CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the May 16, 2018 Meeting

1. **Roll Call.**

   Vincent Brown for State Treasurer John Chiang chaired the meeting of the Tax Credit Allocation Committee (TCAC). Mr. Brown called the meeting to order at 1:55 pm. Also present: Alan LoFaso for State Controller Betty Yee; Jacqueline Wong-Hernandez for Department of Finance Director Michael Cohen; Lisa Bates for Department of Housing and Community Development (HCD) Director Ben Metcalf.

   California Housing Finance Agency (CalHFA) Executive Director Tia Boatman-Patterson, City Representative Ray Mueller, and County Representative Santos Kreimann were absent.

2. **Approval of the Minutes of the March 21, 2018 Meeting.**

   There were no corrections or edits to the meeting minutes.

   MOTION: Ms. Wong-Hernandez moved approval of the March 21, 2018 minutes. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

3. **Executive Director's Report.**

   Mr. Stivers noted that among the changes in the federal omnibus appropriations bill passed in March is that TCAC has been granted a 12.5% increase in the amount of 9% credits staff can allocate each year for this year and three years thereafter. Mr. Stivers also noted that since TCAC is currently in the middle of the first round for 9% credits, staff will put the entire increase into the second round this year, essentially increasing the second round credits by 25% more than what would normally be available. Mr. Stivers also noted that in the successive years, staff will account for the 12.5% increase in each round. He also noted that the staff is looking forward to receiving the additional credits and approving some additional projects.

   Mr. LoFaso thanked Mr. Stivers for finding the fastest way to deploy the additional funds.

4. **Discussion and Consideration of the 2018 Applications for Reservation of Federal Four Percent (4%) Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.**

   Gina Ferguson noted that staff had 24 4% projects for the Committee's consideration and approval consisting of 8 new construction projects and 16 rehabilitation projects. She also noted that staff has reviewed the projects for program compliance and recommended them for approval.

   MOTION: Ms. Wong-Hernandez moved the approval of the 24 projects. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

5. Discussion and Consideration of the 2018 Application for Reservation of Federal Four Percent (4%) and State Farmworker Tax Credits for Tax-Exempt Bond Financed Projects.

Ms. Ferguson stated that there was one 4% plus State Farmworker credit project staff has reviewed for program compliance and recommended for approval.

Ms. Wong-Hernandez asked if staff could speak to the high per unit cost of this project.

Mr. Stivers responded by stating that this was a 10 unit project, which makes it difficult to capture economies of scale. He also stated that the project is located in Solano Beach across the street from the transit station in a very expensive community. Mr. Stivers added that there was a long period of local entitlements with a lot of changes to the project that added time and costs. Mr. Stivers noted that the project is predominately for farmworker families which includes three and four bedroom units. Larger units are inherently more expensive on a per unit basis.

Ms. Ferguson also added that the project has some additional features such as an elevator, advanced energy efficiency, and parking beneath the units.

Ms. Wong-Hernandez thanked Ms. Ferguson and Mr. Stivers for their explanations.

Mr. LoFaso asked a follow up to the applicant in regards to how the protracted entitlement issues drove up the costs and what the sources were to pay for those costs.

Ginger Hitzke, the applicant for the project, stated that December 30, 2018 will mark the 10th year that she has been working on this project. She noted that the project is in Solano Beach, which is a very high opportunity area. Ms. Hitzke added that the entitlements for the project were issued in 2014 and the project was in a California Environmental Quality Act (CEQA) lawsuit for 2.5 years. She also noted that the lawsuit was appealed, extending the court process for an additional year, which the developer ultimately won.

Mr. LoFaso asked where that ultimately gets paid for.

Ms. Hitzke stated that the City was contributing generously to the project and did most of the heavy lifting. She noted that the majority of the cost associated with the legal action was absorbed by the General Fund of the City of Solana Beach and not passed on to the developer in their loan. Ms. Hitzke noted that the support from the City has been unbelievable and acknowledged that it is an expensive project but assured the Committee that this was the least expensive way they could develop the project since it is on a city owned parcel of land, which is near impossible to find in this small coastal town.

Mr. LoFaso stated that he just wanted to draw out the question of who is going to be paying for entitlement costs in affordable housing projects. He thought it was noteworthy that Ms. Hitzke noted some of the costs were off budget. Mr. LoFaso also noted that if the project

were competitive, she would have wanted to count every dollar of donation to help out her tiebreaker score.

Ms. Hitzke noted that she was appreciative of the Committee for allowing such a small and high cost project in an area that has no housing.

Mr. Stivers stated that this project probably would not have qualified for 9% credits since it would not pass the high cost test. He explained that the project is leveraging 4% tax credits and tax exempt bonds since the 4% tax credits are unlimited and the bonds are still in some supply. Mr. Stivers also noted that the project is using state farmworker credits for this project, which have gone unused over the last couple years. He added that because of the high cost associated with the project, it was taken out of the 9% program but able to leverage other resources which was a decent outcome.

MOTION: Ms. Wong-Hernandez moved the approval of the project. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

6. Discussion and Consideration of a Resolution to Adopt Proposed Regulations, Title 4 of the California Code of Regulations, Section 10325 and 10326, Revising Allocation and Other Procedures.

Mr. Stivers stated that these are emergency regulation changes resulting from the federal omnibus appropriations bill of March 2018. He added that the second provision of the bill affecting the tax credit program was the ability for projects to use income averaging. Historically, projects would have to make an election between one of two choices, 20% of the units were at 50% Average Median Income (AMI) or 40% of the units were at 60% AMI. Mr. Stivers noted that this bill has created a third option which says that 40% of the units can be affordable ranging from 20% AMI to 80% AMI so long as the average is at 60% AMI. Mr. Stivers noted that the emergency regulation changes helps staff administer the new provision and ultimately do three things:

1. Open the door for people to come in with these new types of projects in order to serve residents higher up the income ladder in California. Mr. Stivers added that TCAC is the first state in the country to have opened that door noting that other tax credit housing agencies have been hesitant to move quickly. He noted that staff likes the flexibility this change provided in terms of meeting different income ranges and that it helps rehabilitation projects with over-income tenants.

2. Maintain the status quo in terms of the historic deeper targeting requirements noting that the federal law allows states to administer the program and set stricter requirements. In TCAC's competitive program (9% projects and 4% projects seeking state credits), a project currently needs to average 50% AMI to get maximum points. The proposed regulation change states that competitive projects which elect income averaging must average 50% AMI. Mr. Stivers noted likewise in the 4% program, there is a requirement that 10% of the units be affordable at 50% AMI. Assuming the remaining units are at 60% AMI, that requires an average of 59% AMI. Mr. Stivers added that TCAC will

allow the use of the income averaging provision for 4% projects provided the project averages 59% AMI.

3. The law allows some projects that have already received a reservation to change their targeting mix. The proposed regulation change is stipulating when staff will allow the change. Mr. Stivers stated that this would only apply for projects with over-income tenants that need accommodations or for projects that want to increase the number of low income units. Mr. Stivers added that to be any broader on this regulation change would have a potential to overwhelm staff in terms of workload without any additional benefit.

Mr. Stivers noted that the proposed changes did receive a number of public comments over the period of one month and that the revised changes takes into account the three items noted above.

Mr. Sabelhaus on behalf of the California Council for Affordable Housing (CCAH) commented on the proposed regulation changes, stating that it was a long time coming but a major leap to allow for a higher income level up to 80% AMI as long an average of 60% AMI is being retained. He added that mixed income projects are the better part of valor in terms of what you want to do for the population you are serving because in essence, it allows for projects with lesser concentrations of lower income families if you can get a better spread on the income.

Mr. Sabelhaus commented that given the cost constraints, the spike in interest rates and the decreasing amount of permanent financing available, projects that received allocations from the California Debt Limit Allocation Committee (CDLAC) and TCAC back in December are now on the verge of tanking because they cannot make up the gap in their costs unless local jurisdictions come forward to help them out.

Mr. Sabelhaus stated that this leads him to his point that if projects were permitted to have the maximum flexibility that he has stressed in his communications to Mr. Stivers, projects would be able to make up the gap in their costs. Mr. Sabelhaus referenced a 9% project with 76 units in Paso Robles that he has been working on as an example of his point. Mr. Sabelhaus noted that by increasing some of the 60% AMI units to 80% AMI, it would have increased the rental income allowing an increase to the permanent loan amount. The increased permanent loan amount would allow them to save tax credits or soft financing. By doing so, Mr. Sabelhaus explains that the price to pay would be that the average income would increase to 54-55% AMI.

Mr. Sabelhaus stated that their recommendation to Mr. Stivers was to allow the adoption of a regulation that would permit the maximum flexibility that Senator Cantwell's bill provides to allow for the construction of additional housing units in California.

