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6  
7 IN THE RENTAL HOUSING COMMITTEE  
OF MOUNTAIN VIEW, CALIFORNIA

8  
9 Lindsay Properties, LLC,

10 Appellant-Landlord,

11 vs.

12  
13 Del Medio Manor Tenants Association,

14 Respondent-Tenants.

) Petition No.: 17180002

)  
)  
) **Respondent Del Medio Manor Tenants**  
) **Association's Response to Tentative Appeal**  
) **Decision**

) Rental Housing Committee

) Date: August 27, 2018

) Time: 7:00 p.m.

) Place: 500 Castro Street

) Mountain View, CA 94041  
)

16  
17 **I. INTRODUCTION**

18 Respondent Del Medio Manor Tenants Association submits this response to the Tentative  
19 Appeal Decision issued by the Rental Housing Committee (the "RHC") on August 17, 2018.  
20 This appeal involves an extremely lengthy evidentiary record, which includes comprehensive  
21 briefing, over 1,000 pages of documents, and hours of witness testimony. In reviewing this  
22 extensive record, the Hearing Officer was required to assess the validity of the evidence, the  
23 credibility of each witness, and the strength of each argument. Based on this familiarity with  
24 the record, the Hearing Officer provided each piece of evidence its due weight and rendered  
25 numerous factual findings to reach her decision.  
26

1 When considering the parties' requests for appeal, the RHC should treat these findings of  
2 fact with significant deference and affirm the portions of the Hearing Officer's decision that are  
3 supported by substantial evidence in the record, even if individual committee members would  
4 have reached contrary conclusions. (*See Bowers v. Bernards* (1984) 150 Cal. App. 3d 870,  
5 874.) In assessing whether findings are supported by substantial evidence, the RHC can  
6 consider only the hearing record and must disregard any new evidence, including any  
7 additional testimony offered by the parties, in its decision on appeal. (Art. XVII, Sec. 1711(j).)

8  
9 The Tentative Appeal Decision adheres to these principles in affirming the Hearing  
10 Officer's findings with respect to issues supported by the substantial evidence in the record and  
11 remanding the decision with respect to issues where the application of the evidence in the  
12 record is unclear. Respondent urges the Committee to adopt the Tentative Appeal Decision in  
13 full with respect to the ten issues analyzed in Sections 4(A)-(J).

14 In addition, Respondent respectfully requests that the Committee address two issues raised  
15 by the parties on appeal, but not analyzed in the Tentative Appeal Decision. First, the Tentative  
16 Appeal Decision provides no legal analysis or explanation to support the conclusion that  
17 Respondent's appeal regarding the validity of the Regulation 6(C)(4) is improper. As the  
18 Hearing Officer lacks authority to apply a regulation that impermissibly undermines the  
19 purpose of the CSFRA, the Hearing Officer should be instructed on remand to apply a lawful  
20 definition of the Consumer Price Index her calculation of any upward adjustment of rent.  
21 Second, the decision does not address Appellant-Landlord's appeal on the basis of delay. As  
22 this request is improper and meritless, the RHC should deny any appeal predicated on alleged  
23 delay in its entirety.  
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## II. RESPONSE TO ISSUES ADDRESSED IN THE TENTATIVE DECISION

### A. Vega Adjustment

Respondent requests that the RHC adopt the Tentative Appeal Decision in full affirming the Hearing Officer's findings denying Appellant-Landlord's request for a *Vega* Adjustment. The individual components of this decision, including the conclusion that "junior one-bedroom" units should be valued as efficiencies and the conclusion that the physical and market conditions of the property and individual units do not merit a *Vega* Adjustment, are the result of the factual findings of the Hearing Officer, which are entitled to substantial deference on appeal.

#### 1. Valuation of Junior One-Bedroom Units

The Hearing Officer's decision to value "junior one-bedroom" units as efficiencies was supported by substantial evidence in the record and must be affirmed. In reaching this decision, the Hearing Officer reviewed Respondent's physical descriptions as well as photographs of individual units to conclude that these units had "only an accordion door to separate the bedroom from the rest of the unit," and that this "door does not go to the floor but instead floats a few inches above it, providing no more privacy than a dressing screen." (Decision at 6.) The Hearing Officer also relied on Appellant-Landlord's own valuation of the units, which placed "junior one-bedroom" units at rates more similar to other studio apartments than to actual one-bedroom units on the property. (Decision at 6.)

In her appeal, Appellant-Landlord points to no specific evidence in the record, but argues that the Hearing Officer's decision was in error because "junior one-bedroom" units are "90 square feet larger than a studio," have walk-in closets and mobile dividers, and "have been considered a Jr. 1-bedroom for almost 50 years." (Appellant-Landlord's Appeal at 6.) These

1 points do not contradict the Hearing Officer's findings. While the "junior one-bedrooms" may  
2 be 90 square feet larger than other studio units, they are, according to Appellant-Landlord's  
3 evidence, 123 – 322 square feet smaller than the one-bedroom units on the property, supporting  
4 the finding that the "junior one-bedroom" units are most similar to efficiency units. (See  
5 December 22, 2017 Petition, Worksheet 1A.) In addition, ample evidence in the record  
6 supported the finding that the dividers in the "junior one-bedroom" apartments failed to create  
7 actual separation of the "living" and "sleeping" areas, making these units one-room  
8 efficiencies. (See Exhibit B to Del Medio Manor Tenants Association Response to Hearing  
9 Officer's March 7, 2018 Request.) Finally, Appellant-Landlord's own classification of the  
10 apartments as "junior one-bedrooms" for "almost 50 years" is not probative of their  
11 classification for purposes of the *Vega* Adjustment, and is contradicted by Appellant-  
12 Landlord's valuation of these units at rent levels closer to studio apartments than to the actual  
13 one-bedroom units on the property. (See December 22, 2017 Petition, Worksheet 1A.)

