

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the September 25, 2019 Meeting**

**1. Roll Call.**

Jovan Agee for State Treasurer Fiona Ma chaired the meeting of the California Tax Credit Allocation Committee (CTCAC). Mr. Agee called the meeting to order at 1:30 p.m. Also present: Anthony Sertich for State Controller Betty Yee; Kris Cook for Department of Finance (DOF) Director Keely Martin Bosler; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman Patterson; Zachary Olmstead for California Department of Housing and Community Development (HCD) Acting Director Doug McCauley and City Representative Vivian Moreno.

County Representative Santos Kreimann was absent.

Mr. Agee welcomed Ms. Moreno as the newest Committee member of the CTCAC.

Ms. Moreno thanked Mr. Agee for the kind gesture and stated that she is looking forward to getting more housing built in California, primarily San Diego.

**2. Approval of the Minutes of the July 17, 2019 and August 20, 2019 Meetings.**

**MOTION:** Mr. Sertich moved the approval of the July 17, 2019 and August 20, 2019 Meeting Meetings. Ms. Boatman Patterson seconded and the motion passed unanimously by a roll call vote.

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

Executive Director Judith Blackwell stated that for the last few weeks, staff has been collecting comments on CTCAC's proposed regulation changes. Staff has embarked upon two sets of regulation changes pursuant to the Ten City Tour, which Treasurer Ma conducted to gain information from constituents and the housing community on what staff needs to do to produce housing more efficiently and in a better manner. Ms. Blackwell stated the changes are going to occur over a two-step process, the first being the technical revisions, which were just completed. A year from now, staff will be looking more deeply into CTCAC regulations, which staff has already collected comments for as well. The changes primarily include technical changes and changes to implement the \$500 million in state tax credits for next year. The public comment period ended last Monday; staff is currently compiling the comments and will be posting a summary of them on the CTCAC website along with the final proposed regulation changes in response to the comments. The proposed regulation changes will be considered by the Committee for approval at the October Committee Meeting.

Mr. Sertich stated that he wants to make sure staff is not rushing through these regulation changes in hopes that both the Committee and the public are aware of what's being adopted before approves the changes. He stated that it is important to take into account

the timing for the changes and proposed that there be a formal discussion regarding the regulations to give sufficient time for public comment and reflection prior to voting on the regulations at a separate meeting thereafter.

Mr. Agee asked if whether Mr. Sertich was suggesting delaying the November application process.

Mr. Sertich stated that it is important to think through all the changes brought up in past comments to assure the regulations are understood by everyone. It is important that staff has the ability to deal with an oversubscription and that everyone has the opportunity to comment on the regulations and understand them before the applications roll out. He also believes that it is important that the California Debt Limit Allocation Committee (CDLAC) is able to tie into the new state tax credits since CTCAC and CDLAC are going to be working together. Mr. Sertich mentioned it is likely that CDLAC will become competitive sooner rather than later so it is important that the Committee deal with CDLAC issues with regard to the allocation of funds in the different pools, which is traditionally done at the January Committee Meeting. Mr. Sertich cautioned that if the Committee skips this process, it could create other problems with unintended consequences.

Mr. Agee stated that he will be meeting with CalHFA following this meeting and noted that others are welcome to attend in order to get a better understanding of the timeline. He asked CalHFA and HCD whether they think that a delay to the regulation changes are necessary beyond the November application deadline.

Mr. Sertich clarified that he is not suggesting that they delay the process beyond the November application deadline and noted he would be okay having a special meeting so staff can keep the process moving along. Mr. Sertich stated that he wants to make sure there is transparency in the regulation process since they have not yet been released in their final status.

Ms. Boatman Patterson asked the Chair if he was suggesting delaying the application process until after the new regulations have been adopted and not hold applications in November. She asked whether Mr. Sertich was suggesting delaying the applications or the regulations.

Mr. Sertich stated that it would be very difficult to submit applications prior to the regulations being adopted since the applicants need to know what they are applying for and the rules for the program. He suggested delaying the approval of the regulations until the Committee and the development community have had an opportunity to thoroughly review the proposed changes.

Mr. Agee stated that all members agreed and suggested that they bring this up in the meeting that is taking place behind closed doors after this Committee Meeting so they could go over administrative support issues and get a solid understanding of the timeline.

Mr. Sertich stated that more than anything, he just wanted to make sure the Committee has a thoughtful process to ensure the new state tax credit program will work efficiently.

Mr. Agee asked Ms. Blackwell that staff come up with a working calendar for the next meeting with agency heads in regards to what the additional timeline should be.

**4. Discussion and Consideration of appeals filed under TCAC Regulation Section 10330(b)(1), and if appeal is granted in its entirety, a 2019 Second Round Reservation of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs). See Exhibit A for a list of the appealing projects.**

Deputy Director, Anthony Zeto stated that the appeals for Trinity Place Apartments (CA-19-104) and Ivy Senior Apartments (CA-19-105) were granted at the Executive Director's level and have been removed from the agenda. The projects will be considered for a recommendation depending on the outcome of the appeals on today's agenda.

**Appeal for Sun Commons (CA-19-108)**

Maura Johnson, Director of Housing for Abbey Road presented the appeal for Sun Commons. She stated that Sun Commons was disqualified due to a discrepancy between the Sources and Uses Development Budget in the application Excel workbook and details in the Construction and Design description (Attachment 12) regarding offsite costs. Ms. Johnson stated the difference of \$63,915 in the context of a \$56.7 million project was one-tenth of a percent of the budget. She explained that TCAC staff concluded the project was under sourced by \$63,915 and therefore disqualified for failing to meet financial feasibility. Ms. Johnson reiterated that the project is not under sourced and that the \$63,915 is included in a site work line item instead of the offsite line item and therefore, accounted for in the total development cost. She explained the clerical error was due to aggregating line items in a slightly different manner than entered into the CTCAC application. Ms. Johnson stated that using Attachment 12 as a verification of the budget is not appropriate because it is not the purpose of the narrative attachment. She explained that the requirement to include an offsite cost breakout was added in 2010 so CTCAC staff can verify which offsite costs qualify to be included in the final tiebreaker calculation. Ms. Johnson stated the costs in ineligible off site costs in Attachment 12 along with the application's tiebreaker score calculation are consistent at \$39,900. Ms. Johnson stated that the project was being held to a standard not required by CTCAC's regulations by using Attachment 12 as a budget verification method. She stated that cost estimates for new construction projects are not a required part of the CTCAC application, nor have they ever been so it not accurate nor appropriate under the regulations for CTCAC to conclude there is a gap in financing.

Ms. Johnson noted that if the Committee concludes there is a gap in financing, they could defer up to \$1 million in developer fee. She stated that if the project is delayed until the next round, their project costs will increase by roughly \$1.6 million, which will be borne by tax credits since the project already has maximum state and local resources committed from the County of Los Angeles and HCD. Ms. Johnson concluded by stating that they

have been working on the project for five years and it will provide 51 units of permanent supportive housing and 50 units of affordable family housing.

Mr. Zeto stated there was a discrepancy in offsite costs and while the regulations do not speak to a schedule of costs, staff does question inconsistencies found in the. In this case, the applicant stated these costs were in the site work line item which staff has no way of verifying. He added that CTCAC regulations permit staff to fix issues in the application up to \$50,000 but in this case, the difference was \$63,915. Mr. Zeto concluded by stating that there was a gap in financing of \$63,915 in unaccounted costs.

Ms. Boatman Patterson asked if CTCAC staff sees appeals of this nature often. She believes the \$50,000 number was established to show de minimis, and that there are ways to measure de minimis such as \$50,000 or no more than 2% of the total development cost. Ms. Boatman Patterson also asked when the \$50,000 number was established.