Mr. Brown asked Mr. Stivers if this change would apply to projects that have already been approved where TCAC would have to go back and redo the awards or if it only applied to the specific project Mr. Sabelhaus was speaking to.

Mr. Stivers stated that to the extent that the comments by Mr. Sabelhaus were about projects that have already received a reservation, then yes that would require TCAC to expand the universe of projects.

Mr. Stivers disagreed that allowing already awarded projects to increase their average AMI was necessary to close financing gaps. He noted that projects generally commit to a certain level of affordability and staff holds them to those commitments. While the tax credit market did change for 2016 projects, this cohort of 9% projects needed to close within six months and the corresponding cohort of 4% projects needed to issue their bonds within 6 months. These time periods have long since passed. Mr. Stivers believed the projects with current financing gaps Mr. Sabelhaus referenced were 2017 projects that started with the lower credit pricing. Mr. Stivers accepted the fact that interest rates and costs have been increasing but doesn't believe these increases are significant enough to necessarily sink a project or warrant a change in affordability. Mr. Stivers stated that he would prefer to hold projects to their commitments and thinks we have passed the wave of projects affected by the immediate down turn of the credit pricing. He also stated that while you would save subsidy by allowing projects to go up to 80% AMI, you would lose significant affordability. Some of the units that would have been affordable at 60% AMI would become 80% AMI units. Mr. Stivers concluded by stating that this program ultimately buys affordability.

Mr. LoFaso asked for clarification on the language referencing March 26, 2018 in the proposed regulation changes, where he would expect a provision providing leeway for projects that have already been awarded tax credits but have not yet placed in service. Mr. LoFaso said he is unclear if this is the same rule as the post March 26, 2018 average 50% and 59% AMI and whether the income averaging is allowed for already awarded projects.

Mr. Stivers answered Mr. LoFaso stating that the proposed regulations change would apply the average 59% AMI to both eligible projects previously awarded and to any future projects. Mr. Stivers believed that Mr. Sabelhaus was referring to projects that have already received a reservation. Mr. Stivers also stated that staff received a letter from Mr. Sabelhaus advocating that we should also eliminate the 59% requirement for future projects as well.

Mr. LoFaso noted that he would like to confine his question to the context of an existing project.

Mr. Stivers stated that the proposed regulation change does allow some projects to come in and utilize income averaging but only under two scenarios.

1. The project has existing tenants that earn more than 60% AMI. These tenants are over income and either need to be relocated or the project will have its applicable fraction reduced to a percentage less than 100%. Mr. Stivers noted that staff

would like to avoid that scenario for a number reasons which is why TCAC is allowing projects in these particular situations to utilize income averaging.

2. The project had less than 100% affordable units to begin with, which is quite rare. If these projects wanted to come in and increase their number of affordable units, they would be allowed to utilize income averaging.

Mr. Stivers noted that the project Mr. Sabelhaus had mentioned was one having a financial gap after approval where they would like to make up the financial gap by revisiting their targeting and utilizing higher income units. Since this is a 9% project, staff would also need to allow them to undo their current average 50% AMI and go up to some higher level. Mr. Stivers stated that the pro forma he reviewed showed an average of 54% AMI which would be a big departure from the targeting for a typical 9% project.

Mr. LoFaso inquired about mixed income projects and the reasons why Mr. Stivers did not want to adjust the applicable fraction.

Mr. Stivers clarified that TCAC would revisit the applicable fraction in the two scenarios noted above.

Mr. LoFaso stated that Mr. Stivers said there was a reason why he did not want to do it and asked whether that was a question of magnitude.

Mr. Stivers noted that he doesn't recall what he said and apologized.

Mr. Brown added that Mr. Stivers said for projects that had already been approved and further along in the process.

Mr. Stivers noted that if neither of the two scenarios above applies to the project then it's not an issue of revisiting the applicable fraction but an issue of revisiting their targeting. He gave a hypothetical example of a 4% project to help explain the issue. A standard 4% project has 10% of the units restricted at 50% AMI and the remainder at 60% AMI. If the project is already 100% affordable and will not have any over-income tenants, it is not eligible for either of the two scenarios noted above and therefore TCAC would not want to revisit the targeting previously approved.

Mr. LoFaso stated that he has some future focused questions but has exhausted his present questions.

Mr. Brown wanted to make clear that these were emergency regulations so that staff could get moving on some activity in the area. He assumed that the path forward would be to come back and implement permanent regulation changes.

Mr. Stivers clarified that these regulations were adopted in an emergency time period but stressed that they are permanent regulatory changes and that there is no need to revisit them with a second action.

Ms. Wong-Hernandez added that the comments made by Mr. LoFaso towards the end were very helpful in summing up the discussion for her.

Mr. LoFaso asked if it is fair to characterize this overlay as we allow income averaging but we allow it at a lower threshold and asked Mr. Stivers if he could explain what that means.

Mr. Stivers noted that generally he would say yes and stated that the federal law sets the minimum standards and says that if you're going to use income averaging, you can have ranges of income targeting 20% and 80% AMI but you have to average of 60% AMI which is the minimum threshold for income averaging. Mr. Stivers added that staff is setting a higher standard and noted that if projects are going to be utilizing income averaging in California then they need to have an average 59% AMI which TCAC has long required in addition to the federal minimum standard.

Mr. LoFaso asked what it means to follow the historic approach in the context of the new averaging world and referenced Mr. Sabelhaus' comment regarding higher income units in mixed income projects where the average income units would be at a higher income level and fewer units to serve people at the lower incomes. Mr. LoFaso explained that his understanding is that this would broaden the range of potential units to which tax credits could be deployed suggesting that there would be more overall units there could be more units at an aggregate higher income level or is there any potential at a higher averaging threshold to spread tax credit revenues across more units in a way that would get us more units built without an appreciable diminishment of our commitment to the lowest income targeted units.

Mr. Stivers responded first by addressing mixed income projects. He stated that until now, tax credits have never been able to support units above 60% AMI and noted that the range was typically from 30% to 60% AMI. Since income averaging is now allowed, any future project is allowed to propose 70% and 80% AMI which will be offset with additional deeper targeted units down to 20% AMI. By allowing the use of income averaging, the proposed regulation is serving a broader range of incomes which is consistent with Mr. Sabelhaus' interests in that regard.

With regards to whether you can get more units by allowing higher targeting, Mr. Stivers stated that there is a dichotomy between affordability and the number of units that can be produced. Mr. Stivers added that ideally, you want more affordability and less resources but that is not the case. If future projects are allowed to have an average of 60% AMI as opposed to 59% AMI, there would be some additional projects built due to the additional rental income which in turn allows more debt to be leveraged making some projects that would otherwise not be feasible, become feasible. However, you would lose 10% affordability on 10% of the units. The tradeoff is that you would get some more units but lose some affordability. Mr. Stivers also noted that you would lose affordability in every project moving forward, including all the ones that are currently feasible.

Mr. Stivers stated that keeping the average 59% AMI and continuing the deeper targeting is the better approach which is in part linked to the idea that CDLAC is expected to be competitive in the near future. At some point, TCAC won't be able to approve additional projects because CDLAC will simply deplete its resources.

Mr. LoFaso noted that Mr. Stivers moved the discussion along nicely. He noted that as a matter of principle, he would like to think about how unit mixes and flexibility can lead to efficiencies on stretching resources more. Mr. LoFaso added that he would like to come back and revisit the issue at a later date.

Mr. Brown thanked Mr. LoFaso for his comments in an effort to narrow down the focus of the emergency regulations and noted that adjustments can be made to the regulations in the future. He added that he is in support of staff's current proposal and thought they should move forward.

Mr. LoFaso asked Mr. Brown if he would commit as chair to revisit the regulations at a later date and suggested that a time limit be imposed on the regulatory changes.

Mr. Stivers stated that a time limit on the use of income averaging would be problematic for the development community, noting that projects are lined up months and years in advance. Alternatively, Mr. Stivers suggested that the Committee schedule a time at a future meeting to revisit the issue in anticipation of the fall 2018 regulation changes. In theory, the Committee could sunset the provisions but noted that revisiting them would be a better idea.

Mr. Brown, Mr. LoFaso and Ms. Wong-Hernandez were all supportive of Mr. Stivers' suggestion and agreed to revisit the discussion of the topic at the October meeting.

MOTION: Ms. Wong-Hernandez moved the approval of the emergency regulation changes. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

7. **Discussion and Consideration of an appeal filed under TCAC Regulation Section 10330(b)(2) on behalf of Sonata at Riverpark (CA-14-158) to the issuance of negative points.**

Mr. Stivers started the discussion by noting that the project dated back to 2014 and that the tiebreaker, heavily weighted by public funds, was the driving factor of the funding decisions for the 9% tax credit program. Mr. Stivers added that staff deducted off-site costs in the tiebreaker calculation with minor exceptions such as costs for curbs, gutters and sidewalks. The idea is that the project should not receive a tiebreaker benefit for public funds that are paying for non-housing amenities outside of the project. Because of this rule, the application requires applicants to disclose what the off-site costs are so staff can determine if they qualify as eligible or ineligible off-site costs.

