be my definition.

MS. ANDERSON: Do we have a second to Mr. Conine's --

MR. CONINE: No. You know, I bet the counselor's going to jump on me if we don't repeal the other one first, so we need to move to repeal the 2004 QAP first.

MS. CARRINGTON: 2003.

MR. CONINE: '03 QAP; excuse me.

MS. CARRINGTON: Yes. '04 stays in place.

MR. CONINE: '03. Okay.

MS. ANDERSON: Do we have a second?

MR. BOGANY: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're

ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CONINE: Now we'll move to adopt the 2005 QAP as amended.

MR. BOGANY: Second.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. 2005 QAP is adopted.

MS. CARRINGTON: I'd like to thank the staff for all of the work that they have put in on --

(Applause.)

MS. CARRINGTON: And the public for helping us create the document.

MS. ANDERSON: With the board's indulgence, I'm

going to hopscotch a little bit on this agenda for just a few minutes because of some travel commitments, some plans people have. I'd like to proceed now to agenda item 8f, which is a proposed housing tax-credit amendment for Sedona Springs Village Apartments in Odessa.

And then also with your indulgence, the next item I'd like to deal with is the appeal to the board for housing tax-credit applicants on underwriting matters, item 8b, Las Palmas in San Antonio. So to 8f.

MS. CARRINGTON: 8f. And this is one request for an amendment to a housing tax-credit application that involves a material change. This is a 2004 tax-credit application that did receive an award. It's located in Odessa.

And there are three amendments -- three changes that the developer is asking for on this award. They are asking, first, to change from gas to electric heating and water heating. They are asking, second, to upgrade from vinyl flooring to ceramic tile in kitchens and bathrooms.

And then the third request is to upgrade all two-bedroom one-bath units to have two bedrooms and two baths.

And the change from gas to electric is a cost-saving measure, and there is an explanation of why it was not going to be cost-efficient for them to put in the

electric heating as opposed -- the gas as opposed to the electric heating.

Items 2 and 3 on the vinyl and adding the extra bathroom are requested to increase market demand. This would not have impacted their recommendation for an allocation of tax credits, but the changes do qualify as material changes, and that's why the board is being asked to consider this.

And staff is recommending that all items in this request be approved.

MR. BOGANY: So moved.

MR. GONZALEZ: Second.

MS. ANDERSON: We have public comment on this agenda item.

Mr. Ron Hance.

MR. HANCE: I'm going to give my time to Cynthia Bast.

MS. ANDERSON: Ms. Abrea Hance.

MS. HANCE: Same.

MS. ANDERSON: Mr. Tim Smith.

MR. SMITH: Good afternoon. I just had one comment on this of -- about this amendment, not standing against it on the changes for reasons to make the development more feasible, but just looking at the

incorrect utility allowance being used.

The developer had submitted an alternative utility allowance that differs greatly from the utility allowance that the local housing authority requires them to use. And the change from gas to electric would cause a great change in the cost of the utility allowance, which would affect, we think, some of the financial feasibility, which would also change some of the ability to score some of the points.

This is all just basically brought up -- that the housing authority is part owner on this deal, and the majority -- one of the big point characteristics that the applicant claimed was on Section 8 vouchers issued by the housing authority.

So just to make sure that we are having financially feasible developments put out, HUD would be requiring that this development would have to be using the local-housing-authority utility allowance to let the vouchers stay in place.

So that just -- don't have a problem with the other changes, but I just wanted to make sure that if the correct utility allowance is going to be used, because the housing authority's an owner, and that Section 8 vouchers are going to be there, that it would be financially

feasible with the change from gas to electric.

MS. ANDERSON: Any questions?

MR. CONINE: Are there any comments from staff?

MS. CARRINGTON: This item was tabled at the board meeting last month, and you all may remember at that point that real estate analysis had not completed their reevaluation of the transaction. Real estate analysis has reviewed the transaction and still would have -- there would not have been a change in the amount of credits requested, and it would have been a recommended transaction.

MS. ANDERSON: Any questions for the witness?

Okay.

Thank you.

MR. SMITH: Thank you.

MS. ANDERSON: Cynthia Bast.

MS. BAST: Good afternoon. Cynthia Bast of Locke Liddell and Sapp representing the owner. With regard to the issue of the alternative allowances, I wanted to point out that the underwriting guidelines specifically permit an applicant to use either the PHA allowance or an alternative allowance if appropriate documentation is submitted.

That's a lot of work to go to, but in this case



they did go to that work and obtain that backup documentation. With regard to the inference that because the Odessa Housing Authority would be potentially providing project-based vouchers and potentially involved in the ownership, and therefore the housing authority's utility allowance must be used --

We have a letter from the housing authority of the city of Odessa -- and I have copies for each of you -- in which the executive director indicates that the alternative housing -- excuse me; the alternative utility allowance may be used, that they have the authority to do that, well aware that they're part of the ownership and the project-based vouchers.

So we are relying on this letter from the Odessa Housing Authority to confirm that these alternative allowances can be used, and I will provide you with a copy of that letter.

MS. ANDERSON: Thank you.

Questions?

(No response.)

MS. ANDERSON: Mr. Bert Magill.

MR. MAGILL: Thank you, Madam Chair, board. I'm Bert Magill, and I was here last month talking on this particular issue. I have 250 units in two different

developments that I'm a principal in Odessa, and we have generally always had to rely on the housing authority's utility allowance for underwriting purposes, for application purposes and through the lease-up period.

We have a new development that is in its initial lease-up stage in Odessa. The housing authority has indicated to us that we were unable to make any modification to the utility allowance until such time as we have 12 months' history on the utility allowances on individual tenants.

So we have historically always done the application under the utility allowances provided by the housing authority, and as a result of that, did the initial lease-up until we actually got historical documentation to what the alternatives are.

And then the board of the housing authority have voted on a particular project-by-project basis on that utility allowance based on that historical information. So I would have to say that having an alternative utility allowance gives this particular deal an advantage over what is presently out there and is in the lease-up mode.

And so that's my basic comment for you to consider.

MR. CONINE: Mr. Magill, what do you think -- if we were to grant this request, what would you think the housing authority of Odessa would tell you tomorrow?

MR. MAGILL: I -- you know, I would be more than happy to work with the principals of this application to rework the standard utility allowances for the city of Odessa. They are extremely high. That is why we put gas in there.

Because on the two developments that I'm a principal of, we have a master meter, and we can only make it work economically -- is if we pay -- pick up those charges on the gas, because we get a \$40 allowance per month where in actuality it only hits that in the colder months.

And that is an extreme -- it's very costly to put that gas in there, and that is my objection to this request -- is that was part of their original application.

And to change it at this point without really any additional confirmation of the alternative utility allowance from the application to now is a different deal.

This application received much greater competitive edge in the award process because they used this alternative utility allowance, which -- I also had an

application in, and I did not prove up the alternative, because I've always used the PHA's until I put it into service for 12 months and had historical backup, and then the board of the PHA would consider it.

So yes, I would work -- along with this -- the principals of this application to work something out with the City of Odessa Housing Authority. But they're using -- I mean, we've put in there \$100 a unit for a one-bedroom, and if you did it on electric, it would go almost up to \$200 a month.

And so that -- and that with the lower rent that you have in Odessa and West Texas, you're just about giving the unit away. So what I'm saying is there was a clear competitive edge given to this application because of the utility allowances that they used, and to keep monkeying with it would not be fair.

MR. CONINE: Ms. Bast, I thought I heard you say that the applicant had already gone through the work of generating the new utility allowances for the city of Odessa or for that project within the city of Odessa. And yet, it seems like the letter reads that sometime in the next 12 to 18 months they'd take a look at it. Now, explain it to me.

MS. BAST: Sure. What I said was that the

applicant provided the backup documentation for alternative utility allowances in accordance with the underwriting guidelines. First, they provided that for the first level of utility that they would be having.

And then when they requested this amendment, they provided the new backup documentation to the underwriting department. What this letter says, I believe, Mr. Conine, is that -- in the second paragraph -- that the Odessa Housing Authority can use alternative allowances.

It goes on to say in the fourth paragraph, I believe, that because they are having additional new construction in the area, they are looking at creating their own PHA allowance for new construction, because their current PHA allowance deals with older properties that are not energy-efficient.

So in the next 12 to 18 months, they do anticipate putting that in place so that they have these two different utility allowances that can be used depending upon the kind of property. But in the second paragraph, I believe what they are saying is in the interim they can use alternative housing -- excuse me -- utility allowances.

MR. CONINE: And by inference, I would take it

that if the housing authority of the city of Odessa, being a public entity, granted it to one project, they would have to blanket the city with that new policy.

MS. BAST: It seems to me that they should be consistent.

MR. MAGILL: That has not been historically the policy.

MR. CONINE: I know, but that -- my question was what are they going to tell you tomorrow.

MR. MAGILL: But -- well, the same thing that they told us when they did Key West -- is, Oh, we did that several months ago; we will grant that to you now. And then they told me before on the new property that, No, you have to have the 12 months --

MR. CONINE: Right.

MR. MAGILL: -- historically before we can consider it.

MS. ANDERSON: This letter says if they need board approval prior to the first of the year, so they're clearly not planning to make them wait 12 to 18 months to get history. That's how I'm reading that.

MR. BOGANY: I'm going to ask Tom --

MS. ANDERSON: Sure.

MR. BOGANY: -- Mr. Gouris. He's the guy that

can give us some answers.

MS. ANDERSON: Nice to have this hearing room with all these chairs right up front.

MR. BOGANY: I had a question. Are you saying this project is feasible regardless if they had made the change or not in regards to gas and electric based on your criteria?

MR. GOURIS: Tom Gouris, director of Real Estate Analysis. Yes, but to be clear, they used an alternative calculation for utility allowance originally as well, so they -- both with the original application and with their amendment request, they're using the -- an alternative-utility-allowance calculation, which is acceptable under our guidelines.

MR. BOGANY: Okay. And if you could -- I think I know what he's saying, but would you explain to me -- he seems like he's saying that this project is getting an unfair advantage, because he didn't use that same -- when he was trying to calculate his utility allowance.