Mr. Zeto stated the \$50,000 was established a few years ago so staff could view the contingency line item as covering any excess costs up to \$50,000. In order to use a percentage, he stated that staff would have to determine a percentage that was not too high where it would use up the contingency for actual costs needed during construction.

Ms. Blackwell stated that staff can take this under advisement, but a percentage would make some sense to accommodate both large and small projects.

Mr. Sertich wanted to make clear that the project came before the Committee today since it exceeded the \$50,000 de minimus cost threshold.

Ms. Boatman Patterson asked Mr. Zeto what would happen if this appeal were granted.

Mr. Zeto stated the project would be awarded from the Nonprofit set aside.

Ms. Boatman Patterson asked what would happen to the other projects.

Mr. Zeto stated Trinity Place Apartments (CA-19-104) would drop down into the San Diego region for an allocation, but the outcome would still be unclear because there is another pending appeal in that region. Staff would need to consider the remaining appeals to make that determination.

Ms. Boatman Patterson asked if whether staff considers this an unusual amount of appeals.

Mr. Zeto stated it was an unusually high number of appeals, specifically to the Committee level, but overall it was an unusually high.

Ms. Boatman Patterson stated she is supportive of staff and allowing staff to effectively administer the program, which is why there are rules. She stated she was supportive of regulation changes to allow staff to effectively administer the program rather than these appeals go the Committee level. Ms. Boatman Patterson added that the number of appeals

that brought before the Committee concerns her and that overturning staff's decisions could create precedent.

Mr. Agee stated Ms. Boatman Patterson's comments echo many of the discussions he has been having over the last couple of days. He mentioned the program is going to face a significant amount of appeals since the administration is trying to quintuple the amount of housing production. He also understands that under the previous administration, there was a great amount of discretion given to the Executive Director. Moving forward, he does not believe this is the best path in terms of things being highly subjective as they are. Mr. Agee agreed that there have been a great number of appeals over the last couple of months involving small discrepancies, similar to the appeal in front of the Committee today. He believes that the Treasurer's Office and Governor's Office should remain closely aligned and set a tone according to the demand of the market place to show both entities are very serious regarding the housing goals they have put forth. Irrespective of staff's decisions, he would like to defer to the will of the Committee in terms of making decisions on appeals. Mr. Agee stated that there are lot of procedures that leave the staff's hands tied in many of the areas with regard to the regulations, and the Committee must go back and revisit some of these items. He asked that over the next couple of weeks and months the Committee take on more in regard to the decision making process on these appeals. Mr. Agee stated he would defer to the will of the Committee on most appeal decisions for the sake of walking in unison on many of these issues.

Mr. Olmstead stated that he agrees with Ms. Boatman Patterson on regulation changes that would give staff the ability to correct de minimus errors that are less than 2%. He believes this is a reasonable number but does not know where it leaves staff with now with the appeal before them since it is not an existing regulation.

Mr. Agee asked the General Counsel if the Committee has the authority to overturn staff's decision on this particular appeal.

General Counsel, Mark Paxson stated that at times the Committee has granted appeals based on their findings that the amount is de minimus above what the regulations require so the Committee can approach this appeal in that way if they so choose.

Mr. Agee asked if there was a motion to overturn staff's recommendation for Sun Commons.

**MOTION:** Mr. Cook moved to overturn staff's recommendation for Sun Commons but there was no second. The staff recommendation was upheld.

### **Appeal for 1801 West Capitol Avenue (CA-19-076)**

Jennifer Fleming with Mercy Housing presented the 1801 West Capitol Avenue appeal. Ms. Fleming stated they are requesting that the Committee restore the two-point reduction from the Miscellaneous Federal and State Policies point category (Revitalization project point option) and allow the project to compete on its merits for any awards that may be

made from the waitlist. She provided a brief summary of the project explaining that it is a high profile project, which would provide 85 units of permanent supportive housing. The project is being developed with the City of West Sacramento, Yolo County Health and Human Services and Yolo County Housing. Ms. Fleming added that the project has the potential to house 50% of the homeless in West Sacramento based on point and time count statistics in 2019. She stated the applicable regulation provides two ways of qualifying for the two-point option: provide evidence of being in a Qualified Census Tract (QCT) or provide evidence of being in a promise zone via a letter from the local government. She explained that the project was not in a promise zone, but rather the first option in a QCT. Ms. Fleming stated that an independent attorney reviewed regulation language stating it is ambiguous at best further clarifying that the local government letter was only required for projects in a promise zone. She added that a first and second appeal with this information were submitted, both of which were rejected based on historical context. Ms. Fleming stated that their attorney letter called it is unreasonable to assume that an applicant in 2019 would be aware of a regulation change in calendar year 2014/2015. Based on this, she asked the Committee to see this application as complete and restore the two points. She noted that letters from the local government were submitted in the first and second appeals but were not considered in staff's appeal decision.

Ms. Boatman Patterson requested to hear from staff on the issue.

Mr. Zeto stated that staff requires the revitalization letter from the local government be included with the application at the time the points are requested in the point category. The applicant stated that due to the comma, she believes the letter was only required by the federal promise zone. With regard to the historic aspect, the requirements for this letter pre-existed the promise zone language. Mr. Zeto clarified that this letter be provided for projects located in a QCT zone in order to garner the two points. Since then, staff has added additional items to this point option while maintaining the requirement for the letter. He added the regulations require the letter for any of the items in that point option. The applicant provided a letter in February but it did not include all of the items that the regulations require. The applicant's second appeal letter, dated September 16, 2019, did address all of the required items in the regulations, but the letter was dated well after the application filing deadline, which could not be accepted. Mr. Zeto stated that if the Committee approves the project, it will go on to a waiting list and will not affect any of the projects on the preliminary list on today's agenda. The project would not be approved for an allocation at this Committee Meeting.

Mr. Sertich stated that after reading the regulation, he could see where the confusion came about due to the comma issue. He also noted the project had a letter in the same vein of what was requested for the previous AHP application. Since this was more of an administrative error than a technical error, he believes the mistake was in good faith.

Mr. Agee summarized that there was a lack of information submitted due to the comma issue but when fully understood, the requested document was submitted but occurred well after the application filing deadline.

Mr. Zeto stated that was correct and that the applicant was notified of the point reduction via point letter issued after the application deadline.

Mr. Olmstead asked the applicant why a letter of support from the local government was not submitted at the time of application.

Ms. Fleming stated that they were in possession of the letter but in order to not over burden staff with documents, the applicant chose to not include the letter due to their understanding of the regulations.

Mr. Zeto stated the letter Ms. Fleming is referring to did not include all of the require information stated in CTCAC's regulations for the letter.

Ms. Fleming stated that at the time, they only had a letter for the AHP application since it was not required by the CTCAC application per the applicant's understanding.

Mr. Olmstead asked if whether the letter provided to CTCAC still lacked the necessary information after the applicant was notified of the issue.

Mr. Zeto stated the letter submitted for the first appeal was very basic and lacked certain information such as the information relating to the last five years of funding. The letter submitted in the second appeal to the Executive Director did address all of the requirements but was dated September 16, 2019, well after the application filing deadline.

Ms. Fleming stated that in original appeal, the applicant requested that the Executive Director use her discretion to contact a third party, the City of West Sacramento to obtain the required information and upon denial of the appeal, they asked the City of West Sacramento to draft the letter, which would have otherwise been provided in the original application.

Ms. Boatman Patterson asked whether the purpose of the letter was to support that the project was a QCT.

Mr. Zeto stated the purpose of the letter is to delineate the project's revitalization efforts.

Ms. Boatman Patterson stated that even if the applicant is coming in as a QCT, CTCAC staff still requires the letter in the application to delineate the revitalization efforts.