Mr. Stivers noted that this project listed $0 in their total off-site costs line item of their initial application, basically stating that there weren't going to be any off-site costs.

However, in the final cost certification, staff observed a couple hundred thousand dollars in off-site costs and questioned the owner. The $269,000 in off-site costs was related to alley improvements that the master developer had completed which the project was going to reimburse to the master developer. Mr. Stivers noted that during staff's conversations with the owner, it was clear that they were aware of these additional costs at the time of the initial application and always intended to reimburse the developer. However, these off-site costs were not disclosed in the original application. Not only were the costs not disclosed, the costs were imbedded in a different line item of the project budget. Mr. Stivers explained that staff viewed this as a material misrepresentation in the initial application and as a result, levied five (5) negative points on the applicant for the calendar year 2018. In addition, staff reduced the project's total credit award.

The appellant Anders Plett with Retirement Housing Foundation (RHF) introduced himself and his colleagues Kevin Gilchrist and Mark Walther. Mr. Plett referenced the negative points letter where they were accused of knowing about and failing to disclose certain ineligible off-site costs totaling about $270,000 and in doing so it altered their tiebreaker score and thereby constituted the material misrepresentation of facts. He added that they were penalized with negative points for the 2018 calendar year and a reduction in state credits by the amount of off-site costs in the amount of about $270,000, thereby creating a gap in the project that will now need to be funded by RHF.

Mr. Plett stated that he appealed on February 9, 2018 and was denied by Mr. Stivers on February 13, 2018. He added that the original appeal letter was misunderstood and had to do with the roles of the parties at the table here today. Mr. Plett stated that he would like to clarify their original appeal letter. He added that the tag of "material misrepresentation" is false and could be damaging to the reputation of their firm. He also noted that the reduction in tax credits is now a significant obligation for RHF which now takes away from their mission as a non-profit organization.

Mr. Plett stated that RHF is one of the largest operators and developers of affordable housing projects in the United States which was formed in 1961 and currently has 197 projects with over 18,000 units in over 29 states. He also stated that their foundation is mission-driven with roots that are faith based since the founders were members of the United Church of Christ. Their mission is that everybody in the United States have access to affordable housing to ease the burdens of life and improve the quality of life. Mr. Plett noted that they are huge rule followers so when they received the letter from Mr. Stivers they were shocked and embarrassed to say the least. Mr. Plett then turned it over to Mr. Walther to explain more about American Communities.

Mr. Walther thanked staff for all the hard work that they do and apologized for taking up their time with this appeal. He explained that American Communities was founded in 2000 and noted that he'd been in the credit business since 1987. He added that American Communities was approached by the master developer to get on board with the project. Since this project was out of their area of expertise, they mainly relied on the master developer for guidance. In 2013, Mr. Walther explained that American Communities

withdrew from the project and handed it over to Mr. Plett and his team with RHF to do the application.

Mr. Plett added that the Sonata project was the affordable housing component of the master plan and one of the last projects to go in as most of the master plan was already built out when RHF stepped in. He also noted that RHF provided a $1.5M long term commitment in residual receipt loans for the project which helped make the project feasible. When RHF took over the project, they became the managing general partner and American Communities stayed in as the administrative general partner.

Mr. Plett addressed the concept of material misrepresentation from Mr. Stivers' negative points and denial letters. He stated that a material representation is a deliberate hiding or falsification of a material fact, which if known to the other party, could have significantly altered the basis of a contract, deal or transaction. Based on the legal definition, there must have been prior knowledge and a significant impact resulting from the misrepresentation. Mr. Plett noted that the general contractor who had ended up building the project was an affiliate of American Communities called American Communities Home Builders. The off-site costs in question were included in their schedule of values as hard costs under site work. Mr. Plett explained that by the time RHF got the data for their application, these off-site costs were hidden in the general contractor's numbers and not obvious to RHF as an off-site cost since it was included in the on-sites.

Mr. Walther stated that the off-site costs were hidden in the overall site work line item of $500,000.

Mr. Plett stated that although the number was included in the application under site work, it wasn't disclosed as an off-site cost. He added that neither RHF nor the architect who prepared Tab 12 knew of the off-site costs at the time of application. Mr. Plett also stated that the off-site costs adjacent to the project were being built by others and completed prior to RHF starting the Sonata project. He added that it wasn't obvious to RHF that they had off-site costs even though they were bound by a contract to reimburse those off-site costs. Mr. Plett presented the Committee with a letter from the architect which stated that the architect did not know about the off-site costs. Mr. Plett stated that RHF discovered the issue until almost a year later when the contract was being finalized with the general contractor.

Mr. Brown asked Mr. Stivers to clarify what he meant by material misrepresentation.

Mr. Stivers replied that he was not sure what the developer's intentions were but that, in his view, the applicant team was aware of the off-site costs that had to be reimbursed to the master developer. He added that there may have been some things that were lost in translation when the roles were changed in the project, but it was always the intent to reimburse the master developer for the off-site costs, which was in writing at the time of application. Whether they actively knew about it or should have known about it, it is their responsibility since it is their project. Mr. Stivers noted that it ultimately comes down to that

they were aware of or should have been aware of a $270,000 payment to the master developer that should have been listed as off-site cost but it was not.

Mr. Stivers clarified the sanctions that were placed as a result of the mispresented information. Mr. Stivers stated that the two sanctions that were placed were negative points for the 2018 application cycle and a reduction in credits that equals the amount of $270,000 in equity.

Mr. Walthers invited Mr. Gilchrist to join the conversation to elaborate on how the 2014 application was laid out. Mr. Plett also stated that this was the second part of their argument.

Mr. Gilchrist stated that in the 2014 regulations the only reference to ineligible off-site costs is within the leveraging section which is a subsection for public funds. The Sonata project scored the maximum points in that section in cost efficiency so they didn't review the public funds section within the 2014 regulations. He also stated that the tiebreaker section of the regulations only referenced non-residential only costs which would not apply because there was no non-residential use as the project is 100% affordable housing with no commercial use and the regulation section does not refer to ineligible off-site costs. Mr. Gilchrist stated that had the off-site costs been noted on the correct line, it still would not have impacted the point score or tiebreaker. He added that the leveraging language was moved into the tiebreaker section, but did not occur until 2016.

Mr. Stivers replied by stating that the tiebreaker section in 2014 cross referenced the definition of public funds in the public funds point category for purposes of the tiebreaker. Since the public funds point category references the exclusion of ineligible off-site costs and the tiebreaker section cross references that section, the exclusion of ineligible off-site costs applied to the tiebreaker.

Mr. Gilchrist responded by stating that there were two different descriptions and calculations on how to discount the public funds which he stated was confusing.

Mr. Brown asked if State Treasurer's Office counsel Robert Hedrick had any comments.

Mr. Hedrick replied no.

Mr. LoFaso stated he recalls the regulation changes in 2016 and 2018 to the tiebreaker section and that it is clear to him that there is knowledge intent in the representation of the application and the working relationship between the master developer and general partners. Mr. LoFaso stated that if the regulation was clear, there is a burden to know the regulations and to follow through with the documentation. He asked Mr. Stivers to clarify the descriptions of the off-site costs subtraction from public funds in the 2014 regulations.

Mr. Stivers stated that the language regarding off-site costs has not changed since prior to 2014, but has been moved. He explained that the language stated that off-site costs, except for curbs, gutters, sidewalks and utility connections immediately adjacent to the property, are deducted from public funds point category and the tiebreaker score. In this case, the off-

site costs were not curbs, gutters, sidewalks and utility connections immediately adjacent to the property and therefore would have been discounted from both the public funds point category and tiebreaker score.

Mr. LoFaso stated that the applicant made a reference to non-residential. Mr. Stivers responded that that was a different concept relating to how much commercial space a project has which is unrelated to off-site costs.

Mr. LoFaso asked Mr. Stivers to confirm that off-site costs, except for curbs, gutters, sidewalks and utility connections immediately adjacent to the property, would not qualify as public contribution based on the 2014 regulations.

Mr. Stivers quoted Section 10325(c)(9)(A)(i) of the 2016 regulations stating, "Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property."

Mr. Stivers noted that the language was in Section 10325(c)(1)(C) of the 2014 regulations.

Mr. Gilchrist claimed that this language was a separate scoring subsection where 20 points can be achieved in three different subsections within the leveraging category with Public Funds being one. The Sonata project achieved the full 20 points in Cost Efficiency so they didn't review the public funds section. He adds that the reference back to the public funds section within the tiebreaker contained two separate instructions. He added that the instructions within the application made no reference to go back and discount public funds for ineligible off-site costs, only for non-residential commercial funds.