MR. GOURIS: Had he given us the documentation to back it up as this applicant had, he would have gotten the same treatment.

MR. BOGANY: Okay. So he could have done it either way if he had chosen to use that.

MR. GOURIS: That's correct.

MR. BOGANY: Okay.

MR. SALINAS: But what he's saying is the housing authority didn't give him the same break, right?

MR. MAGILL: What I'm saying is that historically the housing authority has required us to give them evidence of 12 months' historical background before they will allow a particular development to use anything other than what they established.

MR. SALINAS: But this would set precedence here right now --

MR. MAGILL: Well --

MR. SALINAS: -- with this letter.

MR. MAGILL: I would say that that would -- that's not a third-party document, because they have a relationship with this --

MR. SALINAS: This is the executive director. I'm sure she had the authority of the board to write this letter, right?

MS. BAST: We would assume so.

MR. SALINAS: Okay. Or else she's in trouble.

MS. ANDERSON: We have a motion on the floor, don't we?

MR. SALINAS: We already have one.



MS. ANDERSON: And it's been seconded. Is there discussion?

MR. CONINE: Can you refresh my memory of what the motion was?

MS. ANDERSON: It was a motion to adopt the staff's recommendation.

MR. CONINE: Okay.

MS. ANDERSON: Any discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Okay. Now, item 8b -- this is an appeal to the board on housing tax-credit application number 04074, Las Palmas in San Antonio.

MS. CARRINGTON: Thank you. The Las Palmas application was awarded tax credits in the 2004 tax-credit allocation round on October 6 of this year. Due to a violation in the department's environmental-site-assessment rules and guidelines, which we call our ESA rules and guidelines -- and at 10 Texas Administrative

Code Section 1.35a -- state that environmental site assessment shall be conducted by a third-part environmental engineer.

The reason this application was terminated was because the ESA provided with the application was prepared and signed on January 28, 2004, by George Ozuna, Jr. Mr. Ozuna also signed the application for tax credits as a representative with the authority to execute documents on the applicant's behalf.

In addition, Mr. Ozuna was listed as the president of the nonprofit managing general partner in control of the applicant. Thus, Mr. Ozuna clearly was not a third party as is required by our real estate-analysis rules.

The department wants to state from a staff standpoint that we feel that this is a very worthy development that was awarded credits last summer. But in our continued review of this development, it is clear to the department that the ESA was not done by a third party, therefore violating our rules, so we did terminate the transaction.

And what the applicant is asking today or the awardee is asking today is that this application be reinstated.

MR. CONINE: It's why they pay us the big bucks. Is the applicant here by chance?

MS. ANDERSON: Yes. We have public comment.

MR. CONINE: Okay. All right. Let's hear some.

MS. ANDERSON: Mr. David Marquez.

MR. MARQUEZ: Thank you, Madam Chair, board. I'm going to be speaking today, and then also there's another witness, Beebee [phonetic], as well in there. I don't know if I'm going to take that much time. Just in case.

First of all, I'd like to thank you. And I'd like to also have the residents from Las Palmas Garden Apartments stand that have been here today, that came with us today from San Antonio.

Would you guys stand up? Don't be shy. Thank you, guys.

Actually, I've kind of come with my hat in my hand today. We really look at this as kind of an administrative error, because if Mr. Pariz [phonetic], who is the vice-president of Las Palmas or Urban Progress -- I don't know if we would even be here today.

But because Mr. Ozuna is an engineer, he did sign the environmental. I don't know if I could really

give you the definition of the third party. I looked under the TAC, couldn't really find it. I've looked in the 2306. I've looked to see what a third party is.

I think it only mentions the appraisal of the application. But I will tell you that Mr. Ozuna sits on the board as a -- volunteer basis, and he has served on that board for a number of years. He's never received any kind of benefit, payment benefit, for serving on that board.

And his study -- that would not reflect any money to him in terms of the sale or the awardment of this credit. So that's how come we would like to really state that we feel that it is a -- more or less an administrative error.

We did go out and get another environmental done, which basically said the same thing, and I believe we had forwarded that to the staff as well. We also feel that if we would have been able to review this earlier, because we did turn it on March 1, and it was generally turned in on March 28, we could have caught that and had corrected that as well.

But I will tell you that we've gone through great pains to have this project funded. You came back in October and said that this was an unfunded mandate, at-

risk set-aside. And so once again, we're looking for your support.

Like I said, I don't think I can argue the third party. I'm not asking you to make an exception on the third party. I'm asking you to make an exception to granting the people that have become a part of this process here today -- and I'm sure if you look through your board packet -- all the people that are excited that live -- the hundred families that live inside of Las Palmas Garden Apartments. So that's where we're at.

MR. CONINE: Ms. Carrington, have we had a chance to review the second report that he submitted that said it was done -- he said it was done by a third party?

MS. CARRINGTON: I don't know if we have or not. When we identified the fact that the ESA that was submitted with the application was not by a third party, we terminated the application.

MR. MARQUEZ: I have it right here, if you'd like to --

MR. CONINE: I don't want to read it.

I think the motion I'd like to make is we grant a 30-day extension to this application to give time for staff to look at the third-party ESA and see if it meets our specifications or not, come back to us next month.

That's the motion I'll make.

MR. GONZALEZ: Second.

MS. ANDERSON: We have additional public comment.

Mr. Madrid.

MR. MADRID: Thank you. Good afternoon, Madam Chair and board members. My name is Carlos Madrid, Jr. I'm the chairman of the Bear County Housing Authority for the city of San Antonio, and I'm here to speak on behalf of the Las Palmas multifamily complex, which is -- consists of 100 units.

It was built approximately 40 years ago. The complex is situated in the parts of the west side considered low-income. And speaking for myself for the complex as chairman of the Bear County Housing Authority, we desperately need for this complex to survive.

However, it must be safe, decent and in sanitary condition and with central heating and air conditioning, which -- it does not have those amenities. Obviously, the complex is in need of it -- being rehabbed and upgraded.

And with this in mind, we are here asking for your support. This development has provided shelter for many families, families that do not wish to relocate. In

all of the years that I've been involved with affordable housing, I've learned that decent housing is the basis of family.

Anything less historically has reflected a negative -- economic issues. And as chairman of the Bear County Housing Authority, we have an enormous waiting list of families needing a roof over their heads, and San Antonio needs housing badly.

Bear County Housing Authority has an obligation. Therefore, I'm seeking your assistance and your support. This is not a Bear County Housing Authority development. My sole purpose for my presence here is to show my support for this request -- for approving it.

It will provide the opportunity for placing some of our Bear County Housing Authority families within this complex. And I wish to thank the board for listening -- for my plea and asking for your support. Thank you.

MS. ANDERSON: Ms. Barrientos.

MS. BARRIENTOS: I wish not to speak.

MS. ANDERSON: Okay. Thank you.

MR. CONINE: Go ahead.

MR. BOGANY: I have a question for Ms. Carrington.

MS. CARRINGTON: Yes, sir.

MR. CONINE: You have a carryover issue or something?

MR. BOGANY: Yes. That's --

MS. BOSTON: I was just going to ask that we be --

MR. CONINE: Here comes a technical issue.

MS. BOSTON: Yes. I was just going to ask that we be clear about what we're extending for 30 days, because right now it's terminated. Thirty days from now, the December board meeting date already will have passed, and either the applicant will get the credits and be required to quick carryover before December 31, or if he's not going to get the credits, we would need to reallocate those at the December board meeting. So just in terms of the timing, it would be helpful --

MR. CONINE: Well, okay.

MS. BOSTON: -- to have --

MR. CONINE: I'll amend my motion then to -- you know, until the next board meeting in December to give staff time to review the new third-party report and see if it meets our specifications or not. You know, I -- this is a project that -- as we were discussing earlier, in my mind it's a rehab project.



Credits are going into rehab instead of new construction. I think it's worthy of our consideration. And if all it is is an environmental report date and authorization issue, that's not critical enough in my mind to kick it out the door.

MS. ANDERSON: I must beg to differ with my vice-chairman. This is a clear violation of a very clear black-and-white department rule. We have these rules, you know, for reasons. You know, human error happens. It's very unfortunate when it happens.

But I think for everyone who -- you know, who did everything by the rules -- and our rules are not -- you know, some of them are complicated, and some are complicated because the development community helps us write complicated rules, but this is a pretty clear rule that you don't have a third -- that you have an independent entity sign the -- conduct and sign the ESA.

And that clearly did not happen in this case, and I just think to ignore the department's rules on something that's as clear as this is -- in my opinion, is not wise.

MR. CONINE: My answer is that this is their first time through. If the environmental survey doesn't say what we think it should say, then we can reject it

then at that point.

MS. ANDERSON: I just think that's irrelevant.

MR. CONINE: We beg to differ.

MS. ANDERSON: Anybody else want to jump in?

MR. GORDON: I do think that on some other projects we may have not granted it when an ESA was wrong, so I think there may be some precedent out there.

MS. ANDERSON: Anybody else?

MR. SALINAS: I don't want to get into it.

MS. ANDERSON: All right.

MR. SALINAS: I just -- and this is one of the projects that I really supported the last time, but, you know, I think that the rules need to be followed. And I kind of agree with Conine, but, you know, I really -- I've asked for too many of these things to happen.

This is one of the projects that I feel -- to see going down, but I hate to ask the staff to break the rules again or to do away with it or if it's already terminated -- the way you said it --

MS. ANDERSON: Yes.

MR. SALINAS: It's already terminated.

MS. ANDERSON: Been terminated. Correct.

MR. SALINAS: So what you're asking us -- what they're asking us to do is to go ahead and reactivate

the --

MS. ANDERSON: Correct.

Mr. Gordon's next. You had --

MR. GORDON: Is this something that could have been corrected? Is it -- was it possible?

MS. ANDERSON: No.

Mr. Bogany.

MR. BOGANY: I have a couple of quick questions. I've been a big proponent of rehab, and I really think we need to rehab -- get as many units out there -- but I do agree with you, Beth, that if we're setting a precedent that if somebody breaks the rules -- it comes back to bite us again.