Mr. Zeto confirmed that is correct.

Ms. Boatman Patterson asked if staff usually sees applicants who apply with this letter.

Mr. Zeto stated that this option is not selected very often given the other options available to garner the two points, such as the federal and state credit exchange option.

Ms. Boatman Patterson stated that basically, the applicant made a mistake and checked the wrong box in the application.

Mr. Zeto stated that is correct.

**MOTION:** Mr. Sertich moved to grant the appeal for the 1801 West Capitol Avenue project, Mr. Cook seconded and the motion passed unanimously by a roll call vote. Ms. Boatman Patterson did not vote.

Mr. Zeto stated that given the results of the Sun Commons appeal, staff has reviewed the Trinity Place Apartments and the project met all program requirements. Staff now recommended the project to the Committee for approval in the Nonprofit set aside.

**MOTION:** Mr. Sertich moved the approval of the Trinity Place Apartments, Mr. Cook seconded and the motion passes unanimously by a roll call vote.

Ms. Boatman Patterson asked how the approval of the Trinity Place Apartments would affect other projects that are also seeking approval.

Mr. Zeto stated the project Econo Inn (CA-19-098), originally on the recommended list in the Nonprofit set aside, drops into the Central Valley Region where it is now recommended for a reservation. The project Residence at East Hills (CA-19-060), previously on the recommended list in the Central Valley Region, is no longer being recommended for a reservation.

Mr. Agee stated this was another case where the Committee should not be having a conversation about a project being bumped, since it would not have been in the pipeline anyways.

Ms. Boatman Patterson reiterated that staff needs to be able to effectively administer the program so the Committee is not faced with these sorts of situations.

Mr. Sertich clarified that the appeal for the Trinity Place Apartments was granted at the Executive Director's level.

Mr. Agee stated that the appeal actually came to his desk first and rather than having it heard at the Committee Meeting, he recommended that staff uphold a new recommendation on the project since the interpretation of the code was very narrow.

### **Appeal for Truckee-Donner Senior Citizen Community (CA-19-080)**

Patrick Sabelhaus representing Cascade Housing stated that the Truckee-Donner Senior Citizen Community project consists of 60 existing units and originally financed by the United States Department of Food and Agriculture (USDA) has been in existence for more than 30 years and in need of rehabilitation credits. Steve Strain with the Law Offices of Patrick Sabelhaus stated they were appealing the disqualification of the project on two



grounds. He explained that staff asserted the applicant had incorrectly calculated the developer fee that was payable to this project and that the application incorrectly requested acquisition credits despite being ineligible for such credits. In regards to the developer fee, Mr. Strain stated it was calculated in compliance with the regulations as they stand today on the CTCAC website. He stated that the applicant was directed, in the response to the appeals, to a guidance memo published in 2014, which cannot be found on the CTCAC website. Mr. Strain stated it is unreasonable to expect the applicant to be aware of a memo that was published 5 years ago that was not been incorporated into the regulations. The second issue involved a request for acquisition credits, where the project is ineligible. He stated that the regulations allow for acquisition credits to be rescinded and offset with rehabilitation credits so long as the change does not increase the amount of credits being requested, does not increase the tie-breaker and does not result in a change of costs/sources in excess of \$50,000. Mr. Strain stated that this change would result in no change to the costs or sources of the project and no increase to the amount of credits requested in the original application. He explained the only change would be offsetting acquisition credits with rehabilitation credits and added that this project was the highest scoring project in the Rural set aside meeting all the other requirements for funding in the second round.

Mr. Zeto responded to the developer fee being derived using both acquisition basis and rehabilitation basis by stating that since the project was not eligible for acquisition basis, the developer fee could not be derived from that same basis for which the project was not eligible. In regards to the changes requested with the rehabilitation and acquisition credits, Mr. Zeto stated the applicant is requesting staff to change their application by adjusting the voluntary reduction thereby removing the acquisition portion and adjusting the requested rehabilitation so all the credits come from the rehabilitation portion in order to maintain project feasibility. Based on staff's interpretation of the regulations, he did not believe staff had the authority to make such a change.

Mr. Strain responded that the prohibition in the regulations to receiving tax credits derived from acquisition basis is not a prohibition on including acquisition basis in your application. In 2014, it was determined that this merited clarification by way of the guidance memo which has not been repeated in the five years since.

Mr. Zeto stated staff has a two-step process in determining how much credits a project receives. The acquisition basis establishes the acquisition credits and staff does a funding gap analysis where a portion of developer fee was derived from acquisition basis. He reiterated that credits can't be derived from acquisition basis and the overstated developer fee is doing just that.

Mr. Agee stated that given the statement made by the applicant, is it true that the project would be qualified for more credits if the correction had been made.

Mr. Strain stated that was incorrect and that the amount of credits being requested would remain the same but would result in a higher tiebreaker score.

Mr. Agee stated that after conversing with staff, it seemed like the adjustment would have made the projects more viable.

Mr. Sertich stated the tiebreaker score would have been higher because the returned credits would have resulted in a voluntary reduction.

Mr. Zeto stated the applicant's basis could have been lower due to the higher multiplier.

Mr. Agee stated this is important to know because staff needs to use finite resources in the wisest manner possible. He stated that this appeal was challenging for him but wanted the Committee to have this conversation.

Mr. Cook asked staff if the applicant became aware that they were not qualified for acquisition credits and made the request to switch it over to rehabilitation credits only after having further discussions with staff.

Mr. Zeto stated that since this was a re-syndication project, CTCAC's regulations prohibit the project from receiving acquisition credits. The applicant was made aware of this via a disqualification letter that was sent out. As a remedy to staff's decision, the applicant requested staff to adjust the voluntary reduction figure to reflect the basis lost under acquisition to be offset with the rehabilitation.

Mr. Sabelhaus clarified for Mr. Cook the applicant's reasoning for both claims under which they are disputing CTCAC staff's decision.

Mr. Sertich stated that this appeal was similar to the Sun Commons appeal in which there was an error in the application, which does not really affect the major financing of the project but that it does really eat up staff time. He believes the error was made in good faith and that the applicant was not trying to game the system in any way. Although, he believes that staff should hold a high standard to completing the application correctly so that staff can effectively administer the program.

Mr. Agee stated that in the Sun Commons appeal, the regulations clearly stated what the cap for the margin of error was but for this appeal, he believes that there was a discrepancy in the steps that were followed.

Mr. Sertich stated the regulations are very clear in terms of the acquisition basis being used but where the regulations are unclear is on the developer fee so he sees them as two separate issues. The initial disqualification was based on the acquisition basis and the adjustment that was requested. He was also concerned regarding the use of guidance that was not publicly available and wanted to make sure such information is publicly available if staff is going to reference it moving forward. He added that the use of acquisition basis is clearly prohibited in the guidelines for this project.

The Committee thanked the appellant for presenting their case and called the next appellant to present their case.

### **Appeal for Donner Trail Manor (CA-19-084)**

Keith Stanley with Horizon Development Consulting presented the appeal for the Donner Trail Manor project. Mr. Stanley stated the appeal was in regards to tiebreaker calculation, specifically the rent differential calculation relating to the United States Department of Agriculture (USDA) rental assistance contract. He stated that guidance that basic rate rent be utilized instead of the note rate rent in the USDA contract that staff references is not in the regulations or application. Mr. Stanley added that the actual expected post renovation rent was provided in the application as supported by the market study. He stated that USDA fully committed to the expected rent in the form of a letter during the CTCAC appeal process. Mr. Stanley added that the actual expected post renovation rent was several hundred dollars more than the note rate rent used in the tiebreaker calculation, which would have increased the tiebreaker score to 45%, one of the highest tiebreakers scores in the Rural set-aside. He concluded by stating that the project is an At-Risk project, which can be prepaid based on the USDA note and go market rate. Mr. Stanley made reference to a prior regulation change preventing rural projects from applying in the At-Risk set aside but not intended to disallow rural projects from being eligible for funding in the At-Risk set aside in the event there were no projects competing in the At-Risk set aside.