Mr. LoFaso appreciated Mr. Gilchrist's comment but he did not want to argue.

Mr. Stivers stated that he disagreed with Mr. Gilchrist's comment.

Mr. Plett stated that a significant part of their argument has to do with Section 10325(c)(10) of the regulations and the application. He explained that the application does not say to subtract off-site costs from public funds, but it does say to discount the public funds by the proportion of the project that is non-residential. He restated that there were no non-residential components with the Sonata project and that the off-site costs in question were related to residential uses. Mr. Plett added that if the off-sites cost were disclosed correctly, the tiebreaker score would not have changed. He noted that in the denial letter dated February 13th, Mr. Stivers admitted that the final tiebreaker page was confusing and did not show how to exclude such off-site costs but then downplayed it by stating that the off-site costs were clear everywhere else including a voluntary workshop PowerPoint presentation. Mr. Plett argued that the only place in the 2014 regulations that discuss the treatment of off-site costs is within the leveraging section of the regulations in Section 10325(c)(1)(C) and where the Sonata project received all 20 points in Cost Efficiency. For that reason, he

explained that the Sonata project did not need to rely on the language from Public Funds. Furthermore, Mr. Plett stated that there was no requirement to attend a PowerPoint presentation and added that Mr. Stivers claimed that had the project disclosed the off-site costs in the application, staff would have corrected the tiebreaker accordingly. He added that they would've appealed the issue at that time using the same reasoning previously mentioned. Mr. Plett stated that TCAC staff added language to the 2016 application clarifying the treatment of off-site costs in the tiebreaker calculation which indicated to them that staff was aware of the issue and changed it in the 2016 application and 2018 regulations. Mr. Plett concluded by stating that since RHF and the architect did not know about the off-site costs in 2014 and because this oversight would not have altered the tie breaker score, no material misrepresentation occurred and pled the committee to rescind the penalties because they were unwarranted.

Mr. LoFaso asked Mr. Stivers for a clarification on the contents of the appeal.

Mr. Stivers clarified to Mr. LoFaso that the contents of the appeal consisted of a loss in tax credits and negative points.

Mr. LoFaso stated that the appellant has given the Committee two paths. He suggested the first path being that regulation was ambiguous such that it was appropriate for the applicant to include the off-site costs and that had the applicant been docked points back in 2014, they would have addressed the issue then. Mr. LoFaso said that this suggests to him that the applicant is disputing whether the off-site costs are includable. He explained the second path being that if the regulations made the off-site costs not includable, the applicant did not intentionally misrepresent the application, but rather it was just incorrectly included.

Mr. Plett stated that they brought up the two points because the definition of material misrepresentation where there had to be prior knowledge and a significant impact as a result. He explained that they did not know about it when the application was prepared and even if they had known, it would not have changed the tiebreaker score due to the limited language in the 2014 application and regulations.

Mr. LoFaso asked Mr. Stivers to refresh the Committee's recollection on how much documentation comes with a tax credit application.

Mr. Stivers stated that they would have expected to see the distinct off-site costs line item filled out in the budget pages of the 2014 application. Mr. Stivers stated that the tiebreaker page was a separate issue but noted that in Tab 12 in the application, the applicant is expected to describe and break out the various off-site costs. Mr. Stivers noted that in this case the off-site costs line item in the budget was blank and the narrative in Tab 12 stated that there were no off-site costs.

Mr. LoFaso stated he believed that under certain circumstances staff would have adjusted the points by identifying it in the budget and carrying it over to the tiebreaker.

Mr. Stivers once again stated that these were two separate things and that they would have expected to see it in the budget, which was not there. He also noted that in the current tiebreaker section the applicant enters the ineligible off-site costs, which is discounted. Back in 2014, staff would have noted the errors and adjusted their tiebreaker score accordingly. If the budget had correctly disclosed the off-site costs and their narrative in Tab 12 had correctly described those off-site costs, staff would have adjusted the tiebreaker score. In this case, neither occurred. Mr. Stivers also responded to the comment made earlier by Mr. Gilchrist noting that the tiebreaker language in the 2014 regulations made it very clear that the public funds portion of the tiebreaker was the same public funds as in the public funds point section. The tiebreaker cross-references all provisions of that point section including ineligible off-site costs. He explained that the idea that it wasn't clear that off-site costs had to be deducted in the tiebreaker is an unfortunate misunderstanding of the regulations on the applicant's part.

Mr. Plett restated that they didn't rely on the public funds section so they didn't rely on that language.

Mr. Stivers stated that it was applicable to the tiebreaker.

Mr. Brown stated that the Committee has heard enough of the back and forth.

Mr. LoFaso stated that he is very uncomfortable concluding that the regulation is not sufficiently clear in regards to the off-site costs issue to say it did not apply to the applicant such that if the applicant had fought it three years ago, the applicant would've won. He also noted that he has read the cross-referenced sections several times because they are of high interest to him and as someone who does not do the projects himself, he understands what those cross-referenced sections mean and that if he could understand them, an applicant can understand them.

MOTION: Mr. Brown stated that having listened to the conversation, he is supportive of staff's recommendation to deny the appeal and entertained a motion. Ms. Wong-Hernandez stated she too has read over the appeal documents and is supportive of staff's recommendation and seconded the motion to deny the appeal. The motion passed unanimously by a roll call vote.

8. Discussion and Consideration of appeals filed under TCAC Regulation Section 10330 for 2018 First Round Competitive Applications.

A. CA-18-015 / Brookside Senior Apartments

Mr. Stivers briefly laid out the issue for this appeal by stating that the tiebreaker gives credit for rental subsidies by calculating the present value of rental subsidies and part of that calculation has to do with determining the additional amount of rental income that a project receives over and above tax credit rents from that rental subsidy. He explained that in most cases, the tax credit rent is subtracted from the known rental subsidy provider rent, but when dealing with the United States Department of Agriculture

(USDA) rental subsidies those rents are unknown. Mr. Stivers stated that over time staff has developed a practice with respect to USDA rehabilitation projects like this one where staff references the subsidy contract calculation worksheet in the application where the applicant predicts what rents they are going to receive from USDA, which staff caps at 60% AMI with one exception that is not applicable to this project. Mr. Stivers stated that this is how staff scored the tiebreaker for this project as well as the final appeals decision. Mr. Stivers noted that there was some guidance that was put out by TCAC prior to the round that stated staff would continue to use 60% AMI rents for USDA projects consistent with past practice. Mr. Stivers stated that this was intended to apply to new construction projects only, and it said consistent with past practice, which was not staff's past practice with rehabilitation projects. He admitted that these instructions could have been clearer but in his view the intent and language was applicable only to the new construction projects. Mr. Stivers stated that this appeal was in regards to a rehabilitation project and noted that the applicant believes staff should have used the 60% AMI rents and not the rents that were predicted in their application to make the calculations. He opened the floor to the applicant to make their case.

Patrick Sabelhaus introduced himself on behalf of Cascade Housing, a 501(c)(3) non-profit that has developed several projects in California over the last 20 years and noted that the Brookside project is an existing USDA project about 30 years old and now applying for acquisition and rehabilitation credits. Mr. Sabelhaus stated that the debate was in regards to how the subsidy calculation is carried out and what is required pursuant to the regulations.

Mr. Sabelhaus stated that the regulations do not distinguish, specify, or state new constructions versus rehabilitation projects and restated what Mr. Stivers had mentioned earlier in regards to USDA rental subsidies and how staff has calculated the subsidy in past practices at the application stage by taking the difference between 40% and 60% AMI. Mr. Sabelhaus stated that this is exactly what the applicant had done with regard to the tiebreaker page of the application. He also stated that the applicant thought the guidance memo was clear on its face and did not attempt to speculate what the final subsidized rental amount was going to be in the application since this number is unknown until a later date. Mr. Sabelhaus noted that the applicant had no reason to doubt that this was the calculation that they should have followed and did follow.

Mr. Sabelhaus also stated that they think there is not reasonable justification that an applicant should have known that the calculation only applies to new construction projects and not rehabilitation projects. Mr. Sabelhaus also stated that he didn't understand why there would be a difference between new construction and rehabilitation project because the applicant would not know what the final subsidized rent would be in either case until confirmed by USDA. Mr. Sabelhaus asked the Committee to read the regulation in its clear intent, as it does not make a distinction between new construction and rehabilitation. Mr. Sabelhaus concluded by asking the Committee for their vote to grant their appeal.

Mr. Brown asked Mr. Hedrick if he had anything to add to the conversation.

Mr. Hedrick, senior counsel for the State Treasurer's Office stated that staff is faced with a regulation that did not fully anticipate this situation and that the clarification made by staff may not have adequately addressed the situation as well. He added that he believes there is an ambiguity in the regulation and precedent makes a difference if precedent has been established but he believes that the regulation and the clarifying Q&A memorandum are less than clear.