And he mentioned something about March 1; if he had known about this March 1, they could have corrected it. What was that?

MS. CARRINGTON: I can respond to that. This was not a correctable item.

MR. BOGANY: Okay.

MS. CARRINGTON: The third party is required to do the ESA. You all may remember that this was not a development that had been recommended by staff back last summer for tax credits. And then as we looked in, I think, September at over- and under-, we recognized that

in the San Antonio region -- that we had underallocated in the at-risk set-aside.

So this transaction hadn't been underwritten. And so when the board made that decision to go ahead and pick up these -- to make this allocation, then at that point the transaction was underwritten. But even if it had been underwritten in April or May, it would have been terminated, because it was a violation of the rule.

MR. BOGANY: Have we ever had a precedent done where we made a change or okayed something when it's been so black and white?

MS. CARRINGTON: We always recommend to you all that we follow the rules.

MR. BOGANY: Okay.

MS. ANDERSON: Hearing no further discussion, I assume we're ready to vote on the motion. All in -- let me think what the motion is.

MR. CONINE: To grant the appeal.

MS. ANDERSON: To grant the appeal. Okay. All in favor of the motion please say aye.

(Mr. Gonzalez, Mr. Conine, Aye.)

MS. ANDERSON: Opposed, no.

(Mr. Salinas, Mr. Bogany, Ms. Anderson, Mr. Gordon, Nay.)

MS. ANDERSON: I need to see a show of hands. I'm sorry; I can't call that one. All in favor of the motion please raise a hand.

All opposed raise a hand.

Motion fails.

So now we return -- and thank you all for your indulgence with those changes to the agenda. We now are back on item 2b, which is the final adoption of the HOME rules.

MS. CARRINGTON: What the board has in front of them this afternoon is the final adoption for our HOME investment partnership rules. This is posted correctly on the agenda. If you look at your summary page, this would have us repealing the '04 and approving the '05. That's not correct. We are not repealing the '04. We are proposing amendments to the '05 HOME rule.

This followed the same process that the QAP did. The board approved the draft in September; it went out for public comment in our 13 service regions; and we have incorporated as many of the comments as we could on these rules that are being proposed to you.

We have followed the same format on all of our rules in what we are calling our reasoned responses in that we provide the comment for you along with the section

citation of the rules, and then we indicate for you whether we have accepted the comment; we've accepted it with modification; or we have rejected it.

One of the administrative corrections that I would like to point out to the board is on page 33 of the actual document. And the language that's currently in the draft that you all are looking at does not track the housing trust fund and the QAP language on ex parte.

What we've done on the ex part on both the QAP and the housing-trust-fund rules is loosen that up so that all members of the staff can have discussions. Even senior members of the staff can have discussions with developers and others about applications.

It's restricted to technical corrections and discussions about the application, but if you look at the HOME fund rule -- the HOME rules, you'll see that we did not get that language changed in the HOME rules. So what I want to say is that the language in the trust fund and the language in the QAP will be tracked. It'll be the same language in the HOME rules.

With that, I think we have a combination of Brooke and Eric, because as you all know, we program our HOME funds into some multifamily activities, but really the majority of our HOME funds are programmed into single-

family activities. So it takes two of them.

MS. BOSTON: Thank you. With the HOME program, we are definitely open to making comments. Interestingly, most of the comments we received this year specifically to the rule were things that we did not have the ability to change.

They were things that were either legislated state or federally. Examples would be how we use our CHDO funds, how we use the 5 percent of the funds that go for -- into PJs that are for people with disabilities, how we deal with our interpretation of the integrated housing rule.

And those are things that we did not feel like we had the latitude to change. Ultimately, the only recommended change to the rule that we're making, because the ex parte comment from Edwina, is an administrative amendment.

At the federal level, there's been a change relating to religious- or faith-based organizations in the more recent past, and we wanted to be positive that our handling of CHDOs didn't in any way have any type of a negative implication.

And so we've gone and made some revisions to make sure that it's consistent with the federal

requirements. And that's essentially it. We're both up here for questions.

MR. PIKE: Eric Pike, director of Single Family. Most of the changes that we had put into the rules were -- we received favorable comment on. Most of the stuff was primarily cleanup, what I would classify as cleanup.

And I think Brooke has basically touched on most of the items that we did make changes to and summarized it pretty well. We're happy to answer any questions.

MR. CONINE: Move for the adoption of the 2005 -- on the HOME investment-partnership-program rules.

MR. BOGANY: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: 2c. Moving now to the adoption of the final housing-trust-fund rules. Again,



your agenda posting is correct. We are not going to be repealing existing rules. We are proposing amendments to the housing-trust-fund rules -- again, went out on the same public-hearing schedule.

We do have the reasoned response of the comments that we received on the trust fund, and there were basically, I think, some technical corrections and some cleanup that we are recommending to the housing-trust-fund rules.

But I don't believe we had anything that was very substantive from last year to this year.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carried.

MS. CARRINGTON: Next set of rules, 2d. These are the final real estate analysis rules and guidelines. In this case we will be taking two actions, which is the

adoption of the amended existing sections of the real estate-analysis rules, and then we are also adding a new section, and that section is the reserve for replacement rules and guidelines.

This was as a result of the 2003 legislative session. This relates to replacement reserves. And last year this section was in the compliance rules, and we felt that this section was much better placed in the real estate-analysis rules.

When the board was provided with this draft in September, at that point we outlined the major changes, and there were some fairly substantial changes from the '04 rules to the '05 rules. We did outline those for the board in September.

If you all would like, Mr. Gouris will go back over some of those major changes from last year to this year, but then we've also provided for you a memo with the comments that we received on these rules and the reason we did or did not incorporate the revisions that were recommended.

And we've also included for you all -- and we might have gone a little bit overboard, but I think we included all of the public comments. So the way your book is put together, I think Delores told me when you all got

it it had a rubber band around the sections on all the public comment.

But if you want to go to your set of rules, you go behind all of the public comment, and then there is a nice color -- in color -- very nice color copy of the real estate-analysis rules.

MR. CONINE: Why don't you walk through the major changes, just for my own little -- so just kind of get in the flow of things.

MS. CARRINGTON: To just be clear, Mr. Conine, would that be between '04 and '05 or anything that we have changed from the time the board looked at the draft in September to what we're proposing now?

MR. CONINE: Both.

MS. CARRINGTON: Okay.

Mr. Gouris.

MR. GOURIS: Tom Gouris, director of Real Estate Analysis. The changes to the original from '04 to '05, while they looked significant -- if you look at it, there's a lot of blue -- a lot of it really was clarifying language.

We tried to clean up some language, and we saw some issues that were not as clear as we had liked -- would have liked. The -- and the other -- the

section that changed significantly was the reserve-for-replacement section. That wasn't part of the rule previously.

I think one of the things we added that had received comment was the cap rate for property-tax expense, to determine what the property-tax expense was. And we added a requirement that we would look at an estimated cap rate of 11-1/2 percent.

The comment that we received back suggested that that cap rate was way too high, and we should look at something that was more like 8 or 9 percent. That would effectively increase operating expenses for a project. We went back to look and see what the counties had posted for rates and found that there is a mix from around 8 percent up to 11 and-a-half percent.

And so -- but that -- a large number of them rested at 10 percent. So we adjusted down from what we presented in the draft to today to a 10 percent cap rate to determine what the expense number for property taxes might be. We also will look at historical actual information from the area, as we always do.

One of the significant areas of clarification with -- was with the regard to the comparable units and what is a comparable unit in a market-study section, and

we received quite a bit of comment on that issue.

And the clarification is that we believe that a unit that is new -- or not new, but leasing at the same rent that are acceptable or at the same price points as our affordable rents would be at or could get at would be affordable, regardless of what funding source they might have used, if they're comparable in other ways.

And so we added -- we adjusted the comparable language to make that more clear. We also made it more clear that when we talk about comparables, we're really looking at other developments with the same unit mix or same type of unit mix.

So a transaction that we might be looking at that is one, twos and threes might not be at all comparable to a transaction that's 100 percent ones or 100 percent fours. So we wanted to make sure that that was a clarification that was in the -- in there.

I think some of the comments that have come up today might -- it might be illustrative to go through some of those so that -- so you can understand where we're coming from on those issues. One comment that was made with regard -- on page 3 with regard to direct construction costs -- there was a comment that we should be looking also at historical cost adjusted for inflation.

And I think we missed that adjusted for inflation in the comment originally. And I looked back, and that was already in our rule, and that's probably why we missed the comment that it needed to be added, because it was already there. But that was a comment that I heard this morning.

On page 4, a topic I'm sure Mr. Conine would like to talk about, is the average-versus-good Marshall and Swift costs. A couple of points on that -- that wasn't something that we changed in our draft from 2004. We've always looked at the average cost with an allowance for us to look at "good" if that was what was relevant to that transaction when we look at the quality of the transaction and see if it does indeed rise to a higher level.

We also, however, look at historicals adjusted for inflation, and that would provide another avenue to capture any transaction that was claiming to be at a good quality or could be -- you know, needed that level of cost to be adjusted for.

Historically, we found that our costs using average are predominantly higher than the applicants' costs at application. And in fact, that's also true at cost certification, when we look at costs as of the date

of cost certification, not going back to the original cost that we looked at at application.

So in other words, when we look at cost today, we look at what the applicant tells us. We, in the majority of the cases, are higher than the applicant's direct construction costs. There are a lot of other reasons that the credits might be adjusted, and typically we can't adjust upward, so the adjustments that you all hear about are the adjustments downward.

But there are a lot of other -- you know, they go over the 6 percent, 2 percent, 6 percent contractor fees, or they go over the 15 percent developer fees or the other adjustments that are made that might adjust credits.

But we keep track of our costs to see if our costs are reasonable or not and if the average quality is the right quality level to use, and we believe it is.