Mr. Zeto announced that Gayle Miller has joined the meeting for DOF.

Kim Vann, State Director of USDA Rural Development introduced herself and stated that Wheatland was one of the cities that was addressed by Governor Newsom in his State of the State Address. She added that USDA would like to continue to make investments into Yuba County, specifically the City of Wheatland in order to assist in their economic development efforts. Ms. Vann stated USDA stands by its commitments to the rent amounts described in the letter submitted in the CTCAC application. She hoped the Committee would give consideration to fund the project in the At Risk set aside if not the Rural set aside to ensure the project remains affordable for the surrounding community.

Development Section Chief, Gina Ferguson stated that the issue concerning the basic rate rent and note rate rent affects project's tiebreaker score. Ms. Ferguson referenced guidance from 2018, which was provided to applicants on the CTCAC website. She explained that the guidance stated that for USDA purposes, the basic rate contract rents are the rents to be used in the application. Ms. Ferguson stated the basic rate rent is the contract rent that USDA is going to provide, reduced by the interest credit agreement amount. The loan payment is reduced by an interest credit agreement amount so that the loan payment actually becomes smaller, which explains the difference between the note rate rent and basic rate rent, while the note rate rent is a contract rent that takes into the account the full loan amount and the loan payment. Ms. Ferguson stated she was able to get in contact with USDA who verified that the basic rate rent amount is what the project is going to receive, not the note rent amount. She referenced language from USDA guidelines, which stated that the project would utilize the basic rent amounts, and not the note rate amounts.

Ms. Boatman Patterson stated that if the project was approved in the Rural set aside, it would affect other rural projects, but if the project is moved into the At Risk set aside, there is no risk because staff did not receive any applications in the At Risk set aside.

Mr. Zeto stated that he is not sure if staff is able to make such a change and that he would have to consult with General Counsel.

Ms. Boatman Patterson asked General Counsel if the Committee made a motion to move this project into the At Risk set aside.

Mr. Paxson stated that he does not know the answer to that question and that staff would determine it.

Mr. Agee stated that for the purposes of this appeal, it is clear in the guidance memo which type of rent to use, but unclear in the regulations.

Ms. Boatman Patterson asked staff if the Committee has the option of moving this project to a different set aside or if there is any section in the regulations that prohibits it.

Mr. Zeto asked Mr. Stanley if he recalls a section in the regulations that permits the project to be moved and funded in a different set aside.

Ms. Ferguson stated that generally projects that are eligible for the Rural set aside are not eligible for other set asides. Twenty percent of the federal ceiling is set aside for rural projects, which is the largest set aside in terms percentage. She added that CTCAC's methodology states that if the project is a rural project, then it must compete in the Rural set aside.

Mr. Paxson cited that the CTCAC regulations stating that all projects located in eligible census tracts defined by the section must compete in the Rural set aside and will not be eligible to compete in other set asides or geographic areas unless the geographic region in which they're located had no other projects eligible for a reservation in the current calendar year.

Ms. Miller stated that the CTCAC regulations are not clear in regards to the USDA tiebreaker rent between basic and note rate. Since staff is relying on guidance, she is unsure if the Committee is being consistent with their views on the CTCAC regulations by not approving the project. Ms. Miller's position is that given the opportunity from USDA, given that there are no other project competing and the need for housing, she would move to support approval of the project. She is willing to accept Mr. Paxson's guidance on allocations but believes that it is an issue CTCAC staff should address later. She is not compelled to deny the appeal since the regulations do not specifically refer to guidance.

Ms. Boatman Patterson asked which other projects were in the Rural set aside and whether granting the appeal would affect other projects.

Mr. Zeto stated if the appeal is granted in the Rural set aside, the Grass Valley Terrace project (CA-19-119) would be bumped out of the Rural set aside.

Mr. Stanley noted that there also appears to be remaining funds in the Capital geographic region as well.

Mr. Paxson restated that the regulation does not allow a rural project to move into a geographic region unless there has been no applications or eligible projects in the calendar year.

Mr. Sertich stated that this appeal is different from the ones heard before because it is not a disqualification, but rather a tiebreaker score reduction.

Ms. Ferguson clarified that the note rate rent is never going to be received by the applicant.

Ms. Vann stated that the applicant will receive the renovation rents but they are much higher.

Ms. Ferguson stated those rents are not eligible for the tiebreaker and were not even requested in the application.

Ms. Vann stated USDA did send CTCAC a public comment letter regarding the regulation changes on this issue.

Mr. Sertich stated that from a fundamental standpoint, due to the contents of the application, reducing the tiebreaker score makes sense and believes that staff made the correct decision.

Ms. Boatman Patterson requested that the Committee waive the regulations and allow the project be funded in the At Risk set aside in which there were no other applicants at this time.

Mr. Paxson advised that the Committee cannot waive regulations.

Ms. Boatman Patterson stated the Committee can approve regulations and unless there is someone who is going to challenge the Committee on funding a project in a Rural set aside in which there are no other projects being funded, she is willing to take the risk.

Mr. Agee stated essentially what Mr. Paxson is saying is that the only option the Committee has if it's going to stick to the CTCAC regulations is to keep the project within the Rural set aside and in doing so, bumping the Grass Valley Terrace project.

Mr. Olmstead stated he does not feel comfortable with that motion in the case there are other Rural at risk projects that are provided the same benefit as this one project.

Mr. Paxson stated this appeal is solely for the appeal of the Donner Trail Manor project and the grounds for their appeal.

Ms. Boatman Patterson stated she is very comfortable both legally and statutorily with the motion she has made and appreciates what Mr. Olmstead is saying but noted that her motion was very specific, targeting only the specific project in the agenda.

Ms. Miller stated she disagrees with staff's recommendation on the issue of regulations versus guidelines and notes she was in support of approving the appeal for Donner Trail Manor. She added that a legal memo would be nice to have so Committee members can be aware of what sort of actions they can take especially when there are so many items in the meeting agenda. Her concern is that the CTCAC regulations are unclear and need to be clarified, which makes it unfair for taxpayers, especially if the Committee members are having trouble understanding the rules of the program.

Mr. Sertich asked staff if the At Risk set aside credits rolls into the waitlist pool if the credits are not utilized.

Mr. Zeto stated that all of the credits would eventually get used via the waitlist. He explained the waiting list has a specific procedure staff uses for undersubscribed set asides and regions, and then a general waitlist based on ranking and scores. In order to be eligible for the National Pool, no more than one percent of the federal credits can remain for the calendar year.

Mr. Agee asked staff if the project that would be bumped assuming approval of this appeal would be eligible in the At Risk set aside.

Mr. Zeto stated that both projects are identical in that they are both At Risk housing types that applied in the Rural set aside. Since there are no eligible projects in the At Risk set aside, there are no undersubscribed set asides with eligible projects remaining. He explained that the waiting list would then go to the undersubscribed geographic regions.

Ms. Vann asked if the credits are pooled generally statewide.

Mr. Zeto stated there is a certain percentage allotted for each of the set asides and then a percent apportionment for each of the regions.

Ms. Vann asked what happens if a particular set aside does not award all of their credits.

Mr. Zeto stated the credits are allocated elsewhere statewide through a process established by staff. He explained that the project could be awarded in the general pool but it is likely due to the competition and the funding of the remaining undersubscribed regions.

Ms. Miller stated for the record that even with the approved appeals, there is no guarantee the projects would be awarded.