14  
15 For these reasons, the Tentative Appeal Decision affirming the Hearing Officer's finding  
16 that junior-one bedroom units should be valued as efficiencies should be adopted in full.  
17

## 18 2. Application of *Vega* Adjustment

19 The Hearing Officer's finding that a *Vega* Adjustment is unwarranted in this case due to the  
20 location and condition of the property and the individual units is supported by substantial  
21 evidence in the record and must be affirmed. In reaching this decision, the Hearing Officer  
22 considered extensive evidence submitted by both parties and found that "[t]he market  
23 conditions of the property show that the rents as charged adequately reflect the condition of the  
24 property and that such an increase is 'unnecessary for the landlord to receive a fair return on  
25 investment for the property.'" (Decision at 5 (citation omitted).)  
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1 In her appeal, Appellant-Landlord, without reference to any specific evidence in the record,  
2 contests several of the factual findings used to support the Hearing Officer's decision denying a  
3 *Vega* Adjustment. However, these factual findings are entitled to deference on appeal, and  
4 review of the record demonstrates significant evidence in support of the Hearing Officer's  
5 decision. (See Attachment A for a sample of the substantial evidence in the record supporting  
6 the Hearing Officer's findings.) In addition, based on the totality of the record, it was  
7 reasonable for the Hearing Officer to rely on Respondent's consistent and credible testimony  
8 regarding the condition of the property, consisting of twenty declarations signed under penalty  
9 of perjury, when presented with conflicting evidence from Appellant-Landlord. (See  
10 Attachment B for a summary of conflicting statements made by Appellant-Landlord in the  
11 record raising significant concerns about credibility.)  
12

13 For these reasons, the Tentative Appeal Decision affirming the Hearing Officer's  
14 finding that a *Vega* Adjustment is unnecessary should be adopted in full.  
15

16 **B. Calculation of Adjusted Gross Income in the Base Year.**

17 Respondent requests that the Committee adopt the Tentative Appeal Decision affirming the  
18 calculation of Adjusted Gross Income in the Base Year. Respondent has not raised this issue on  
19 appeal, and Appellant-Landlord has offered no basis for her challenge to this calculation. It is  
20 especially unclear why Appellant-Landlord has raised this issue on appeal, as the Hearing  
21 Officer accepted the Gross Income for the Base Year presented in Appellant-Landlord's  
22 Revised Petition. (See April 4, 2018 Petition, Worksheet 2.)  
23

24 As the calculation of Base Year Adjusted Gross Income in the decision does not appear to  
25 be in dispute, the Tentative Appeal Decision affirming the Hearing Officer's finding should be  
26 adopted in full.  
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1       **C. Calculation of Adjusted Gross Income in the Petition Year.**

2       Respondent requests that the Committee adopt the Tentative Appeal Decision remanding  
3 the calculation of Adjusted Gross Income in the Petition Year so that the Hearing Officer can  
4 provide appropriate reference to the evidence in the record. As noted in the Tentative Appeal  
5 Decision, it is unclear from the record how the Hearing Officer arrived at her determination of  
6 Petition Year Adjusted Gross Income, which differs from both the number reported in the  
7 Petition and the total calculated from the available evidence. Therefore, additional clarity from  
8 the Hearing Officer is necessary on this issue to determine whether her calculation of Petition  
9 Year Adjusted Gross Income is consistent with both the evidence presented and the  
10 Regulations.  
11

12       In her appeal, Appellant-Landlord argues, without reference to any supporting evidence in  
13 the record, that the “rents lawfully collectible” standard used to calculate Adjusted Gross  
14 Income should be disregarded because it is “not consistent with industry standards.”  
15 (Appellant-Landlord’s Appeal at 6.) Appellant-Landlord’s appeal appears to misconstrue the  
16 purpose of the “lawfully collectible” standard in calculating adjusted gross income. This  
17 standard is sensible in the context of the petition process, where a landlord is claiming that the  
18 regular Annual General Adjustments (AGAs) provided by the CSFRA are insufficient to ensure  
19 that the landlord earns a fair return on his or her investment. To analyze such a claim, the  
20 income that the landlord could lawfully collect under the CSFRA, including any AGAs not  
21 implemented, must serve as the starting point to determine whether the landlord is able to earn  
22 a fair rate of return absent a special upward adjustment.  
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25       Although the Hearing Officer’s decision states that she has calculated gross income “using  
26 rents that are ‘lawfully collectible,’ not simply rents that were actually collected,” as discussed  
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1 above, it is unclear how the Hearing Officer applied this standard to the evidence in reaching  
2 her final calculation of Adjusted Gross Income in the Petition Year. Therefore, the Tentative  
3 Appeal Decision remanding this calculation to the Hearing Officer for additional clarification  
4 should be adopted in full.