If we used good for all cases, which is what was been -- what has been proposed, what we'd end up doing is -- there would be a greater likelihood -- and this happens occasionally now, but it would be an even greater likelihood -- that we would end up with a cost that's significantly higher than the applicant's cost, thereby creating a gap of funds, because we'd use our higher costs to determine how much the project should be -- should

cost.

Thereby -- therefore, there'd be a gap of funds that the developer fee may not be sufficient to cover. And in such an instance, we'd have to determine that the project is infeasible based on a cost structure using good quality that may not be applicable to that -- in our minds, wouldn't even be applicable to that project, because we think it's probably going to be an average-quality project anyway.

If we think it's going to be a good-quality project, like I said originally, we would adjust to that.

So I don't know if you want to break here and talk about that issue a little bit, but -- or if you want me to keep going on other issues.

MR. CONINE: You know, what I'd like to refresh my memory on, because it's been about 20 years since I've looked at it, is the difference in the definition between Marshall and Swift average and good. Do you have the definitions with you?

MR. GOURIS: I don't have them with me, no.

MR. CONINE: So it would be kind of hard for us to make a decision. You know, my experience has been that most of the Texas low-income tax-credit projects I've been to and seen built are of good quality, not average



quality.

They're doing an outstanding job of doing what they're doing. And I hear what you're saying about creating the gap, but I also understand that some projects get applied for that are -- and you know, when you get out of the 5 percent range, you either get knocked down or you could eventually get kicked out and not approved.

So we're probably not approving some projects that could have qualified under a higher standard. But your issue of making -- of creating a gap over there, you know, I understand that too. And I just would like to hear the definition so that we can make a better decision, I guess.

MR. GOURIS: And this isn't the first time this issue's come up over the years. We've talked through this in working groups throughout -- you know, over the years and have generally come to the conclusion that the average quality is a better gauge from a Marshall and Swift perspective.

I totally agree that the quality of the affordable housing that we produce through the tax-credit program is a very high-quality product. But, you know, you need to forget about the level from a Marshall and Swift, you know, case point. You could call it one, two

and three; and this is three; and there's four and five too.

But, you know, this is a label -- or this is a category that fits. And I feel confident about that, because when I look at our cost-certification process that's been with us now for about a year, whenever we've had a tough time getting to the cost because their costs have gone up or what have you, we've been able to reanalyze those costs using then-current Marshall and Swift information.

And consistently, so far anyways, we've been able to understand why their costs have gone up, because Marshall and Swift shows that their costs have gone up too, and we're still within our tolerance levels at the average quality.

If we did that with the good quality, we would be way over their costs, and so there's a concern there. Now, all that being said, there is this issue of timing, and timing is -- you know, it's a huge issue. And --

MR. CONINE: We have a cap, don't we, of \$65 a foot or whatever the number is --

MR. GOURIS: It's --

MR. CONINE: -- on a total cost --

MR. GOURIS: It's a -- that's a scoring item,

so it's not an absolute item.

MR. CONINE: And --

MR. GOURIS: And that's set at a very high level, not at a -- at a level that allows -- it allows most transactions to get through --

MR. CONINE: Okay.

MR. GOURIS: -- and based on an average -- more of an average cost too.

MR. CONINE: And wouldn't it kind of go to logic to say that cost certifications are only going -- you're going to look at what you approved? So anything that would have bumped above it wouldn't have gotten approved, so you wouldn't have been able to compare a project that didn't get approved on good quality, because you hadn't ever -- you know, you hadn't ever approved one.

So if you had more of those go through, you -- your cost certifications would be -- especially in urban areas where, you know, you're going to do an urban rehab downtown or something; it's going to cost more.

MR. GOURIS: But the argument is that -- I mean, the argument -- the conversation is the quality of the product that's being produced today is of a very high quality. That's what we're cost certing, those costs.

MR. CONINE: Right.

MR. GOURIS: And that's what we're comparing to Marshall and Swift, which has the label of average, you know, not that it is average, but that's the label that we -- that's used by Marshall and Swift. And those costs are consistent.

Those Marshall and Swifts costs, when we recost it at cost certification, are consistent with what they actual cost with an average quality. If we used a higher-quality standard to cost that, we'd have a gap. Now, at cost cert that gap wouldn't be that -- that gap wouldn't be a big deal.

But it's telling that the average costs are the right costs to use for the quality of product that we're producing today, even though it's a high quality of product, with that average label.

MR. CONINE: But my point is if you don't cost cert a project that doesn't get done, that got kicked out because the costs were too high, you never would know that average is too low.

MR. GOURIS: But I think we're all in agreement that the quality of the product is high. Are we suggesting that the quality of the product is going to go up by changing the underwriting criteria for --

MR. CONINE: No. What I'm suggesting is that the gate would be open for higher-cost projects to get approved and not get kicked out on underwriting.

MR. GOURIS: And they still would if they can substantiate that they are of a higher quality. The first thing we'll do when we look at a project --

MR. CONINE: You just said they're all high quality.

MR. GOURIS: When we look at a project and we see that their costs are significantly higher than the average cost, we look at the specifics of the project to see: Are there qualities in this project that would kick it up to Marshall and Swift's good quality?

And if they are -- or if they're not, we'd try to find out, you know, what the deal is. We'll also go back to historical and see: Is there something about this market -- this submarket that drives costs higher? And we'll look at that as well and adjust for inflation.

MR. CONINE: How many times have you done that in the past?

MR. GOURIS: How many times have we kicked it to good quality?

MR. CONINE: Right.

MR. GOURIS: Handful in the seven years that

I've been here --

MR. CONINE: Okay.

MR. GOURIS: -- less than one handful, but we've done it.

MR. CONINE: Go ahead with your presentation.

MR. GOURIS: Okay. One of the other areas that was commented on extensively, which is on pages 4 through 8 of the comments, is the reserve for replacement and rehab costs that were used. We implemented the PCA last year and are trying to use that as our tool to understand what a true third-party estimate for the rehabilitation costs are.

And I think there's been some misunderstanding, miscommunication about that, and so we are trying to clarify that to make sure that all the applicants recognize that the PCA is supposed to include all the costs, not just the emergency or necessary immediate needs, but the other costs that are associated with the transaction that the applicant is proposing due to economic obsolescence or due just to making a better project.

And the PCA provider is our third-party evaluator of the reasonableness of those costs. Unfortunately or fortunately, as the case may be, Marshall

and Swift doesn't give us a tool that is very useful in that manner.

In addition to that, it's very difficult for us, being in Austin, to be able to evaluate the specific needs of every rehabilitation project, and so we rely heavily on the PCA provider to do that. In addition, the PCA provider is expected to provide us with an understanding of what the long-term needs of the project are going to be, given the proposed rehabilitation that they've evaluated.

And we try to understand if those rehabilitation costs are going to significantly exceed our \$300 reserve requirement for -- in the operating expenses.

There have been some comments with regard to allowing that -- if we allow that PCA provider to do that for a 30-year period, we will always get a reserve requirement that is significantly higher than \$300 per unit.

Our experience this year -- that wasn't the case with our experience this year. Although I can understand that argument, I also am concerned that we don't address what I think is our statutory obligation to ensure the financial feasibility for 30 years.

And if we only look at a 20-year PCA, that could be a potential income that we wouldn't see that 30-

year fallout. I also recognize that, you know, what's going to be projected to occur in year 20 -- between year 20 and year 30 is very nebulous at best.

On the other hand, we have to have a plan that seems to be reasonable. So we've addressed the language in our -- in the rule to try to clear that up. I think there are still some issues that some folks may want to -- further clear that up but --

There is a comment on page 8 with regard to impact on schools in the market study, and I think you heard comment this morning that that's something that TAAHP, I believe -- that -- doesn't want to see in the market study, and we tend to agree.

We feel that's a pretty difficult -- that's going to increase the scope of the market study significantly. And so we didn't -- we agree. We didn't make a change there.

There was some discussion about the primary-market-area definition. We have made a clarification there in that we had a maximum of 250,000 people in the primary market area as being a reasonable-sized primary market area.

We had recommended, based on conversations with lots of market analysts and other conversations, that a



better guideline would be 100,000 folks allowing it to go up to 250,000. So we made a change in the draft to suggest that.

The comments that I've heard and that are in the -- in this document reflect that we should back off from that entirely and allow the market area to be driven by the lenders and the syndicators and the market analysts themselves without any cap on the -- I think that's what I'm getting, that there should be no cap on the total population size of the market area.

MR. CONINE: You think -- you still believe that up to 100,000 is the correct number?

MR. GOURIS: I think 100,000 gives a reasonably sized market area in most cases. I think that in some cases that could raise -- could go up to 250,000 people in the market -- primary market area, and I suppose it could be even greater than that in very selective situations.

But generally speaking, I think a primary market area of 100,000 is going to cover what's needed. What happens sometimes when they get too big is that they take in more properties, more -- other properties, and that can be a problem for inclusive-capture-rate issues.

MR. CONINE: Well, that's -- I think that's what the testimony we heard this morning was. In like the

rural areas, they would reach over into the next county and the next town and grab -- because they could, under the way it was written, I think, going up to a 100,000.

MR. GOURIS: They --

MR. CONINE: And of course, the next town has no bearing on this town over here so --

MR. GOURIS: Oh, absolutely. This is not a minimum 100,000. This is a maximum 100,000, a guideline maximum of 100,000.

MR. CONINE: But does the market analyst have the flexibility to go out and reach to that next town if he needs some higher comps or something? Is it written in such a way that it is a negative?

MR. GOURIS: If the market analyst believes that the next town is part of the same market area, they have the flexibility to do that. If the market analyst believes that the market area only contains 50,000 people, they have the ability to do that.

MS. ANDERSON: And in an urban area, if the market analyst believes that the market area is not 100,000 but is 180,000, they have the ability to substantiate that for you in the report --

MR. GOURIS: Exactly.

MS. ANDERSON: -- and have you accept that.

MR. GOURIS: Exactly. This was to give them more guidance, because we were seeing a lot of transactions that were right at 250,000 people, and that wasn't at all the intent. I think the unfortunate part of putting rules out is people go to the limit of the rule without, you know, thinking that that's what we were looking for.