Ms. Vann stated it would be hard for the Donner Trail Manor project to compete with other projects in the general pool due to its small size. Although the impact of the project for the rural community in which it is located would be huge.

**MOTION:** Ms. Boatman Patterson moved that the Committee approve to waive the regulations that disallow a geographic or rural project be moved to the At Risk set aside in the event there are no other projects competing so that this project may be funded.

Mr. Agee asked if there was a second to Ms. Boatman Patterson's motion. The motion was not sustained.

Ms. Miller stated she would like to make a follow up motion.

**MOTION:** Ms. Miller moved to approve the appeal for the Donner Trail Manor project. Ms. Boatman Patterson seconded. There were public comments.

Gary Downs with Impact Development Group representing Grass Valley Terrace stated their project is in desperate need of rehabilitation credits and noted that their seller is notorious for taking these projects and converting them to market rate, which will displace around 80 senior families in the Grass Valley area. He stated the seller needs a 9% deal to get this done and that he's tried with other buyers in this funding round but was not successful. Grass Valley Terrace project was successful because they were able to get rental subsidies from the regional housing authority, their joint development partner and rural development. Mr. Downs added that this project is a competitive project that is being recommended by staff for approval but it will be bumped if the Donner Trail Manor appeal is approved. He requested that if the Grass Valley Terrace project is bumped, staff allow the project to compete for an allocation in the October Meeting round. Mr. Downs added that like many of the other rural projects in this funding round, their project is an at risk project.

Mr. Downs stated that if it were not for the regulation, the project would be able to compete in the At Risk set aside. He owns 45 rural development projects in California and most of them got 9% credits. Mr. Downs stated that he has never used the note rate rent because it is not applicable. He added that it is a theoretical number and only used for internal purposes and does not show up in the applicant's documents, which is very clear to rural developers in the room, including Mr. Stanley on past projects. Mr. Downs stated that his tiebreaker score would also be significantly higher had he used the note rent rate but he knew not to use it because it is not a realistic number.

Gustavo Becerra with the Regional Housing Authority echoed what Mr. Downs said, stating that they did not use the note rate rents because he knows not to. Mr. Becerra stated that would be very sad to know their project would be bumped due to it and is unfair to the other projects.

William Leach with Kingdom Development has been a program participant for the last 15 years and stated that if the Committee makes a distinction today between regulations and

guidance, it would be a brand new concept. He explained that guidance has always been treated very strongly so if the Committee has a different view on guidance, then it would be very different from what the development community has been previously accustomed to.

Mr. Leach also stated that with the recommendations being made today, there will be leftover Rural set aside credits that will be addressed at a future meeting. Mr. Leach proposed that the Committee instruct staff to take all unfunded rural at risk projects and see if they can all be funded in the October Meeting via a public notice that staff is considering funding rural projects in the At Risk set aside.

Ms. Miller asked for Mr. Paxson's input on Mr. Leach's comment.

Mr. Paxson stated he has total appreciation for creative thinking but Mr. Leach's proposal would be waiving the regulation at the staff level and essentially asking the Committee to override staff's decision. He reiterated that the regulation is clear, stating that rural projects are not allowed to compete in other set asides, which would be amending the regulations without going through the proper regulatory process.

Ms. Boatman Patterson stated that the State has a huge housing crisis, especially in the rural community and there is a federal partner willing to provide an ongoing USDA rental subsidy. She stated that her original motion would have funded the two at risk rural projects.

Mr. Sertich stated that his concern with Ms. Boatman Patterson's approach was that the rules for how the credits would be used was laid out at the beginning of the year and if not used, how it would be funded in the various pools. He believes that it is unfair to change the rules in the middle of the game in order to make the program be equitable for those who are in the application process.

Ms. Miller clarified that if the appeal is approved, Grass Valley Terrace would go to a waiting list for all unused credits at the end of the year, which is a separate process in CTCAC's regulations.

Mr. Agee stated that the fact is there was an applicant who did what they were supposed to do versus an applicant who did not. He asked staff if additional information provided following the application deadline could be considered in the appeal.

Ms. Ferguson stated that when staff looked at the USDA documents, it was unclear whether staff had the necessary information so they reached out to USDA to get additional documentation for clarification as a third party source which the regulations do allow for.

Ms. Miller asked Mr. Zeto again for clarification on how projects are funded off of CTCAC's waiting list by the end of the year.



Mr. Zeto stated there are credits remaining in the Rural set aside because there were some projects that fell out due to other reasons at the last minute. Staff will fund at least one project from the Rural set aside at the October Meeting and would still utilize the rules in place such as the housing type first tiebreaker. By funding one of the projects, staff would be meeting its housing type goal for acquisition/rehabilitation projects within the Rural set aside. If the Donner Trail Manor project was funded at this meeting, the Grass Valley Terrace project would not be funded because staff would have already met its acquisition/rehabilitation goal in the Rural set aside. At the end of the year, Grass Valley Terrace would be eligible to compete in the general pool based on ranking and tiebreaker scores. Mr. Zeto stated that it would be unlikely the project would be awarded from the waiting list due to the competitiveness of other projects.

Mr. Agee advised that the Committee think of the appeal in terms of real time and not in the abstract in order to hone in on the issue.

Ms. Miller stated that her motion still stands which Ms. Boatman Patterson had seconded.

Mr. Leach reminded the Committee of a regulatory authority providing the Committee the ability to fund priority projects. He added that it has only been invoked twice in the last 15 years and explained that it is a very discretionary part of the regulations but wanted to make sure the Committee is aware of all the tools at its disposal.

Mr. Agee stated staff would look for the regulation section referenced by Mr. Leach but in the meantime, called on the next public commenter waiting on the phone.

Paul Patierno with Highland Property Development stated that he had been involved with USDA and the United States Department of Housing and Urban Development (HUD) since 1981. He concurred with staff on Section 10315(c) of the regulations stating that a rural project must compete in the Rural set aside and cannot be moved to the At Risk set aside. In regards to the note rate rent issue, he stated there is no grounds for using the note rate rent since it is a theoretical figure. Mr. Patierno stated he is confident the applicant knew not to use the note rate rent but used it anyway. He also suggested the Committee look at the history of the application and noted that it was disqualified twice previously for improprieties.

Ms. Miller stated she does not feel comfortable discussing an applicant and past improprieties.

Mr. Stanley stated he would like to respond to the Mr. Patierno if he could.

The Committee advised that Mr. Stanley does not have to and should not justify Mr. Patierno's comments.

Mr. Agee asked if the regulation section Mr. Leach had referenced was located.

Mr. Paxson referenced Section 10315(f) of the regulations concerning the Committee's discretion to fund priority projects and noted that Mr. Leach is correct that there has been a couple of instances over the years where a similar scenario had occurred. Instead of leaving the project to compete in the general pool, the Committee may fund a project to from the 3% Supplemental set aside as a priority project.

Mr. Zeto stated there have been two instances in the past where the Committee has made the decision to do fund a priority project from the Supplemental set-aside.

Mr. Agee asked for clarification as to whether or not the award would be made at the same meeting or subsequent meeting.

Mr. Leach stated that in past the Committee's decision has been a two-prong recommendation where the Committee stated to uphold staff's disqualification of the project and fund the project via the 3% Supplemental set aside as a priority project.

Ms. Miller withdrew her previous motion and made a new motion.

**MOTION:** Ms. Miller proposed to uphold staff's denial of the Donner Trail Manor project and moved to approve the allocation under the 3% Supplemental set-aside immediately. The motion passed 3 to 2 by a roll call vote. Mr. Sertich and Mr. Olmstead voted no.