Mr. LoFaso asked Mr. Stivers whether or not this was a new regulation.

Mr. Stivers stated that this was a long standing regulation.

Mr. LoFaso asked Mr. Stivers whether or not the guidance Mr. Sabelhaus was referencing was new or old.

Mr. Stivers noted that staff holds application workshops where questions are received regarding the application. He adds that TCAC tries to answer these questions in a public format by way of a Q&A memorandum that gets published to the TCAC website so everyone has access to them as opposed to only those who have attended the workshop. The guidance was in response to a specific question but did not provide clarification that it was only for new construction projects.

Mr. LoFaso stated that the rule was old and the Q&A was new but not asked in the context of new construction or rehabilitation.

Mr. Brown and Ms. Wong-Hernandez both stated that they agree there is an ambiguity in the regulations and thanked Mr. Hedrick for weighing in on the discussion.

Ms. Wong-Hernandez stated that it was uncomfortable if there are other reasonable interpretations to the regulations and noted that she was struggling with whether this was how staff has always done it.

Mr. Brown stated that this appeal was a very difficult one and had a tough time denying the appeal.

MOTION: Mr. LoFaso moved to grant the appeal for the project and Ms. Wong-Hernandez seconded the motion. The motion passed unanimously by a roll call vote.

B. CA-18-024 / El Verano

Mr. Stivers stated that this action item consists of three different appeals noting that two are related and one was distinct.

Mr. Stivers noted that they had disqualified the application because not all of the land value was included in the application. He explained that the regulations require that all land costs whether real or imagined needs to be included in the application. Mr. Stivers

noted that this application had two parcels of land, one of which met the requirements and the other did not. He added that the parcel of land that did not meet the requirements was valued at $100,000, which was not included in the budget as a cost but documentation of the value of the land was provided. As a result, TCAC staff added the cost of the land to the budget because the regulations require staff to adjust and make sure the costs are reasonable. Mr. Stivers explained that following the addition, the permanent financing sources became insufficient to cover the additional cost and therefore staff disqualified the application.

Mr. Stivers stated that the second appeal dealt with readiness points and noted that in order to receive readiness points, an applicant must demonstrate that all construction sources have been committed at the time of application. When staff added in the $100,000 in land cost, they made the assumption that the applicant's construction sources would not be adequate since the construction sources typically equal the permanent sources. Mr. Stivers stated that for some unknown reason the project had a surplus of construction sources, which in essence could cover the additional $100,000 in land cost. He added that if the Committee grants the appeal on the disqualification, staff would be willing to concede the readiness point reduction. Mr. Stivers reiterated that staff still recommends the denial of the disqualification appeal.

Mr. Stivers stated that the third appeal involves the tiebreaker, specifically the value of the main parcel of land. He noted that the appraised value of the land was $2.7 million for which the applicant seeks tiebreaker credit as a land donation. Staff stated that in their view a donation is a gift that will not be paid back but in this case there are two ways the City will be paid back for the land. Mr. Stivers stated that the first is through an upfront lease prepayment called a "base rent" in the documentation. He adds that the amount was left blank in the documentation so staff is unable to determine the amount. Mr. Stivers noted that in one of the appeal letters, the applicant stated it will be the full amount of the value of the land. If this were true, there would be no donation. In any event, the number is still unknown. Secondly, he explained that the city will receive 85% residual receipt payments over a 55 year period which will be substantial, but again it is 85% of an unknown number.

Mr. Stivers stated that in either case, staff could not calculate the value of the land or donation to the applicant which is why staff gave the applicant a donation value of zero ultimately reducing the tiebreaker score.

William Leach with Kingdom Development introduced himself to the Committee and noted that he serves as the financial advisor to Innovative Housing Opportunities (IHO) and also assisted preparing the application. Mr. Leach then introduced Denice Wint with IHO to discuss the organization and project.

Ms. Wint thanked the committee members for the opportunity to consider their appeal. She stated that IHO is a 42 year old nonprofit affordable housing developer located in Irvine, CA with a commitment to developing projects in Orange County and providing housing to all income levels, particularly serving homeless and special needs. Ms. Wint

added that IHO is working together with the City of Anaheim to get this housing project built.

Andy Nogal with the City of Anaheim also thanked the Committee members for their time today and for the opportunity to discuss the appeal. He noted that the City of Anaheim has been very successful in developing affordable housing and that they really owe their success to the tax credit program. Mr. Nogal stated that he is here in support of IHO developing this senior housing project in the City of Anaheim where there is a great need for affordable housing in general. He stated that the City is supporting the project by providing 100% project-based rental subsidy, HOME funds, a long term ground lease in which part of the amount will be paid back as residual receipts, a fee waiver, and an energy efficiency rebate. Mr. Nogal restated that he is here in support of the project and open to answering any questions the committee may have regarding the project.

Mr. Leach commended staff's diligence and professional administration of the program but stated that disqualifying this project, which has no real flaw, would be a counterproductive activity. He noted that the city is providing $10 million in financing to develop a homeless affordable housing project in a high opportunity area. Mr. Leach added that the City has written commitment letters to acquire all of the land that is necessary and to provide a long term ground lease at no cost to the project with no mandatory payments. Mr. Leach explained that the $3 million of land is just a portion of the overall assistance that the City is providing. He noted that project will be utilizing this land at no cost and no annual expense or mandatory payments.

Mr. Leach stated that he wanted to speak to the appeals surrounding the disqualification and the reduction to the tiebreaker score. He added that the staff's denial to the appeals are not supported in the regulations and noted that he would like to speak to each appeal item one at a time.

In regards to the disqualification appeal, Mr. Leach stated that Mr. Stivers mentioned the cost of the land needs to be included in the application. Mr. Leach noted that the regulations do not state that. Mr. Leach then paraphrased the regulations stating, the applicant must include the land cost except if it's donated land, then it must include the value of the land that is not nominal. He explained that he reading of the word "except" tells him that he is not required to do that, but instead provide the value of land in this particular case. As a result, Mr. Leach provided the value of the land in the budget and not the cost. He noted that the large parcel of land was appraised at $2.7 million. The applicant contended that the smaller parcel of land for $100,000 was nominal, which is why they did not provide an appraisal. Mr. Leach stated that the City of Anaheim is under contract to purchase and pay for both of the property's land parcels. He also stated that the budget for the property has $3.1 million available which is more than enough to cover both parcels of land and account for the regulations. Mr. Leach noted that the regulation is relatively new and that from his understanding staff is required by the Internal Revenue Service (IRS) to make sure that the costs are reasonable in the applications. He restated that if land is donated then there is no cost because the cost was paid for by someone else and in this case, the City of Anaheim. Mr. Leach noted that

this is where the exception comes into play where you have to provide the value instead of the cost because it is donated land. He added that there is no way to calculate the cost of the land if someone else bought it for you. Mr. Leach stated that this is the premise of their disagreement with staff's decision on the disqualification since the applicant did provide the value of the land in the budget.

Mr. Stivers disagreed and wanted to make clear that there were two parcels of land. He described the first parcel, which was appraised at $2.7 million but the City had an additional closing costs associated with the purchase which has already occurred. Mr. Stivers added that the application included a settlement statement that showed $3.1 million as their cost of buying the large parcel of land which is the same amount shown for land acquisition in the budget of the application. Mr. Stivers also noted that all of these costs will be passed on to the developer as debt.

Mr. Stivers described that the second parcel had a value of $100,000 based on the contract the City has with the property owner, but was not included in the budget of the application.

Mr. Stivers stated that Mr. Leach's claim that the $3.1 million includes the second parcel of land valued at $100,000 is not true. Mr. Stivers adds that the $3.1 million accounts only for the cost of the main parcel which the city has already paid for. In regards to the regulatory language, Mr. Stivers concurred with Mr. Leach that if there is a donation then the value of the land would have to be shown and cannot be nominal. Mr. Stivers explained that omitting the value of the land, the applicant provided a value of $0 in their application, which is exactly what the regulation prohibits.

Mr. Brown wanted to clarify whether or not the $3.1 million will be passed on as a debt to the developer.

Mr. Stivers stated that based on the structure that the city has, all the costs that the city entails will be passed on to the developer as a debt. He added that the $100,000 has not yet been purchased by the city but there is an existing purchase and sale agreement or an option to purchase on that amount, which is not included in the application.

Mr. Brown asked Mr. Stivers if the $100,000 would be technically the loan piece.

Mr. Stivers stated that the $100,000 would become a second loan, which too would be added on to the existing debt of $3.1 million resulting in a total debt on the property of $3.2 million for both parcels of land.