And so we were trying to provide more guidance saying, We're really looking for deals with population -- market areas with populations in the -- around 100,000 people. We wanted to clarify that issue.

MS. ANDERSON: But your point's sort of the opposite, in a smaller community that they'll reach to the next town to get a higher rent level.

MR. GOURIS: Well, that's kind of a -- the next issue on comparable units and the inclusive capture rate.

That was another area that we did some clarification to, and we did that so that we could -- I mentioned earlier we did that so we could, especially in soft markets, be able to include new construction, unstabilized new construction that's leasing at rates that are equal to or lower than our maximum tax-credit rents.

And in fact, that's been a consistent policy,

though it wasn't clear in the rule that that's how we would deal with it. We have dealt with it that way. In fact, we had a transaction earlier this year in north Austin that had that same issue.

And we were able to deal with it by working out -- they restructured their transaction to be 100 percent at 50 percent rents, and therefore they weren't in competition with the market units in that area, because they were serving a different group of folks.

MR. CONINE: Well, I think the discussion this morning centered on not projects that were under construction and halfway leased-up, but those that were being applied for in the same round, and that's what gives me a little concern.

MR. GOURIS: That was another issue. There was another issue that was discussed.

MR. CONINE: We haven't gotten to that yet, huh?

MR. GOURIS: Well, as part of that, we're looking at -- I mean, we obviously cannot make a determination on transactions that aren't ours or we don't know anything about with some other source of funding that haven't broken ground but have received permits.

We're not going to throw those into the mix.

So if it's a "market-rate product," even if the market's soft, we're not going to add those into the mix unless we know they're leasing at a lower rate.

On the other hand, if we know we've got a product that hasn't been approved yet -- in fact, we have one this month -- that is -- got a higher lottery number than we have for a project that's going forward next month -- lottery number for the project next month has a better lottery number -- we're going to go ahead and look at both of those transactions when we approve this month's transaction.

Because if failure to do that is going to put this guy at an advantage, even though he's not as competitive based on the lottery-number structure -- he's not as competitive as the other guy. So we have to look at what's been -- what's in the hopper for allocation.

Same with scoring -- if we have two transactions that are in the same market, one scores higher on a 9 percent round, we have to look at both of them and say -- give the preference to the one that scored higher when we do our analysis.

And we have to take them both into consideration for inclusive capture rate. Otherwise, our inclusive-capture-rate construct kind of fails, because we

could then do two or three or four in that same market in one year.

MR. CONINE: I just -- I have a hard time with it, Tom. Number 1, have you ever seen a high-lottery bond deal that didn't actually make, that didn't go through, that didn't get constructed?

MR. GOURIS: Sure.

MR. CONINE: Okay. So you would skew the information, if you will, penalize the other applicant behind him by using that information, especially if it hurt his capture rate?

MR. GOURIS: No.

MR. CONINE: No?

MR. GOURIS: No, we wouldn't. Because the deal that has a higher -- better lottery number doesn't have to take into consideration the one that has the worse lottery number.

MR. CONINE: No, but the other way around.

MR. GOURIS: But the other way around happens, because that's -- that is exactly our selection criteria, right? We go by the best lottery number. So the best lottery number should be able to maintain their advantage.

MR. CONINE: But when is the market study done for that one with the lower lottery number?

MR. GOURIS: You know, well in advance of when we review and when they provide information to us. And that -- I mean, the market analysis may or may not recognize which deals might be coming down the pike, and they -- for a bond transaction, the ones that are behind the transaction that they're working on aren't that relevant for a market study.

The -- what's relevant are 9 percent transactions that are going to the board. And, you know, if we get a bond deal in -- well, we've structured some language already in there to deal with that issue, and that's actually in the QAP.

And this is a process that we used last year, and it's a consistent process. It allows us to look at those bond transactions with priority through a certain date.

Do you remember that date? Is it April? But through a certain date, the bond transactions have priority through a certain reservation date.

And beyond that reservation date through another, you know, period, the 9 percents in that area would have a priority until July 31, and then the -- then those bond transactions that followed up would have priority.

MR. CONINE: But aren't they submitting market studies on January 1 when they do their preapplication on the 9 percent deal?

MR. GOURIS: No.

MR. CONINE: That's later? That's the April date, right?

MS. BOSTON: It's the April 1 date.

MR. CONINE: Okay. So using your scenario, your -- that market study by April 1 needs to pick any other bond transaction in that area, that market area --

MR. GOURIS: That has gotten a reservation.

MR. CONINE: -- that has gotten a reservation, even though it may not be funded and under construction?

MR. GOURIS: Correct. And if we find that it falls out before the July date and that would have excluded the 9 percent deal from getting done, if that's the only issue -- because of market study -- well, we bring that to you all, but then we'd also identify that deal didn't make. So now we're okay again.

We had to set up some sort of priority system with that. Otherwise, we would end up delivering in some markets more than the capture rate would have allowed us to do that.

MR. CONINE: But that April 1 market study,



does it have to consider any other 9 percent deals that are in that round?

MR. GOURIS: If they're known, yes. And they should all be known, because they've all -- they will have all made application by April 1 -- by March 1.

MR. CONINE: Well, that's really crazy then, because you don't know whether you're going to make it or not.

MR. GOURIS: Well, here's the deal. They have to include them so that we recognize that they know that they're there. The final capture rate is going to be adjusted based on score, because we don't -- you know, nobody knows the score until the scoring is completed, and so it may or may not be ahead of it.

So once we know what -- you know, once we know where they rank, the two of them there, we'll say, This one has priority over this one. If for some reason this one that has the priority doesn't get done, then this one is -- you know, is okay to do. Or maybe --

MR. CONINE: On the 9 percent, you don't know that.

MR. GOURIS: Sure. We give you a list that says --

MR. CONINE: By April 1?

MR. GOURIS: No, but -- the market analysts don't know that, but we do, and we make an adjustment to the capture rate accordingly. It's the process we've been using for several years, and it's not been a problem, as far as I know.

I mean, no one's complained about their specific deal getting outed or getting -- you know, getting killed because of that issue.

MR. CONINE: No wonder you're overworked and underpaid. Man, that's tough. Go ahead.

MS. CARRINGTON: Are we through?

MR. GOURIS: I think that -- I mean, I think --

MS. CARRINGTON: He can be.

MR. GOURIS: I can be done.

MR. CONINE: Have we got some other testimony?

MS. ANDERSON: Yes, we do have people -- two people who would like to make public comment. You want to hear that first?

MR. CONINE: Let me see here. You took care of the school problem. It's not in there anymore on the market study, correct?

MR. GOURIS: It never was in there, sir.

MR. CONINE: Yes, let's hear some of the

comment.

MS. ANDERSON: Mr. George Schmidt.

MR. SCHMIDT: Thank you for the opportunity to speak. My name is George Schmidt. I represent a developer, Edgewater Affordable Housing. We specialize in preservation of properties in Texas, Arkansas. We've also gone to Michigan. We're looking at Ohio and Indiana. Midwest and South is where we're focused.

I've -- I used to be with a syndicator, and I also used to be with a lender of housing-trust-fund monies up in Ohio, and so I've had some experience with preservation and with replacement-reserve requirements. What I've sent today is paper clipped -- each package is paper clipped -- is a request to consider adding just six words to the existing real estate rules of Section 1.32(d)(2)(I).

Those six words, while they're only six words, I think really mean a lot in the long-term preservation of these properties. What follows is five main points and then a rather unfortunate dissertation of math that supports it all.

But what I'll do is summarize. We had made some significant comments regarding the PCA requirements and that the PCA was required to be reviewed for a 30-year

and a 40-year period of time. The replacement reserves are derived off of this 30- and 40-year analysis.

It's based on the affordability period. We submitted some significant comments with concerns about how the PCA is being used to derive the current replacement-reserve needs for the property. Our concern is not that we have replacements reserves; we believe very firmly in replacement reserves.

Our concern is that when the replacement reserves are too high -- are too excessive, what you're doing is deferring rehab that you could do now to try to maintain an affordability or a preservation for 30 or 40 years.

And in fact, what it does is it hampers the long-term preservation of a property by deferring those additional -- by deferring cash that could be used now to make rehab to the property.

So I'll wrap it up. Essentially, I do believe that the 2306 would be better served by putting this -- by putting a cap on the reserves and not by trying to make these properties not rely on rehab reserves for 30 or 40 years. Is there any questions? That three minutes was quick.

MS. ANDERSON: Thank you.

Mr. Darrell Jack.

Is Mr. Jack still here? I think maybe he had to leave. That's the end of the public comment. Okay. Well -- gone. Okay. Too bad.

MR. CONINE: Tom, what do you feel about the cap? Have you read the letter?

MR. GOURIS: Yes, sir, I did. I understand where Mr. Schmidt is coming from. I'm concerned that our obligation is to ensure financial feasibility for 30 or 40 years, depending on how long the note is. Specifically, the statute requires us to look at 30 years financial feasibility.

And while I understand his concern that a PCA provider out -- way out there may -- those costs may cause our reserve requirement to be higher, significantly higher, I also need to see a plan that shows that we can meet that need 25 years out there. So the cap would limit us in our ability to do that.

I would suggest if we were going to put such a cap in place that we still require that the staff identify any situation where the PCA suggests -- that the real reserve number is going to be higher than 350 and make sure that that's very clear so that any lender or syndicator out there can be made aware of it and anyone

else who's involved in the transaction be made aware of it and hopefully plan accordingly. Wrong answer; sorry.

I --

MR. CONINE: I -- you know, I understand his view as well and -- but I don't think a cap is necessary at this time so --

MR. GOURIS: I'd agree.

MR. CONINE: I had one more question -- I'm done.

MS. ANDERSON: What's the board's pleasure?

MR. CONINE: I would move to adopt -- we got to repeal something first, don't we? Move to repeal --

MS. CARRINGTON: No, but you're --

MR. CONINE: No?

MS. CARRINGTON: -- making two motions. You're amending the -- Part 1 Sections 1.31 to 1.36 of the real estate-analysis rules, and then you're adopting a new section, 1.37.