### **Appeal for Paseo Artist Village (CA-19-107)**

Sue Reynolds of Community HousingWorks, developer of the Paseo Artist Village project presented the appeal along with their Senior Vice President of Real Estate Development, Mary Jane Jagodzinski and City of Vista Housing Manager Amanda Lee. Ms. Reynolds added that Diep Do from California Housing Partnership was available on the telephone line if needed. Ms. Jagodzinski stated the appeal was to a reduction to the tiebreaker score involving a ground lease. She describes the development as a 60-unit apartment in Vista, California, a city that is very transit oriented. Ms. Jagodzinski stated the project has an executed Disposition and Development Agreement (DDA) adopted by the City of Vista in June 2018. She stated that she wanted to focus their appeal on three main points.

Firstly, Ms. Jagodzinski stated that the project's appraisal and cost certification conforms to CTCAC regulations and represents the most common sense approach to the value of contributed land for a project that has an executed DDA, which establishes site control, not ownership. She added that the ground lease will not be executed until they close their construction financing.

Secondly, Ms. Jagodzinski stated that CTCAC regulations do not provide appraisal-timing requirements for ground leases. She added that the language surrounding appraisals for new construction applications has explicit timing for the execution of a purchase contract or a transfer of ownership but not the appraisal of a below market \$1/year long term ground lease. Ms. Jagodzinski noted that they provided the appraisal as soon as they were

able to confirm the number of units prior to the CTCAC application deadline. She stated that the regulations only address a situation with an executed purchase contract and complete transfer of ownership. She respectfully believes that the staff intent should not preempt the plain language written in the regulations.

Thirdly, Ms. Jagodzinski stated that the regulations do not specifically address a situation where a city loan and land evaluation tied to an entitlement has a range between 45 and 65 units. She added that even if CTCAC staff disagrees and the appraisal regulations are found to apply, they believe the appeal should be granted because the ground lease will be executed following award and at the time of construction closing in March 2020, within one year of their application. Ms. Jagodzinski closed her statement by stating that staff was holding the project's appraisal to a standard not outlined in CTCAC's regulations.

Ms. Lee provided the Committee with some background information on the City of Vista and noted that the project was on city owned property. She noted the project is high priority since it is conveniently located next to public transit. Ms. Lee stated that the city pegged their dollar amount based on number of units, which is not typical. She stated that in May 2019, the project got entitlements for 60 units and the appraisal was completed. Ms. Lee concluded her statement by stating that the project had the highest tiebreaker score in the San Diego region and that the City of Vista is excited to maximize the density of the project.

For clarification, Ms. Jagodzinski stated that they received a point letter in July confirming their tiebreaker, and then five weeks later they received a revised point letter stating their tiebreaker score was reduced due to an outdated appraisal despite the regulations not indicating timing requirements for a ground lease.

Mr. Zeto stated that it is common for staff to see projects with these types of ground lease agreements. Historically, the date on the DDA agreement is the date staff has used to measure the 120-day appraisal requirement. He explained that site control is demonstrated by having the DDA agreement executed, comparable to a purchase option contract. Mr. Zeto referenced the regulation section in question and stated that the execution date of the DDA was June 12, 2018, which was more than a year after the application filing date of July 1, 2019, thereby disqualifying the project. He explained that given the lease agreement is not executed at the time of the application filing deadline, there would be no date for which the appraisal could be measured from for the lease agreement.

Ms. Ferguson clarified while staff does not specifically state DDA in the regulations, it is considered equivalent to a purchase contract in establishing that document.

Mr. Sertich asked staff if they have had projects in the past where the zoning had changed between the DDA and the construction closing.

Mr. Zeto stated not that he could recall.

Ms. Jagodzinski stated the funding was per unit, anticipating the resolutions, DDA, and scope of development were all lined up to make that entitlement the trigger for the application.

Ms. Ferguson stated this scenario is not unusual situation in terms of the tiebreaker, site control and appraisals involving a ground lease with a DDA.

Ms. Jagodzinski stated what is unusual for her is that with DDA, it's usually X dollars for X units, which is known on the day the applicant receives the DDA. She explains that this project is dollars per unit, making it an unusual DDA.

Ms. Moreno stated she was in support of the appeal for Paseo Artist Village. She added the applicant asserts that staff's interpretation of CTCAC's rules in regards to the timing of the appraisal forced them to appraise the value of the land at 45 units rather than 60 units approved by the City of Vista, which understates the true value of local contribution for this project making the project less competitive. Ms. Moreno respectfully asked the Committee to use its discretion to grant the appeal.

Ms. Boatman Patterson stated that the Committee examine the intent of the regulation for requiring an appraisal in a certain amount of time. She explained that the intent of having the period is so the appraisal date is as close to the application date, to avoid the appraisal getting stale. Ms. Boatman Patterson stated that the appraisal date was done two weeks prior to the application date and the DDA demonstrated site control but no transfer of ownership with no purchase and sale agreement. She stated this was the one appeal she had a problem with due to a different interpretation than staff. Ms. Boatman Patterson stated that she was in support of the appeal.

Mr. Olmstead stated the City of Vista is doing exactly what HCD wants cities to do with regard to density and that he does not want to discourage cities from embracing higher densities, especially given the unusualness of this application.

**MOTION:** Mr. Olmstead moved to approve the appeal, Ms. Boatman Patterson seconded. There was public comment.

Todd Cottle with C&C Development introduced himself as the developer of El Dorado II Apartments (CA-19-099), a project currently on the preliminary recommendations list. He stated that if the Committee were to approve this appeal, his project would be bumped from the list, thus not receiving an award. Mr. Cottle stated that El Dorado II Apartments was located just east of the Paseo Artist Village project in the City of San Marcos. He described the project as an 84 unit family community that was a long time in the making. The city and development team started acquiring property 10 years ago and was unsuccessful in the competition with previous application submissions. Mr. Cottle stated that in order for the El Dorado II Apartments to receive an allocation, the Committee would need to uphold staff's recommendation and deny the appeal for Paseo Artist Village. Mr. Cottle stated that the El Dorado II Apartments project would have to acquire an appraisal to keep it up-to-date in order to meet the various program requirements. He

expressed that it would be disappointing for the project to be bumped as a result of an appeal decision for another project despite his project following the rules. Mr. Cottle also noted that CTCAC staff penalized their tiebreaker score but they did not challenge staff's decision and accepted the rules of the program. The applicant hoped that the Committee would do the same and deny the appeal for Paseo Artist Village, allowing El Dorado II Apartments project to go forth.

Ms. Boatman Patterson encouraged Mr. Cottle to look towards 4% and state tax credits to finance their project.

Mr. Cottle appreciated the suggestion but stated that he believes it would be difficult to obtain additional subsidy from the local agency since the amount of public funding they have for the project is in the \$16 million range already from the local agency, which is a substantial amount of money. He appreciated the suggestion.

Ms. Boatman Patterson asked if the city would not allow the project to come over with the 4% and state tax credits.

Mr. Cottle stated the city would but in order to make the project pencil to its gap, they would need an additional funding commitment in addition to the 4% and state tax credits on behalf of the local city, which has already made a \$16 million funding commitment to the project.

**MOTION:** With the current motion and following public comment, the motion passed unanimously by a roll call vote.

Mr. Zeto stated that following the Paseo Artist Village appeal being granted by the Committee, both the Paseo Artist Village project and the Ivy Senior Apartments project have been reviewed by staff, meet program requirements, and are recommended for a reservation of federal 9% tax credits in the San Diego region.

**MOTION:** Ms. Boatman Patterson moved the approval of both projects. Mr. Sertich seconded and the motion passed unanimously by a roll call vote. Ms. Miller was not present to vote.