Mr. LoFaso asked Mr. Stivers if the regulation section in question is Section 10327(c)(6) and Mr. Stivers responded yes. Mr. LoFaso noted that the regulation section was titled "Acquisition Costs" and recited the regulation section before the Committee and told Mr. Leach that the disagreement comes down to the difference in cost and value. Mr. LoFaso asked Mr. Stivers to confirm if the first sentence read cost or value or cost and value.

Mr. Stivers clarified that if the applicant has a cost, it needs to be provided in the application, and if there's a donation where you're not paying the cost, staff still requires the value of the land be provided. In this case, Mr. Stivers explained that since the value of the second parcel of land is $100,000, it should have been in the budget combined with the first parcel of land for the total land acquisition.

Mr. LoFaso suggested that the point here is that there can be cost and value in different contexts in the same sources and uses budget.

Mr. Stivers responded yes. He added that it is rare that a project would have that because the land is either all donated or all purchased, but in this case the project has both.

Mr. Leach stated that he does not agree that the regulation in question is the one Mr. LoFaso referenced previously, but rather Section 10327(c)(6).

Mr. LoFaso clarified that Section 10327(c)(6) was the same regulation section he quoted earlier.

Mr. Leach apologized and stated that he stood corrected.

Ms. Wong-Hernandez asked whether the $100,000 parcel of land was donated or not donated.

Mr. Stivers stated that the applicant left the $100,000 out of the application so it was not clear because it is not there. He also stated that when the Committee gets to the tiebreaker issue with the other parcel, this issue will come back up, but with respect to the $100,000, the applicant is not requesting donation or loan credit for the tiebreaker since it is not in the application.

Mr. Leach responded by stating that the land was absolutely donated because within the application, there was a letter from the city committing to purchase both parcels of land while giving a long term ground lease to the applicant at no cost. Mr. Leach also noted that in the site control section, the applicant clearly stated that the City will be purchasing both parcels of land and donating them to the project.

Ms. Wong Hernandez stated that the reason this was relevant to her was that the idea of interpreting something as nominal cost versus nominal value could be different if one thought they were excluding something because it was of nominal value to the project. Ms. Wong-Hernandez asked Mr. Stivers to provide clarity on the nominal language.

Mr. Stivers stated that the nominal provision of this regulation was added a few years and spoke to its intent. He noted that as Mr. Leach had stated, staff received values of $0 when land was donated which is not what staff wanted to see. Whether the land was bought or donated, Mr. Stivers stated that staff wanted to see the full land value. In the case of donations, staff directed applicants to give the true value of the land, and not a

nominal figure such as $0 or $1. He added that there is no disagreement that the value of the land is $100,000, but it was not shown in the application.

Mr. Brown asked if you add the $100,000, there are insufficient funds to pay for the project.

Mr. Stivers responded that Mr. Brown was correct.

Mr. LoFaso stated that Mr. Stivers commented on the disqualification and the readiness issue being intertwined and tried to explain why $0 was entered into the budget and not $100,000.

Mr. Stivers clarified that there are sources for two separate things, one is construction sources and one is permanent sources. He explained that the readiness points only relate to construction sources and for some reason the project had a surplus of construction sources which is why staff is willing to concede on the readiness points. Mr. Stivers stated that the disqualification relates to the permanent sources. In regards to the permanent sources, he explained that the applicant had sufficient funds to cover the project as proposed, but when you added in the additional $100,000, there are not sufficient funds to cover the project.

Mr. Leach stated that one of things the applicant has an issue with is that the land is being purchased by the City and that the City has promised to be the source for every dollar in acquisition costs. He quoted Mr. Stivers' appeal response letter where it states that Mr. Stivers realizes that the City is the source for the $100,000, but that he cannot change the application. Mr. Leach stated that there is no question that there is more than enough funds to pay for the project and that the City is 100% committed to pay for whatever the costs end up being for the land.

Mr. LoFaso stated that Mr. Leach is arguing that the funds are there but not presented correctly and that Mr. Stivers has all but conceded that. He asked if this was a funding issue or a representation issue with the fundamental problem being that Mr. Leach did not represent the values appropriately.

Mr. Stivers stated that Section 10327(a) of the regulations lists the cases where staff can change an application. He stated that development operational costs must be reasonable and that staff may adjust those costs and any corresponding basis. Staff knew the cost of the land for the second parcel was $100,000 and adjusted the cost accordingly. He added that there are only three sections in the entire regulations where staff can change the application and none refer to the sources. Mr. Stivers stated that if $100,000 was added to the cost of the project, the sources would have to increase by $100,000 which staff believes is prohibited. He explained that part of Mr. Leach's argument is that he entered a formula into the sources cell rather than a hard number where if one cell changes, another cell would automatically change. Mr. Stivers stated regardless if a formula is entered into a cell, staff does not believe the regulations permit the source figure to be increased to accommodate any increase in costs.

Mr. LoFaso thanked Mr. Stivers for the clarification and stated that to him the solution could be that one can only hard enter a real number or one can enter a formula as long as its value is less than $50,000 so staff can make adjustments to make the formula work.

Mr. LoFaso stated that if an applicant can't do this, then it should be made clear about what can and cannot be done in the application.

Mr. Stivers responded that he did not mind Mr. Leach using a formula in the application but does not believe that using a formula should be determinative of changing an application to reflect a different source amount.

Mr. LoFaso asked Mr. Stivers had the amount in question been $40,000, less than the $50,000 threshold, would it have been a different result?

Mr. Stivers noted that the regulations are very clear and that if there was a shortage of less than $50,000, then staff would just ignore it and the application would have been okay in that regard.

Mr. LoFaso stated that he just wanted the rule to be clear so that other applicants avoid the making same error in future applications. He thanked Mr. Stivers for his clarification.

Mr. Brown stated that there is a lot of confusion with this application in the way the financing runs through because it has so many moving parts suggested that the applicant resubmit the application in order to clear everything up.

Mr. Leach stated that Mr. Brown's suggestion would be to deny the applicant's appeal, which would pose a few risks for the applicant in regards to future funding and potential delays in the project.

Mr. Brown asked what if the applicant withdrew their appeal.

Mr. Leach asked whether staff would allow them to apply again in this round if the applicant were to withdraw their appeal.

Mr. Stivers stated that this round has already closed and that the application would need to be resubmitted in the next round.

Mr. Leach clarified that the applicant wants to appeal today and that they would really appreciate their consideration, and he also stated that whatever clarification obtained from staff in regards to the interpretation of the regulations will be applied to the project in the future. He added that he would like to point out that there is no guidance in regards to the interpretation of residual receipts for donated land. Mr. Leach noted that if they were denied the appeal, they would resubmit their application and work with staff.

If their appeal was granted, they would still work with staff on the application going forward.

Mr. LoFaso asked Mr. Leach whether or not he's used formulas in his applications before.

Mr. Leach stated that he always used formulas in his applications.

Mr. LoFaso asked Mr. Stivers if applicants can use formulas on the application.

Mr. Stivers restated that he does not mind that Mr. Leach using a formula, but there has never been a discrepancy in the cost before and noted that the use of a formula does not permit an increase to the source to offset an increase in cost. Mr. Stivers explained that the use of formulas are fine when the two the numbers are accurate and not appropriate when the numbers are inaccurate.

Ms. Wong-Hernandez stated that that regulations permits TCAC to add costs when it is known they exists. She then asked why TCAC could not change the corresponding source if it is known. Ms. Wong-Hernandez stated that she is not getting sufficient argument that the City of Anaheim is going to be the one to cover all the costs for this project.

Mr. Stivers clarified that the regulations were not written with this scenario in mind, but based on the regulations, staff does not have authority to change the sources number. He stated that while the City will pick up the additional cost, that would be considered a change to the applicant's application. Mr. Stivers added that the regulations were written for much broader scenario situations.

Ms. Wong-Hernandez stated that this project is unique enough to say that the cost and the source are linked, which to her does seem different than the broader regulations. She also noted she respects that at the staff level the source cannot be changed due to the current regulation and noted that there is a lurking policy question in regards to whether this project is different.

Mr. Stivers stated that city amounts are usually fixed amounts but noted that this scenario is like a blank check amount and that whatever the cost, the City will cover that amount, including any closing costs.

Mr. Leach stated that he does not agree with the characterization of costs being passed on and noted that the development will never pay the cost, but they will have a residual receipts loan.

Mr. Stivers clarified by stating that it won't be paid as a cost, but it will become a debt to the property and noted that it is unusual that there is an unfixed open amount of the City's commitment to the property. He added that in that regard, this project is different.

Mr. Stivers also noted concerns of other scenarios staff may see in the future if sources are able to be changed.

Mr. Leach reminded the Committee that the applicant contends that it was not responsible to include the cost but rather the value and that the applicant has provided sufficient funds in the budget, which they believe are in excess of the value they are required to show. He adds that the applicant contends there is no reason to add a cost and then have to fix a source.

Mr. Brown stated that Mr. Stivers had already argued against Mr. Leach's statement above.