MR. CONINE: Okay. And can we do that in one motion?

MS. CARRINGTON: Yes.

MR. CONINE: So move.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: 2e is the final set of rules for the board's consideration, and this is the final compliance monitoring policies and procedures. Two actions on this, a repeal of an existing rule and an adoption of a new rule.

We didn't receive any comments on the proposed repeal on the rule. We did receive a few comments on the proposed new rule, and most of the comments that we incorporated as a result of public comment were changes that were made to our construction-inspection process for tax-credit transactions and for non-tax credit transactions also.

So I have asked Suzanne Phillips, who is the director of Portfolio Management and Compliance, to come up and maybe go over some of the changes we made or ask -- answer any of the board's questions.

MR. CONINE: How about if I make a motion

before you do that?

MS. PHILLIPS: You're certainly welcome.

MR. CONINE: We adopt to repeal Title 10, Part 1, Chapter 60, Subchapter A Rule 60.1, and we adopt new Title 10, Part 1, Chapter 60, Subchapter A, Rule 60.1.

MR. GONZALEZ: Second.

MR. CONINE: Do we have any -- we don't have any public comment. The motion's on the floor. I've got no questions of the witness.

MS. ANDERSON: Discussion and questions for Ms. Phillips.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CONINE: Easy street.

MS. PHILLIPS: If I may -- I hate to give up the microphone. Could I take it just for a second? I wanted to introduce Patricia Murphy. She's recently accepted the manager's position of Portfolio Compliance. She's been with the department about ten years.



She was a supervisor before she became acting. She came on this week, and in the interim time she's made some wonderful -- actually, some groundbreaking changes to the division and has made some suggestions to the department on how we do evaluations and job classifications. And I'm really excited to have her on board.

And if I may, we never get to introduce our key staff, and they've been here all day. I also have Lucy Trevino. She, at reorganization, became the manager of Portfolio and Compliance Analysis. They're the team that handle the nonroutine work, the problems that hit our desk every day.

Lucy and her team take care of those problems. She also led the charge on putting about \$25 million of new -- not new HOME funds, but found HOME funds through the reconciliation. She and her team did a phenomenal job with that, and I wanted to offer that appreciation.

Jo Taylor, who's right here, is the woman who takes care of all of our compliance history. It's a full-time job. She does take on other jobs as well, but Jo has been handling that for a couple of years and has done a phenomenal job.

And I also have Michael Garrett here. He was

our representative through the public-comment process. And this team of folks -- it was -- we're not rule makers; we're rule enforcers. And this was a learning experience. Last year was not great. This year was exceptional.

The team had a specific goal to take as much of the public comment as possible and exhibited a willingness to change internal procedures in order to implement those -- the public comment that we received. They stayed in contact with them for the last couple of months working out all of these issues just to make sure that it -- we were doing what we needed to do.

And I want to thank both my staff and the public for helping us through this rule-making process that -- like I said, we're not rule makers; we're enforcers.

(Applause.)

MS. ANDERSON: Item 3.

MS. CARRINGTON: Item 3 is the adoption by the board of the tax-credit application submissions procedures manual. It's required by our statute. As we adopt the QAP, we also adopt a manual that basically gives the development community direction, important dates on how they apply for credits.

And I would like to make a correction on both

pages 3 and page 7 as we approve this document. If you look at page 3, we have the full -- the pre- and full-application cycle opened. That date we had was Friday, December 10. That date should actually be Wednesday, December 8.

And that is on page 3 and also on the schedule that we will be producing and putting up on our -- this one's already on our website, but it'll be amended going up on our website. And we needed to move that date back before the board meeting date so that we can have that cutoff for two times the state average credits per capita.

With that, staff is recommending that the board approve the adoption and the publication of the application submissions manual for 2005.

MR. CONINE: So move.

MR. GONZALEZ: Second.

MS. BOSTON: May I make -- I'm sorry. There was just another clarification that I wanted to be sure we have permission to change.

MR. CONINE: Go right ahead.

MS. BOSTON: Okay. There -- we're still revising the application itself, and because this is so detailed and refers to tabs and formatting, I just want permission to know that if we need to revise tabs and

formatting, that that's okay.

MS. ANDERSON: You got it, I think.

MS. BOSTON: Thanks.

MR. CONINE: Well, if you can't do that, something's wrong.

MS. BOSTON: I'm with you.

MS. ANDERSON: All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next item for the board's consideration is the adoption of the 2005 regional allocation formula. It went out on the same public-hearing schedule as all of the other documents that you have heard about.

We have four attachments for you related to our regional allocation formula. Our public comment didn't generate any changes to the regional allocation formula. There are some changes, however, but those changes -- as a result of receiving final resource data, which we told the board in September that the numbers they were going to be looking at -- we still had some final numbers to come in

from HUD.

HUD's also done some redesignations or renumbering of PJs around the state. So the amounts that you all approved or you looked at for the 13 state service regions in September were preliminary, and now these are final.

And if you look at the second page, we go through basically the explanation of HUD, updating PJs and also receiving final resource data. And what we've provided is the information for the trust fund, for the HOME Program and for housing tax credits.

MR. CONINE: Move for approval.

MR. SALINAS: Second.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Don't go anywhere, Steve. You know that.

Where the regional allocation formula is required by statute, our affordable-housing-needs score is not specifically legislatively mandated. However, Section 42 does tell us that we will allocate our tax credits based on housing need.

And state auditor's office and Sunset's findings said also to the department two years ago that the department would use an objective need-based criteria in allocating the funds. So what the affordable-housing-needs score helps us do -- it's a score.

And last year it was -- or this -- for the '04 rounds it was 20 points. It's going now to seven points, because one of the things we have heard in public comment was that folks thought that there was perhaps too much emphasis, too many points related to the affordable-housing-needs score.

So we have addressed that by reducing those points from 20 to seven. And we do use this in each of the regions to help identify those areas of the region by using Census data and other housing that's in the area to determine where the greatest need is in those particular regions of the region.

And we are recommending approval of this. We did receive some comments on it, but we -- the comments

really didn't result in any changes.

MR. CONINE: Does it go into whether we need one-bedrooms or two-bedroom?

MS. CARRINGTON: No, sir. It does not address that.

MR. CONINE: Okay. Move for approval.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Okay. Our state of Texas -- our 2005 state of Texas low-income housing plan or the SLIHP -- the SLIHP actually provides four vital functions for the department. It's an overview, first of all, of our housing and housing-related priorities and policies.

It outlines statewide housing need. It provides TDHCA's program funding levels and performance measures, and then it -- perspective -- it looks back on

the department's activities during the preceding fiscal year.

And we do have -- we've done two things for you. We showed you the changes in our draft from the '04 to what we were proposing for '05, but then we also have a revision of that that shows from the draft version to the '05 version what we are proposing to you all.

We have updated performance information. Again, in September that information was not final. The year hadn't been closed out. It has been now. As has already been mentioned -- adjustments to the regional allocation formula as a result of receiving all of the final resource information.

In Single Family -- that we may serve participating jurisdictions, although there's going to be scoring preference for non-PJs, and the continuation of the home-of-your-own coalition allocation, and also some scoring preference for tenants -- for rental applications for communities that are serving persons with disabilities under Olmstead. Staff's recommending approval.

MR. GONZALEZ: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion. I have a question. I'd like to understand the policy rationale for, although



we continue to provide a preference for non-PJs, allowing single-family funding to PJs, who already get HOME funding.

MS. HALL: We received public comment expressing the desires -- this is for organizations that serve people with disabilities. It is still a continued need within participating jurisdictions to serve people with disabilities, and we appreciate the need.

And at the same time, there is going to be a preference for nonparticipating jurisdictions, but if there is a --

MS. ANDERSON: Well, I mean, we do some things for people with disabilities, for single family in participating jurisdictions. It's called the Home of Your Own Coalition. I mean, doesn't the vast majority of that money go into PJs?

MS. HALL: Yes, it does.

MS. ANDERSON: Then I'm going to propose amendment to the motion that's on the floor, that single-family funding may not serve participating jurisdictions except for the 5 percent that's of long standing in the --

MR. CONINE: Here comes Mr. Pike.

MR. PIKE: I don't really have anything else to

say. I just wanted to make sure I got your comments down.  
So you're suggesting that the home-of-your-own would  
still be allowed --

MS. ANDERSON: That single-family funding in  
the HOME program will only serve non-PJs, and unlike what  
it says here, may serve PJs -- will serve only non-PJs.  
That doesn't affect the fact that we do single family and  
PJs with the Home of Your Own Coalition.

So I'm not touching the Home of Your Own  
Coalition. I'm just saying other than the Home of Your  
Own Coalition, the single-family funding should be only in  
the non-PJs, because the PJs already have single-family  
funding.

MR. PIKE: Okay.

MS. ANDERSON: That's my proposed amendment.

MR. CONINE: Any second it?

MS. ANDERSON: No.

MR. CONINE: I will.

MS. ANDERSON: Thank you. Is there discussion  
on the amendment?

(No response.)

MS. ANDERSON: Hearing none, I assume we're  
ready to vote on the amendment. All in favor of the  
amendment please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries.

MR. CONINE: Move for the amended plan.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: Next item is 2005-2009 State of Texas consolidated plan. This outlines the resources that are expected to be available to the department, to ORCA and also to Health and Human Services Commission.

It also outlines the method of distributing funds. This is a document that is required by HUD, and it addresses several of our programs, the HOME Program, the Emergency Shelter Grants Program -- and then with ORCA, the Community Development Block Grant Program, and the Housing Opportunities for Persons with AIDS, our HOPWA

program.

But the department does coordinate this document and submit it to the HUD. Most of the comments that we received on the consolidated plan were the same comments that we received on the State Low Income Housing Plan.

And I would recommend or suggest that the same amendment, the same change be made over on page 2, which -- this said single-family funding may serve participating jurisdictions," and so that would be "may not serve participating jurisdictions as approved by the board in the SLIHP.