### **Appeal for Pine Plaza (CA-19-095)**

Andrew Hanna presented the appeal for Pine Plaza, a 24 unit special needs project dedicated to women who are survivors of domestic violence that are being released from long term incarceration. Mr. Hanna stated that Five Keys was the social service provider for the project as well as a secondary property manager for resident stability, which CTCAC staff identified as one of the issues. He described the second issue in which verification from a federal or state entity that the services provided to the tenants would be appropriate to the population be provided in the application. Mr. Hanna stated that the accreditation for Five Keys was provided in the original application, which meant they were qualified to provide the services to the specific tenant population they were servicing.

Mr. Hanna explained that the last issue involved the project's debt service and how the commercial portion of the project was satisfying the debt service and how that calculation was derived in the application and appeals in order to meet CTCAC regulation for the cash flow. He added that the project addresses the tenant population needs in the region.

Mr. Zeto stated that most of the appeal letters exchanged between the applicant and CTCAC addressed the issues that Mr. Hanna mentioned. He added that staff did not receive the proper documents required to meet the Special Needs housing type. Mr. Zeto stated that a letter from a state or federal entity validating the services provided to the tenant population needed to be included in the application. He stated the housing type requirement is also an additional threshold requirement. Mr. Zeto explained that for the service amenity points, the service provider was the secondary property management company, which is not permitted in Service Amenities point category.

Ms. Boatman Patterson asked if the project was coming in under the permanent supportive housing set aside category.

Mr. Zeto stated the project probably applied in the Special Needs set aside but dropped down into the region based on the ranking. He explained that the project is now competing in the County of Los Angeles region where there are credits remaining. Mr. Zeto noted that the issues being discussed are related to both points and threshold.

Mr. Sertich asked whether staff looks to prorate the annual debt service to the development costs.

Mr. Zeto stated it did not seem appropriate to staff since it was a HUD insured loan with 90% of the loan payment in the project's cash flow was attributed to the commercial portion.

Mr. Sertich asked if staff had any threshold guidelines.

Mr. Zeto stated the residential income is prohibited from supporting the debt service of the commercial portion and must stand-alone.

Ms. Boatman Patterson asked what population Mr. Hanna was trying to serve with the project.

Mr. Hanna stated the project would serve women who are survivors of domestic violence, those who are coming out of long-term incarceration due to actions against their abusers. He added that the Department of Corrections and Rehabilitation (CDCR) will be sponsoring the project and providing services like case management.

Ms. Boatman stated the project did not meet threshold because there was no identified service provider in the application.

Ms. Ferguson stated that CTCAC regulations require a letter from a state or public entity that verifies the services provided at the project meet the needs of the special needs population.

Ms. Boatman Patterson referenced a letter from the City of Long Beach, which strongly supports the project.

Ms. Ferguson stated the information referenced in the letter did not elaborate to the requirements set forth in CTCAC's regulations.

Mr. Hanna stated he did provide a letter from CDCR in response to the appeal that spoke to the accreditation of Five Keys to provide the social services required by the special needs tenant population.

Ms. Ferguson stated staff had trouble assessing whether the accreditation letter was addressing a service coordinator's services.

Ms. Boatman Patterson asked whether CDCR was going to be the case manager for the project.

Mr. Hanna stated CDCR was going to help finance the project and Five Keys would be the service provider.

Mr. Agee stated that Five Keys is a very reputable non-profit and that he was comfortable with their abilities to deliver the special needs services to the tenant population in battling recidivism in California. He noted that the state's statutory trends have not caught up to fight issues like these yet. Mr. Agee stated that the decision before the Committee was whether they have discretion to approve Five Keys to act as the property managers. Although Five Keys has a record of accomplishment providing such services, they have only done it in the CDCR realm and not in the housing world.

Mr. Ferguson and Mr. Zeto clarified that Mr. Agee's statement relates to a point issue in the Service Amenities point category and added the property manager cannot be the service provider, even if listed as a secondary service provider.

Ms. Boatman Patterson inquired about the second issue regarding cash flow.

Mr. Zeto noted that 90% of the debt service is accounted for on the commercial space of the mixed-use project.

Mr. Sertich stated the issue is that if the commercial space fails and the loan cannot be repaid then it creates issues with residential portion where the project could lose its affordability through tax credits unless they condo the project.

Mr. Hanna stated they would have the option to condo the project could be a possibility at the time of applying for the building permits.

Ms. Boatman Patterson asked if the applicant had a long-term operating or rental subsidy agreement from CDCR.

Mr. Hanna stated the service provider Five Keys does have an agreement with CDCR.

Ms. Boatman Paterson stated that Five Keys has a contract to pay for services, not rents, which would therefore pay for debt.

Ms. Ferguson said that if applicants were unable to pay their rent, Five Keys would supplement the difference and support the tenants. Staff is unsure as to the origin of the money.

Mr. Hanna stated he included a letter from Five Keys guaranteeing the rents at the property for its special need population with the funds coming from another state agency, CDCR.

Mr. Olmstead stated that obtaining a letter is a very fundamental part of the application and was surprised Mr. Hanna did not obtain one.

Mr. Agee stated that with all due respect to Mr. Hanna, he appreciates him for thinking outside the box. In the past, the Committee has recommended the applicant resubmit and include the required documents.

Ms. Boatman Patterson stated CalHFA has been trying to figure out ways to backfill the operating subsidies with funding from CDCR, especially to help with recidivism rates. She appreciates Mr. Hanna's goal with the project but is having trouble understanding how to pay back project's debt service while staying in line with CTCAC's rules.

Mr. Leach stated the regulation he referenced from earlier was Section 10325(g)(3), which explains the necessary requirements to qualify as a special needs project. Special needs is a very tough to define project type and as a result gives the Executive Director sole discretion on determining whether the project meets the special needs requirement.

Mr. Paxson stated that his interpretation of the regulation is determining whether the project is a special needs project by referring to the population that it serves.

Mr. Agee asked staff if Five Keys provided any sort of documentation to staff from CDCR that speaks to their ability to provide services to the special needs population.

Mr. Zeto state such a letter was not included in the application.

Ms. Miller asked whether staff could delay this agenda item and address it at a future meeting. She stated she does not feel comfortable discussing all 12 requirements, which qualify the project as special needs.



Mr. Zeto stated the applicant would have to re-apply in a future round in order to be considered for 9% credits. If the Committee takes no action, staff's position in denying the appeal will stand.

Ms. Blackwell stated the appeal ultimately boils down to the fact that the applicant has a letter coming from a private entity, when it should have come from a government entity.

Mr. Olmstead encouraged Mr. Hanna to re-apply and get a stronger letter from a governmental entity to bolster his application.

Mr. Hanna noted the decision made on this project today would not affect other projects that are seeking funding since it is the only remaining project competing in the geographic region.

Mr. Sertich appreciated Mr. Hanna's creativity with the project but noted long-term financial stability concerns since they do not meet CTCAC program requirements.

Ms. Boatman Patterson advised Mr. Hanna to meet with Ms. Kate Ferguson to explore alternative ways to finance his project. She noted she wants to see more projects like this but does not believe the 9% tax credit program is the right one for this project.

**5. Discussion and Consideration of the 2019 Second Round Applications for Reservation of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs).**

Ms. Ferguson stated that the preliminary list of staff recommendations was amended due to the decision of the appeals that took place earlier and highlighted the changes.

**MOTION:** Ms. Miller moved to remove the Eddy Street Senior Apartments (CA-19-025) from the preliminary recommendations list for public comment and further discussion by the Committee. Ms. Boatman Patterson seconded and the motion passed unanimously by a roll call vote.

Ms. Miller stated she hopped to hear public comment from the City and County of San Francisco on the Eddy Street Senior Apartments.