Mr. Leach stated that he didn't hear a reason why.

Mr. Stivers stated that the cost for the first parcel when you add in all the additional costs beyond the value of the land was $3.164 million, which is what shows up in the budget. He adds that the second parcel is an additional $100,000 and the amount in the budget does not account for that.

Mr. Leach asked Mark what the requirements were.

Mr. Stivers stated that the requirements are to show the full cost of the land.

Mr. Leach asked which regulation section he was referencing to.

Mr. Brown stated that the Committee has heard both opinions and stated that he was uncomfortable with all the moving parts and future commitments in the application.

Mr. LoFaso stated that his number one priority coming to the appeal was clear guidance. He noted that he would like to address the moving parts in the next issue. He asked Mr. Brown if they could skip to the next issue and come back to this one.

Mr. Stivers stated that the second issue was regarding what tiebreaker credit they should get, if any, for the value of the main parcel of land appraised at $2.7 million. Mr. Stivers added that the applicant is seeking credit for a donation and in staff's view a donation is a gift not paid back, but in this case there is an upfront payment and residual receipt payments, both of which are of an unknown amount where staff cannot calculate the value of the donation.

Mr. Leach stated that Mr. Stivers made the statement, that the applicant is seeking credit as a donation. He stated that the tiebreaker has two ratios and that public funds is usually the first ratio and is very effective ratio for getting a good score. He stated that the applicant applied for tiebreaker competitiveness as a soft leveraged resource in accordance with Section 10325(c)(9)(a) of the regulations. Mr. Leach disagreed with Mr. Stivers' characterization that the applicant asked to be called donated land for the $2.7 million and stated that the applicant asked for soft leveraging credit and an extra

bonus for being donated land. He added that they completed the tiebreaker page in the application by filling out the soft leveraging resource and donated land.

Mr. Stivers referenced the tiebreaker page in question and noted the line for leveraged soft financing excluding donated land and fee waivers where the applicant put in a separate City loan amount. He noted that to the extent that the applicant is asking for loan credit instead of a donation for the value of the land, this also would not be possible since the upfront loan amount pay down is unknown.

Mr. Nogal stated that there might have been some confusion and noted that the City provided the applicant with an option with a form of ground lease which unfortunately had a lot of holes in it. He stated that the lease had a statement in regards to an upfront rent payment which means the actual cost associated with the acquisition will be absorbed by the applicant as a soft debt and paid back through residual receipts. Mr. Nogal clarified that there won't be an upfront or on going payment other than the residual receipts that will be split between the developer and the City.

Mr. Leach stated prior to the application round, the applicant checked in with staff and was told to provide a lease option since the commitment from the City was deemed insufficient. He noted that the applicant entered into an option agreement with the City so staff would have better site control documentation. Mr. Leach noted that the agreement included a blank lease agreement as an exhibit to show what the future ground lease might look like. The blank upfront rent payment was referenced in the blank exhibit. He discussed the references in the regulations to residual receipts and described that the City and the developer would each get a share of the cash distribution.

Mr. LoFaso asked Mr. Stivers if he could address the conversation between staff and the applicant.

Mr. Stivers noted that the conversation was in regards to site control and stated that all the site control issues were resolved so the conversation between staff and the applicant is not applicable to the current conversation.

Mr. LoFaso asked Mr. Stivers regarding the references to residual receipts in the regulations.

Mr. Stivers stated residual receipts are referenced in three places of the regulations, two of which refer to the pro forma/cash flow and one to loans, none are relevant to donations. He then presented the Committee with the definition of what the word donation means in Webster's dictionary and described a donation as an instance of presenting something as a gift, grant or contribution. Mr. Stivers noted that if you are getting paid back, it is not a donation.

Mr. LoFaso asked Mr. Nogal if there were upfront rent payments in previous applications approved.

Mr. Nogal stated that this is the same long term ground lease template the City has used in the past projects they owned and received residual receipt payments for. He noted that there is no upfront rent payment the developer needs to make to the City other than to capture the actual acquisition cost of the project.

Mr. Stivers asked Mr. Nogal if the blank line for the upfront rent payment is now being $0. Mr. Nogal responded yes and that the value of the ground lease is the cost of the acquisition including any preparation costs.

Mr. Leach stated that the City will provide a long term ground lease with no mandatory payments and in exchange, the developer give a promissory note that if they ever have money, they will pay the City back so they can do more affordable housing deals.

Mr. Stivers stated that his recollection of the document was that the loan amount was going to be the total cost that the City had put out and a separate provision that spoke to the base rent which had an unknown value.

Mr. Brown stated that it seems as if the Committee is rewriting the application. He noted that this is troubling because it would allow everyone to come in with an appeal to the Committee to discuss the regulations and how they have been practiced on the past when it should be addressed at the staff level. Mr. Brown suggested that applicant withdraw the appeal and that he is in support of staff's decision.

Mr. Leach stated did not see any value in withdrawing the appeal and would like to proceed with the appeal.

Mr. LoFaso stated that he agreed with Mr. Brown that the Committee's ability to engage at the level of detail from an application perspective has reached the Committee's capacity.

Mr. Wong-Hernandez agreed with Mr. Brown that they are rewriting the application which is unacceptable at this stage of the appeal and noted she was in support of staff's decision to deny the appeal.

MOTION: Mr. Brown entertained a motion to deny the appeal. Ms. Wong-Hernandez moved to deny the appeal for the project. With some reservations and discomfort as expressed, Mr. LoFaso seconded the motion. The motion passed unanimously by a roll call vote.

C. CA-18-016 / Alameda Site A Senior Apartments

Mr. Stivers stated that this issue relates solely to service amenity points. He noted that the issue was whether the case manager services they are proposing to provide qualifies for case manager services points. Mr. Stivers noted that the regulations require that the application include a Memorandum of Understanding (MOU) with the service provider and that the MOU include the cost of the services, that the services are provided for at

least one year, and that the services will be free of charge to the tenants. Mr. Stivers noted that none of these were referenced in the applicant's MOU and as a result, the project was not granted case manager services points. He added that the project is part senior and part special needs where they are proportionally scored where 10 points were received for the senior portion and eight points for the special needs portion resulting in 8.93 points.

Andy Madeira and Neil Saxby with Eden Housing introduced themselves before the Committee. Mr. Saxby also introduced their case management partner Ms. Katie Derrig with Operation Dignity.

Mr. Madeira gave a quick background on the project noting its location in the City of Alameda and that the project is one of two phases. He noted that there is a senior phase and a family phase. Mr. Madeira stated that this project hits all of the buttons as it relates to TCAC policies. He added that the project will be housing homeless veterans and has committed funds from HCD for Veterans Housing and Homelessness Prevention Program (VHHP) and Veterans Affairs Supportive Housing (VASH) vouchers from the Housing Authority.

Mr. Madeira noted that in the application, there was a recent change in the regulations requiring proportionality on the points for the special needs and senior units. He added that there are two places in the workbook where the calculation is done. Mr. Madeira noted it does state in the application that the points are proportional. He explained that there is a box that needs to be checked in order in order to perform the calculation and populate the score. Mr. Madeira stated that when they check the box on the application it does not perform the proportionality so the total points that are produced toward the bottom of the application does not reflect the score consistent with the regulations. Due to the conflict, Mr. Madeira explained that the applicant thought they had total points and therefore did not check the box to be considered for case manager points. His understanding is the Mr. Stivers checked the box for the applicant but that there was inadequate documentation.

Mr. Madeira stated that they thought they had full points due to the conflict in the workbook. He explained that had it been consistent and since the applicant was already going to do case management, the applicant would have made sure the proper documents were included with the application for the case manager points.

Mr. Madeira stated that there is sufficient information and documentation in the application to be awarded the case manager points. He explained that evidence in the form of a commitment that the services will be provided for at least one year free of charge to the tenants and that the money will be there. Mr. Madeira believed that all of the items were provided in the letter from Operation Dignity, with exception of the budget number. He pointed to the services budget in the application workbook for the case manager budget number.

Mr. Saxby believed that they were misled by the point scoring system since the regulations are brand new and the tab in the application referring to the point scoring system was not updated. Mr. Madeira stated that they were not suggesting staff purposely misled the applicant but that the box in the application that needed to be checked was not updated to perform the proportionality calculation properly.

Mr. Saxby stated that he is very cautious when he puts his applications together and that he had more points on the table than he needed based on the scoring tab. He noted that he cannot be expected to second guess TCAC's scoring tab.

Mr. Madeira stated that he tried to inspect the formulas but noted that they were password protected. The applicant believed that it was still within the Executive Director's discretion to see that their application has all the requirements for the case manager points.

Mr. Brown asked Mr. Stivers what the impact on tax credits would be from the denial of the case manager points.

Mr. Stivers stated that as with all appeals, if the appeal is not granted the project will not get funded and some other project would get funded.