MR. CONINE: Move for the consolidated plan with that change.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: Item 5a for the board's

consideration -- this is an item that -- staff is recommending that the board approve funding in the amount of \$500,000 to the Community Action Council of South Texas for HOME-project funds.

The project would be \$500,000. There would be 4 percent administrative funds that would equal to \$20,000. This was an application that did apply with the department in the HOME program last summer. They were a competitive application.

They were the next one on the list to be funded had there been enough funding to fund them. They are working with a weatherization rehabilitation and asset-preservation partnership called WRAP, and it's a partnership with the department. It's of national importance.

They also are working with the Ford Foundation.

And after the round was over, they came back to the department and asked for this reconsideration. And the reason that staff has felt it was important or worthy to bring it to the board's attention -- there's a considerable amount of leveraging that's involved in receiving this award.

A couple of years ago, we called them; we approached them and asked them to work with us on this

Ford Foundation and this border pilot program called WRAP.

The department or the board does have the ability to -- and this is over on the second page of your write-up.

In your deobligation policy, there is an ability to fund activities that would be colonias activities, which -- this is located in the colonias area. And we do have the ability to take deobligated funds and assign it to this kind of activity.

We do have sufficient deobligated funds to do that. This is a community-action agency that I think last summer was one of two around the country that received a National Excellence in Community Action Award. And so the staff did feel that this was an exceptional and an exemplary application and request, and that is why we were bringing it to you today.

MR. CONINE: Move for approval.

MR. SALINAS: Second.

MS. ANDERSON: I have public comment if Mr. Kenneth Christy wants to speak.

MR. CHRISTY: Good afternoon. I'm from the -- Ken Christy from the Community Action Council of South Texas. I brought my executive director, Fransisco Solitare [phonetic] and our planner, Tonie Boytao

[phonetic] with us.

I just came to speak on behalf of it. I'm basically here to answer any questions that might come up about the proposal. Also, the staff made a recommendation for \$500,000 for which, if we can get that funding, we would be very grateful.

Our request was for \$750,000, but I understand that staff is not allowed to make a request above and beyond the \$500,000. However, if I understand the rules correctly, you as the board are able to approve the entire 750 if you choose to do so.

I came to advocate for that, but we'll be grateful for whatever you're able to do for us. And I'm available for questions if you have any.

MR. SALINAS: Do you serve in Starr County in Zapata?

MR. CHRISTY: Yes, sir. Community Action Council of South Texas works in four prime counties, and we do some service work in other counties. The WRAP project is limited to four of the most underserved colonias in Starr County. They're all on the Texas Water Development Board list.

MR. SALINAS: How are you doing with the Water Development Board?

MR. CHRISTY: The Water Development Board's done some tremendous things out there. Most of these are colonias, when we got started out there, didn't have water or sewer service. And the major colonia we're in is Las Lomas, and they now have water and sewer. It's been really good.

Water's been brought into the other colonias that we work with, and sewer service is presently being installed in a number of those colonias.

MR. SALINAS: So this would be for weatherization, right?

MR. CHRISTY: This is a project that combines housing and weatherization. It's looking and saying -- they're usually thought of as two separate things, but there's a lot of thought going on in the country that we need to be able to find ways to integrate those things more tightly together when necessary.

And so we've been doing that with the help of the -- some IOU funding that we received from the department a couple years ago. We have a number of homes now that have received the weatherization aspect but need the rehab part -- here are certain things that weatherization's not allowed to do -- in order to bring these homes up to standard.



And so we're like halfway there, but not all the way.

MR. SALINAS: On this -- Las Lomas is all on the sewer and water?

MR. CHRISTY: Yes.

MR. SALINAS: You do have -- you've done all that already?

MR. CHRISTY: Yes. There's four colonias -- Tierra Linda already had sewer and water. Las Lomas didn't have either one of those things; now they do. The D and E [phonetic] colonia has water and is working on -- they're getting their sewer. It's being installed even as we speak.

And the last colonia, the La Porte number 2, is in the same situation. They have water, and they're receiving sewer.

MR. SALINAS: Does this board have the authority to do the extra 250?

MS. CARRINGTON: The reason we did not request \$750,000 to you was because in our HOME program that is the cap for all applicants for any one activity.

MR. SALINAS: Well, this is a group project, because I know that -- the history of Las Lomas, and it's a bad history. And I'm glad that they all have water and

sewer now, but this would probably -- if we do the increase of 250, it would probably help us kind of rehab a bunch of the homes and help the Starr County area.

So if it's in the -- in our authority -- if -- I would like to make a motion to increase it to 750. We already want to do something good there and do the extra 250.

MS. CARRINGTON: I think we would need to check that we do have sufficient deobligated funds. That would be the one caveat that I would put on it but --

MR. SALINAS: But I think we have a motion, second, for the 500,000, right?

MR. CONINE: Correct.

MR. SALINAS: Okay. So I think if you all would check and find out by the December meeting if we could do the extra 250. If you already want to do that -- I mean, what I'm saying here is that if you really want to do something good for an area, then this is the area to do.

Because I know the history, and I know that -- they've done all that already, that's a great achievement as far as the sewer and water.

MS. ANDERSON: If I could just express an opinion -- is that Edwina said, you know, the ceiling on

the HOME awards that we do under any conditions to any grantee is \$500,000, and we're making an exception to begin with here outside the competitive cycle to someone that didn't qualify in the competitive cycle -- they were close -- because it's an exemplary project.

But I think to -- you know, we're already making one exception. And, you know, I really think we ought to leave our funding ceilings -- you know, be consistent with our funding ceilings.

And I suppose if we've made this exception once, there would be nothing to prevent this entity, you know, from, you know, coming back in six months and asking for, you know, something else or participating in next year's competitive HOME cycle and getting more money.

MR. SALINAS: That's fine. I'm happy with the half a million, but, you know, the -- you would have to see this project to understand it.

Edwina, you've seen them, and I think what they've done on that area is amazing. And bringing in half a million dollars to do rehab is quite a bit -- a lot of money. They've never had this before. So if we can look at them again in the next six months -- probably be something that you all would like to think about.

But we can't say no to half a million to that

area, because it's really a needy area.

MS. ANDERSON: And I think we should be grateful that the staff brought this exceptional item to us. Is there other discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CHRISTY: Thank you very much.

MS. ANDERSON: Thank you.

MS. CARRINGTON: Item 5b -- there was an award previously, August '03, not in a competitive cycle, to the Cedar Ridge Apartments. And this was funded out of our Preservation Incentive Program. That is the funding that we have a variety of difference sources where we are working the preserve the affordability of properties.

Board made a loan in the amount of \$1 million to this property. Due to additional required and unforeseen increases in the scope of work -- and that is outlined for you on the bottom of the summary page going over to the next page -- staff is recommending -- the

developer has requested and staff is recommending an additional \$250,000 to be able to complete the necessary improvements to this property.

And to work this out, we used three divisions, which was portfolio management and compliance, real estate analysis, and the multifamily finance division. And all three of them are bringing this recommendation to the board for an additional \$250,000 to Cedar Ridge Apartments that would be funded out of the Preservation Incentive Program.

And there is ample -- well, not ample, but there's about \$500,000, I think, in that program. So yes, we do have the 250,000.

MR. CONINE: Move for approval.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in the favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: Okay. On presentation and possible approval of recommendations to rescind the general policy issuance, number 04-3.3, regarding the documentation of income for 90 days prior to the application and go back to 30 days, the Programs Committee passed a resolution of approval subject to the board.

So do you want to present that any further or just put it up for --

MS. CARRINGTON: No, sir, adequately covered.

MR. CONINE: Program approval recommends -- Program Committee recommends approval.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: Second, the resolution 04 09 8 is a resolution that -- adopting a payment standard for Section 8 housing-choice vouchers all across the state. Program Committee recommends for approval.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CONINE: And finally, the Program Committee just had a discussion on, again, our Section 8 Voucher Program this morning with no action taken. That concludes my report.

MS. ANDERSON: Thank you, Mr. Chairman.

Item number 7.

MS. CARRINGTON: 7a is one inducement resolution for a 2004 private-activity-bond program development that would, as we use the term, sit at the bottom of the waiting list. It is for 230 units. It's a rehabilitation. It's located in Houston. It has one, two and three bedrooms, 100 percent of the units at 60 percent.

And this is, as the board will remember, for additional volume cap that we anticipate will be returned

to the Bond Review Board. Now, the board did approve several in October that are in the same situation, 2004, sitting at the bottom of the waiting list.

So this transaction would go over and would be behind those applications or those inducements that the board did last month. I would like to note that the amount on your write-up is correct. It's \$8,750,000. However, the resolution -- the exhibit to the resolution does have an incorrect dollar amount on that, and so it should be 8,750,000.

And staff is recommending that the board induce this development to go over to the Bond Review Board for the 2004 waiting list.

MR. GONZALEZ: So moved.

MR. CONINE: Second. Resolution 04-9.0.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: Item 7b. There are seven



applications related to this request. This is, again, the 2004 Private Activity Bond Program, but this is for traditional carryforward. You may remember that the department has the ability to put in a request, and we have actually already put in our request over to the Bond Review Board for the 50 million, which is the amount that any one issuer is eligible to apply for.

These applications are all scored and ranked. And behind tab 2, you do have a list of the seven applications that tells you where they are located, how many units, who they are looking to serve, the bond amount and whether they are new construction or whether they are rehabilitation.

And they do total -- the seven of them total 63,340,000. Obviously, the department's amount that we would be eligible is only 50 million, so we may not get them all. But we are asking for your all's approval of the resolution to induce these for the 2004 carryforward.

MR. GONZALEZ: So move.

MR. SALINAS: Second.

MR. CONINE: I have a question, Ms. Carrington.

MS. CARRINGTON: Yes, sir.

MR. CONINE: On one of these, on my chart, it says do not recommend.

MS. CARRINGTON: I think we had seven applications, and we're actually recommending six.

Is that correct, Ms. Meyer?

MS. MEYER: Yes, ma'am.

MS. CARRINGTON: Okay.