Amy Chan from the San Francisco Major's Office of Housing and Community Development spoke in opposition to the Eddy Street Senior Apartments stating that the project does not serve the City's most vulnerable and high needs community due to reasons they had outlined in the local agency review evaluation. Ms. Chan spoke on the various issues the project presents such as issues related to the small size of the project, feasibility in terms of its sensitivity to construction costs, tax equity pricing, lack of experience on part of the developer and lack of approvals from the city. She also stated that if this project was funded, it would disadvantage other projects in the area that the city has awarded tremendous amounts of local dollars to in order to tackle the root cause of San Francisco's affordable housing crisis. The city has other projects that achieve longer-term affordability

through local regulatory ground leases. Ms. Chan stated these projects would be applying for CTCAC's next round of 9% tax credit funding. She noted that the city has not in recent years seen a project be awarded in which the locality strongly opposes. They fear that a precedent may be established in which projects circumvent working with the city to achieve the goals that the city hopes to accomplish in terms of affordable housing. Ms. Chan strongly urged the Committee to oppose awarding an allocation for the project.

Mr. Hanna stated that CTCAC establishes the rules and priorities in terms of affordable housing. If the CTCAC allowed cities to establish their own rules and set their own priorities, they would have trouble effectively administering their program. Mr. Hanna stated that very large investments have gone into the project and it is up to CTCAC to decide whether the project has met program requirements. He stated that the development is a low-income senior project with 24 units in a highly needed area and is in the process of getting an extension from the city for a building permit. He added that the project has been fully endorsed. Mr. Hanna stated that the city cannot dictate when projects can be approved and it is unfair for a city to create its own list of approved projects, which could be precedent setting. He added that the Eddy Street Senior Apartments project is the only project in the application round seeking an award in the San Francisco geographic region.

Ms. Boatman Patterson stated the city was given a local review and asked Ms. Chan if the city ever reached out to the applicant for further discussion.

Ms. Chan stated that the city expressed its strong opposition to the project in the local agency review and that the city raised valid policy concerns for why the project does not support its affordable housing goals. She believes that the project does not further the city's goals, nor the program's goals.

Mr. Hanna stated he has never heard from the city regarding this issue.

Mr. Agee stated he was struggling with the fact that the city is asking the Committee from a regulatory standpoint to look at highest and best use because there were no other projects by which to compare since no other project applied in the region this round. In regards to Mr. Hanna's experience, a project would typically have to meet CTCAC readiness requirements to utilize the credits at the 180/194-day deadline, but since he did not apply for full readiness points, it is not a tool at staff's disposal. Mr. Agee stated he is not in a position to agree with Ms. Chan to see what sort of discretion the Committee ultimately has.

In regards to the question about CTCAC's regulations, Ms. Chan stated that they have consulted their city attorney and tax credit counsel and they do believe that both the Committee and Executive Director have broad authority to make policy decisions raised by the city under Section 10325(e) of the regulations, which says that projects are not approved by right. She also referenced Section 10328(f), which states that the Executive Director may impose additional conditions on the selection of projects and furtherance of the program.

Mr. Sertich stated it is important that both staff and the Committee follow the rules and regulations set forth in order to effectively administer the tax credit program. He noted the issue being who controls San Francisco's allocation. The city does have the option to choose which project moves on if they both have the same tiebreaker score, but in this case, there was no other project competing in the round. Mr. Sertich stated that it is very hard not to award this project based on the regulations as they are presently written.

Ms. Chan stated the city is committed to breaking the intergenerational poverty of communities living in these sites with other more affordable and denser projects that are ready to apply for tax credits in the next funding round. In the spirit of the comments made earlier, the city requests that the Committee not read the regulations so literally. She believes the two sections she referenced in the regulations gives the Committee broad abilities to make decisions based on the policy reasons she outlined. If not, the projects waiting for funding in the next round will be negatively impacted. Ms. Chan explained that these large 130+ unit projects will each be seeking close to the maximum of \$2.5 million in tax credits and are ready for submittal in the next round of competitive funding.

Mr. Olmstead asked what happens to the unspent credits from the last rounding of funding.

Mr. Zeto stated the credits are used and then accounted for in the following round. There will still be a healthy pool for projects to compete in the next round.

Mr. Agee stated that \$1.5 million would go back into the San Francisco region competition for a total pool of \$6 million in tax credits for the upcoming projects Ms. Chan previously referred to. Mr. Agee expressed concern in regards to the validity that those projects will be competing in the next round.

Ms. Chan reassured the Committee that both the Mayor and City of San Francisco are committed to delivering these projects in an expeditious manner.

Mr. Olmstead understands the comments raised by the city and is sympathetic to them but reiterated that the project did not face competition in the current funding round.

Ms. Miller stated she thinks it is important to hear out the concerns that locals have rather than ignore them and appreciated the comments raised by the city.

Mr. Sertich added that he believes it is a good idea to hear the locals out but does not believe it is a good idea to give the locals too much veto power over projects because there are a lot of localities that do not want projects in their areas, not saying that San Francisco is one of them.

Ms. Miller stated that given the magnitude of cities on California, there are many cities that do not cooperate in terms of building new affordable housing, but San Francisco is not one of them.

Ms. Chan stated that the projects in the next round will be serving a much higher number of residence and special needs populations than the Eddy Street Senior Apartments and explained that the Committee could better utilize the tax credits in the next round. She hopes that the decision made by the Committee today will not establish a precedent that circumvents years of cooperation between the city and the state.

Ms. Boatman Patterson mentioned to the Committee that another one of Mr. Hanna's projects was strongly opposed to by the city in 2011 or 2012.

Mr. Agee stated that the Committee needs to be cautious in not setting a precedent by denying a project that has no competition and has done everything it was supposed to do in order to receive an award. Although the precedent mentioned by Ms. Chan raises a valid point, Mr. Agee believes the precedent he mentioned is much more of a priority for the Committee.

Ms. Chan asked the Committee if a commitment letter from the city, outlining the projects they would be funding in the next application round would make a difference in the Committee's decision today.

Mr. Sertich stated he would still be concerned in regards to not following the regulations as written and establishing a precedent that is not in the best interest of the Committee.

Mr. Agee agreed and stated that timing is very important. Unfortunately, the Committee does not have any other tools at its disposal to make a decision contrary to the staff recommendation.

**MOTION:** Mr. Sertich moved to approve the projects on staff's preliminary recommended list. Mr. Olmstead seconded and the motion passed unanimously by a roll call vote.

## **6. Public Comment.**

Mr. Downs with Impact Development Group asked what was happening at the October Meeting with the excess allocation.

Mr. Zeto stated that projects fell out at the last minute in the Rural set aside and staff is funding projects in accordance with how they would typically fund projects until the Rural set aside has been exhausted.

Ms. Blackwell stated there was not sufficient time administratively for staff to review another application since the projects fell out so close to the meeting date.

Mr. Zeto stated that there was also an appeal pending in the Rural set aside.

Mr. Downs stated he has another project in the Rural set aside and asked whether it would be underwritten due to its tiebreaker score.

Mr. Zeto stated that if staff has met their acquisition and rehabilitation goal in the Rural set aside after funding the Grass Valley Terrace project, they would fund projects in accordance with the first tiebreaker (housing type goal) requirements.

Mr. Downs thanked staff for the clarification and praised CTCAC staff for their hard work.

Mr. Agee stated that he had alluded to a CalHFA meeting that would follow this meeting to review the new regulations. He was informed that they could not add on to the meeting due to certain requirements. It was mostly in response to Mr. Sertich's request for a timeline of the new regulations for further public comment. Mr. Agee requested Ms. Blackwell reach out to Mr. Sertich to discuss the October 16, 2019 Committee meeting so that everyone is clear in terms of the timeline.

## **7. Adjournment.**

Mr. Agee thanked everyone for their time and adjourned the meeting at 5:05 p.m.