Mr. LoFaso suggested that by losing the two points, the project was not able to obtain the maximum points and that these two points are critical for whether the project even has a chance at being funded.

Mr. Stivers stated that Mr. LoFaso was correct.

Mr. Saxby stated that this project had the highest tiebreaker in the region and very well structured.

Mr. Stivers responded that the next tiebreaker is only one percentage point below.

Mr. Stivers stated that this project is looking to obtain case manager points even though the applicant did not check the correct box which would have properly performed the calculations in the application. He added that the applicant's MOU did not include the three items previously mentioned. While Mr. Madeira mentioned developer's portion of the application included the commitment to provide the services and the cost, but for the purposes of the regulations, these items need to have been agreed to by the service provider so that staff knows it is real. Mr. Stivers noted that in this particular case the service costs were referenced only by the developer and not the service provider which is why the project was denied the three points.

Mr. Stivers stated that the application is not advanced enough to have a single cell calculate the proportionate score for the service amenities. This is the same situation that has existed for some years in the site amenities point section, which are also scored proportionately with scattered site projects.

Mr. Stivers confirmed that on the service amenities side there was a summary table that showed 18 points which was more than the 10 maximum points. Mr. Stivers pointed the Committee to the boxes the applicant would check in the application and explained that there are two very distinct sections, one for senior facilities where the applicant received 10 points and one for special needs where the applicant received eight points. Mr. Stivers explained that although the applicant forgot to check the box for the case manager, he would give the applicant the benefit of the doubt had the proper documentation been provided. Mr. Stivers noted that there is no way the applicant could have obtained the maximum points without obtaining maximum points in each section He also pointed out that the application and the regulations make very clear that you cannot double count services unless they are proportionately scored. He explained that the applicant did double count the educational services and service coordinator positions which is why the applicant is claiming they received maximum points. Mr. Stivers noted that while the summary page showed 18 points when the maximum is 10, the rest of the application is very clear that the applicant did not have the maximum points.

Mr. Madeira stated that they really thought they had the full points based upon the calculation in the workbook and that they were not trying to double dip in the service points. He stated that they certainly intended to have a case manager and provide the required services but didn't think they were needed since the workbook showed points above the amount needed for maximum points. Mr. Madeira also stated that the letter from Operation Dignity does provide everything required except for the dollar amount which was noted in the budget in the application.

Mr. Saxby noted that he did not intend to get case management points because they did not need them according to the scoring rubric. He noted that he had provided an MOU and backup documentation in order to differentiate that their onsite services were different than their site amenities score, which Mr. Stivers had also questioned. Mr. Saxby stated that had he not been confused by the point scoring rubric, he would have provided Mr. Stivers all the documentation for the case management.

Mr. LoFaso followed up on Mr. Stivers' statement regarding the equation in the application that would incorporate the proportional calculation based on the regulations. He added that if staff is unable to come up with an equation that represents the regulations then staff may reconsider how to do it.

Mr. Stivers explained that the application does mention that it will be proportionately scored in a different manner. He notes that it is just not calculated in the application itself.

Mr. LoFaso asked Mr. Stivers if that requires a certain degree of manual activity to make it work that everyone needs to understand.

Mr. Stivers stated that this would be very simple and that the applicant would just need to look at the application where the categories are different. He explained that if the

applicant had the maximum points in each section, the applicant would know the project had full points.

Mr. LoFaso stated that he read the applicant's appeal and the real question to him is whether the substance of the services behind the mechanical issue of the application was sufficient enough to be awarded the case manager points or was there sufficient double counting where it is not possible to obtain below 10 points under any scenario.

Mr. Stivers stated that staff believe the applicant did not provided sufficient documentation for the case management services and noted that if the Committee disagrees with staff's decision and grants the applicant their appeal, then the applicant would receive the three points and everything else would go away.

Mr. LoFaso asked the applicant to discuss the documentation and what was provided. He noted that he is not trying to rewrite the application but would like clarification on the term "document".

Mr. Madeira stated that in order to get the case manager points, the regulations require that the service provider, in this case Operation Dignity, has agreed to provide the services. He added that the regulations also require that the applicant know how much the services will cost and that there is sufficient funding to pay for it along with documentation that it will be paid for. Mr. Madeira also stated that he believed the regulations require the applicant to provide the services to the tenants for at least one year free of charge, but stated that they will provide the services free of charge for the lifetime of the project.

Mr. Madeira stated that in the letter from Operation Dignity, they tell staff who they are and that they will provide the case management services to the special needs homeless units, but the dollar amount for these services is admittedly not in the letter, but rather identified as case management in the services budget of the application.

Mr. LoFaso asked Mr. Stivers what was missing from the application.

Mr. Stivers stated that the regulations state that the documentation for the services will take the form of a contract for services, memorandum of understanding or commitment letter on agency letterhead from the service provider and that the documentation must include the dollar value of the annual services, commit that the services will be provided for at least one year and that the services will be available to the tenants free of charge. Mr. Stivers stated that staff could not locate these three items in the MOU with Operation Dignity.

Mr. LoFaso thanked Mr. Stivers for the clarification and stated that he is willing to support a motion to grant the appeal on the provision that the applicant subsequently provides sufficient documentation to meet the level of documentation staff would have required had the scoring system not prejudiced the applicant.

Ms. Derrig with Operation Dignity stated that she would gladly follow up with whatever documentation needed.

Mr. LoFaso stated that he wanted to make clear to the applicant that they need to submit correct documentation at the earliest opportunity.

Mr. Brown stated that this seems like a great application but that at this point in the deliberation process they were getting into the weeds of rewriting an application which he feels very uncomfortable about and noted that the Committee's responsibility is to clarify the regulations from a policy perspective, not to amend an application.

Ms. Wong-Hernandez stated that this appeal calls for a judgment of whether the application was adequately documented which is what she was struggling with.

Mr. Madeira stated that they hope they are not filling in the boxes because the math in the boxes TCAC provided was inaccurate. He added that all the documentation was there, but it would have to be pulled from the budget.

Ms. Wong-Hernandez stated that in all fairness to Mr. Stivers, he discussed what documentation must be submitted and what format they must be in.

Mr. Madeira stated that in all honesty they would have done that had the application calculated the score correctly at the bottom of the page because they would have seen that more points were required.

Ms. Wong-Hernandez asked Mr. LoFaso if he could make his point one more time in regards to what he is proposing.

Mr. LoFaso stated that although they are way down in the weeds of the application, he recalls Mr. Stivers stating that had the applicant adequately documented the requirements they would've received the case manager points. He asked Mr. Stivers to clarify to Ms. Wong-Hernandez the reasoning behind his interpretation of the regulation that the services were not adequately documented.

Mr. Stivers explained that the applicant submitted documentation for case manager point in spite of the box not being checked, which implies they were seeking points for that service. Mr. Stivers adds that he would have given the points had all of the documentation been provided despite the box not being checked off, but they were not.

Mr. LoFaso asked Mr. Stivers what he would have expected to see had the documentation been properly provided.

Mr. Stivers stated that he reviewed the letter from Operation Dignity for the three items required by the regulations, and they were not there.

Mr. Madeira responded that the budget amount was provided in the budget of the application.

Mr. LoFaso stated he supported staff's ability to document substantive things, such as not charging tenants, are important to a project.

Mr. Madeira responded stating that they had a separate certification that addressed that.

MOTION: Ms. Wong-Hernandez, with a lot of heartburn moved to deny the appeal. Mr. Brown seconded and the motion passed 2-1 with Mr. LoFaso dissenting by a roll call vote.

9) Discussion and Consideration of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to Enter into a contract, pending finalization of the procurement process, with the Haas Institute for a Fair and Inclusive Society at the University of California, Berkeley for up to three years, not to exceed $232,246, to provide Opportunity Area Mapping services.

Anthony Zeto stated that staff recently adopted regulations incorporating opportunity areas and that this agenda item is seeking Committee approval authorizing the Executive Director to enter into a contract with the Haas Institute for a Fair and Inclusive Society at the University of California, Berkeley to provide opportunity area mapping services. Mr. Zeto stated that these services include providing annual updates to data sources, interactive maps that will be available on the TCAC website, and revisiting the methodology and making recommendations.

Mr. LoFaso asked who ultimately pays for TCAC's contracts.

Mr. Stivers stated that fees from developers pay all of TCAC's costs.

MOTION: Mr. LoFaso moved approval. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

10) Public Comment.

Mr. Leach stated that he would be willing to provide any Excel sheet calculation to help to anybody that needs it.

11) Adjournment.

Mr. Brown thanked the members and stated we need to figure out a better way to stay with policy concerns without having to dive deep into the application. Mr. Brown noted that this is a complicated program but stressed the need to find a better path on the appeal process. Mr. Brown adjourned the meeting at 5:00 p.m.