MR. CONINE: So it's only the six that are being recommended by staff here --

MS. CARRINGTON: Yes. We did report to you seven --

MS. MEYER: The resolution has the six.

MR. CONINE: You can tell I'm being lazy and didn't read the resolution, but I just wanted to make sure I was clear on it. Okay.

MS. MEYER: It's excluding the Glenn Heights.

MR. CONINE: That answers --

MS. ANDERSON: Thank you for picking that up, Mr. Conine.

MR. CONINE: Answers my question.

MS. CARRINGTON: Yes sir, apologize.

MS. ANDERSON: Do we have a second?

MR. CONINE: Yes.

MS. ANDERSON: Hearing no discussion, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: And was the resolution number read into the record there, 04-9.1?

MS. CARRINGTON: Okay. The next item for the board's consideration is for the 2005 Private Activity Bond Program waiting list. Five applications were received by the department. That resolution number is 04 09 2.

We will finalize the scores and rank these by November 15 and submit them to the Bond Review Board. Also, behind tab 2 you will see the detail of the five applications, and there are four of them that we are recommending.

The last one on the list, Malloy Meadows, is an application we are not recommending, incomplete application and does not meet threshold. So four out of the five staff is recommending, and that is what is also identified on the resolution.

MR. GONZALEZ: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next item for your consideration is a request for waiver of a specific 2004 QAP requirement that requires acquisition-rehab transactions involving HUD or USDA Rural Housing Services -- and there are 14 developments that fall within this request.

You heard earlier from Ms. Boston that this is something that we are correcting and fixing for the '05 QAP. Basically, Section 50.14 (a) (1) of the 2004 QAP requires that the development owner purchase the property for the development by the deadline to submit the carryover allocation documents, and this deadline in the QAP is December 1, 2004.

Several developments that are working with HUD or USDA will not be able to meet this December 1 deadline for closing on the property, and so what we are requesting is for these properties only, those that are working with HUD or USDA -- the board has the ability to waive one or

more portions of the rules if they feel like there's good cause.

And so we are requesting that, because of these 14 transactions working with HUD, USDA that cannot meet this December 1 deadline, that this waiver be granted. And on the second page of your writeup, you will see the list of all of the properties, and they are all waiting on either USDA or HUD transfer approval.

MR. GONZALEZ: So move.

MR. CONINE: Second.

MS. ANDERSON: I would just note that, in fact, there are now just 13 developments, because Las Palmas was listed here. So if we just make sure that that was in correctly.

MS. CARRINGTON: Thank you.

MS. ANDERSON: Any discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume -- still awake enough to catch that. Hearing no discussion, I assume we're ready to vote on the motion. All in favor please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: 8b we have addressed. 8c is issuance-of-determination notices on tax-exempt bond transactions with other issuers. TDHCA allocating the credits on these five transactions -- we can take them individually, or we can take them as a group.

These were all transactions that basically had no public comment reported to us, basically very little opposition on the transactions. They're in priorities one, two and three. Do you want to take them together, or you want to do them --

MR. SALINAS: Together.

MS. CARRINGTON: You want to take them as group? Okay. Then let me read them into the record. The first one is 04457, Evergreen at Lewisville. This is a senior development. It's new construction, Denton County HFC as the issuer. What we are recommending in the way of credit allocation is \$496,596.

The next one is 04463, Lakeside Manor Senior Community, seniors, new construction, Denton County HFC. \$428,143 is the credit-allocation recommended amount. The next is 04452, Seville Place. This is family; it's new construction; it's located in La Porte; Southeast Texas HFC is the issuer, \$564,828 the credit recommended

request.

04459, Bayview Apartments, family, new construction. Credit recommended allocation amount is \$574,895. And the last one is 04492, Artisan on the Bluff, family, new construction located in San Antonio, the San Antonio HFC. \$911,857 is what's being recommended in the credit amount.

MR. CONINE: Move for approval.

MR. GONZALEZ: Second.

MR. SALINAS: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote on these.

MS. BOSTON: Public comment.

MS. ANDERSON: Did you fill out a second witness-affirmation form? Well, come on up. Sorry, Tony.

MR. SISK: Tony Sisk, Churchill Residential. We're the developer on Evergreen at Lewisville, number 04457. One quick request -- in the original application, it had 496,596. We sent in the term sheet from the lenders at the 506,556 eligible-basis amount.

It came back in underwriting at the 496. We didn't catch it, but it was -- the underwriting came back

before we could get it on -- addressed for the board meeting. So I'm just requesting that we change the amount from 496 to the eligible-basis amount of 506,556.

MS. ANDERSON: Thank you.

MR. GOURIS: Tom Gouris, director of Real Estate Analysis. Their credit request -- our recommendation was based on what they requested. I don't know of the timing of the -- when the last piece of information that he's talking about came in.

But I can tell you from the report that's here, if you look at the last page of the allocation calculation, we did calculate based on a -- what probably was a higher applicable percentage of 3.56. We calculated that he would be eligible for 506,556 in credit.

We don't adjust upward; we use what they tell us, and that's been our policy for the last year or so. But had they told us -- had they made that adjustment in time to adjust our board material, we would have accepted it. Perfectly clear, isn't it?

MR. CONINE: Move to amend.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're



ready to vote on the amended motion. Can we just do it that way?

MR. CONINE: Yes.

MS. ANDERSON: All in favor say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. CARRINGTON: And may I clarify for that record, is that number \$506,556 --

MR. GOURIS: Yes, ma'am.

MS. CARRINGTON: -- credit allocation? Okay.

Thank you.

The next item is 8d, which is a request for additional credits at Primrose at Shadow Creek. This is a 4 percent tax-credit transaction that was awarded credits in 2001. The development is built. It is placed in service.

We are in the process of issuing their 8609s. And this was a development -- it's 176 units. It's located in Austin. The original approved credit amount was \$525,000. Prior to actually commencing construction, this development team for this development changed substantially.

And basically what the new development team

found was that a number of design changes were necessary to actually complete the project. And with the current allocation -- there was additional site work that was needed, direct and indirect construction costs.

So with their current allocation of \$525,000 -- 100 -- I mean, that's what they moved forward with, understanding that at 8609 time, if they had basis that supported an additional amount of credits, that they could indeed request those additional credits.

And so staff is recommending the additional \$92,244 in credits for the Primrose at Shadow Creek development.

MR. CONINE: Move for approval.

MR. SALINAS: Second.

MS. ANDERSON: I have public comment on this item.

Cheryl Potashnik.

VOICE: [indiscernible.]

MS. ANDERSON: Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next item for the board's consideration is requests for extensions to commence substantial construction. There are eight of these requests. They are all for 2003 tax-credit allocations. The deadline that they are requesting an extension of is a deadline today, which is November 12, which was required to meet the commencement of substantial construction.

The reasons vary in requesting the reasons for the extension. Staff has reviewed all of the explanations. All of these eight have submitted to the department the \$2,500 extension request fee, and staff is recommending new deadlines on each of these.

Now, some of the deadlines are different depending on the circumstances, but we are recommending extensions on all of these.

MR. GONZALEZ: So move.

MR. SALINAS: Second.

MR. CONINE: Can I get just two minutes --

MS. ANDERSON: You bet. We're just going to take just a minute to look through these.

(Pause.)

MR. CONINE: Okay.

MS. ANDERSON: And Ms. Cheryl Potashnik is also here to testify on this item if anybody has any questions for her. Discussion.

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: I'd like two minutes --

MS. ANDERSON: Yes.

MS. CARRINGTON: -- to toot our horns. Okay.

The executive director's report -- this is not on the agenda. It's not on the item. But if anybody's seen the November 1 Time Magazine -- in the centerfold, Mr. Conine's three children and his father. So Ms. Anderson --

MR. CONINE: Centerfold kids.

MS. CARRINGTON: Ms. Anderson told me about it on Friday afternoon, and I rushed out to buy it. This was at a homebuilder's meeting, I think, in Columbus, Ohio, and I gather the kids were about ten feet away from the president. And did he come -- and came by and got a

picture and --

MR. CONINE: Came by and shook hands, got a picture.

MS. CARRINGTON: All right. So if anybody wants to take a look at that -- but you can't have my magazine. Mr. Conine was elected first vice-president of NCSHB in Chicago in October, and I guess if he behaves himself the next year that he will be president of NCSHB.

I think our meeting is actually in September of next year. So we are very proud, Mr. Conine of you, very much. I was also elected to the board of NCSHA, which I'm very pleased about from an agency standpoint. From a state of Texas standpoint, it's the first time an ED from Texas has ever sat on the board of NCSHA.

So that's a real heavy responsibility, but I'm delighted.

(Applause.)

MR. CONINE: None of them have been around long enough she has to --

MS. CARRINGTON: You know, some of them have been around longer than I have, Mr. Conine.

MR. CONINE: I think I've been around.

MS. CARRINGTON: We have a partnership with the Texas Association of Realtors that there's going to be a

press conference on -- I think it's December 7 -- that we've been working with on their Housing Initiatives Committee.

There is, in your packet, our department outreach activities. And also, there was an award recognition for our community-affairs staff for sponsoring the regional ten-state US Department of Energy conference, which was very successful and was going on in October when we had our last board meeting.

So with that, thank you all very much. Have a very nice Thanksgiving.

MR. CONINE: Mr. Bogany, before he left, told me he was just voted Houston realtor of the year --

MS. CARRINGTON: I did not know that.

MR. CONINE: -- of all the Houston realtors.

MS. CARRINGTON: All right.

(Applause.)

MS. ANDERSON: Is the board meeting on the 9th or the 16th? Does anybody know?

MS. CARRINGTON: Yes, it's on the 9th.

MS. ANDERSON: Okay.

MS. CARRINGTON: It is December 9, second Thursday of the month.

MS. ANDERSON: Okay. Well, I just didn't --

MS. CARRINGTON: Okay. Thank you all very  
much.

(Whereupon, the meeting was adjourned at 4:00  
p.m.)

C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: November 12, 2004

I do hereby certify that the foregoing pages, numbers 1 through 232, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

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(Transcriber) 11/23/2004  
(Date)

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