5 **D. Exclusion of California Apartment Association Membership Renewal Costs as a**  
6 **Business License Fee.**

7 Respondent requests that the RHC adopt the Tentative Appeal Decision modifying the  
8 Hearing Officer's decision to state that California Apartment Association ("CAA")  
9 membership renewal costs are not a business license fee and remanding the issue of re-  
10 classification to the Hearing Officer.

11 In her appeal, Appellant-Landlord argues, without reference to any specific evidence in the  
12 record, that her payments to the CAA have been improperly excluded as lobbying expenses  
13 because the CAA provides "lease forms, training, vendor certification, and legal assistance."  
14 (Appellant-Landlord's Appeal at 7.) While it may be accurate that the CAA provides the  
15 services referenced in Appellant-Landlord's claim, there was substantial evidence in the record  
16 below to support the Hearing Officer's exclusion of these costs as contributions to an  
17 organization that advocates on behalf of apartment owners on legislative issues pursuant to  
18 Regulation 6(E)(2)(j). (See, e.g., Exhibit 7 to Declaration of Khyrstyn McGarry in Support of  
19 Del Medio Manor Tenants Association Response in Opposition (Copy of Membership Benefits  
20 Section on CAA's website stating that "our government affairs team fights daily for the rental  
21 property industry in the state Capitol, city halls and county courthouses"); Appellant-  
22 Landlord's Document "CAA Membership Dues and Contribution Information," dated April 13,  
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1 2017 (stating that a portion of membership dues are allocated to both the CAA's Political  
2 Action Committee and its lobbying fund).)

3 As the CAA membership renewal costs were clearly improperly classified as Business  
4 License Fees in the Petition, the Tentative Appeal Decision remanding this issue to the Hearing  
5 Officer for re-classification and additional clarification as to whether the entirety of this  
6 expense should be excluded as a lobbying cost should be adopted in full.

7  
8 **E. Calculation of Management Expenses at Six Percent of Gross Income in the Base  
and Petition Years.**

9 Respondent requests that the RHC adopt the Tentative Appeal Decision affirming the  
10 Hearing Officer's calculation of Base Year management expenses and remanding the  
11 calculation of Petition Year management expenses for the limited purpose of recalculation  
12 based on any changes that are made to Petition Year Adjusted Gross Income. Based on the  
13 evidence in the record, the Hearing Officer found that management expenses in both the Base  
14 and Petition Years totaled "well over 6%" (Decision at 7.) The Hearing Officer further found  
15 that the evidence failed to support an exception to the six percent presumption for reasonable  
16 management expenses under Regulation 6(E)(1)(g), and held that "Management Expenses are  
17 hereby capped at 6% of Gross Income." (Decision at 7-8.)

18  
19 In her appeal, Appellant-Landlord argues that "[t]he categorization used for management  
20 expenses are not consistent with industry standards." (Appellant-Landlord's Appeal at 8.)  
21 Appellant-Landlord points to no evidence to support this assertion and none exists in the record  
22 below. As Appellant-Landlord introduced no evidence into the record to support the claim that  
23 the high management costs claimed in the Petition did not exceed those ordinarily charged by  
24 commercial management firms for similar properties, the Hearing Officer properly capped  
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1 management expenses at six percent of Gross Income in both the Base and Petition Years.

2 Therefore, the Tentative Appeal Decision affirming the Hearing Officer's findings with respect  
3 to Base Year management expenses and remanding the decision with respect to Petition Year  
4 management expenses for the limited purpose of recalculation based on any changes to Petition  
5 Year Gross Income should be adopted in full.

6 **F. Calculation of Costs for Ordinary Repair, Replacement, and Maintenance**

7 Respondent requests that the RHC adopt the Tentative Appeal Decision remanding the  
8 calculation of ordinary repair, replacement and maintenance costs in both the Base and Petition  
9 Years for the limited purposes of (1) clarifying whether any labor/salary costs are included in  
10 these calculations and (2) clarifying whether the evidence supports excluding certain claimed  
11 expenses as either reimbursed or reimbursable pursuant to Regulation 6(E)(2)(d).  
12

13 As noted in the Tentative Appeal Decision, the record with respect to salary costs is  
14 extremely disorganized and unclear. Appellant-Landlord has claimed salary/labor costs in  
15 multiple categories in addition to claiming substantial payments to a property management  
16 company. Although the decision finds that the salary expenses claimed as maintenance costs in  
17 the Petition should be excluded because they are duplicative of management expenses claimed  
18 elsewhere and because Appellant-Landlord failed to meet her burden of proof with respect to  
19 these expenses, the final calculations in the decision do not reflect this exclusion. Therefore, it  
20 is necessary to remand the decision for additional clarity with respect to this issue.  
21

22 In her appeal, Appellant-Landlord argues that the Hearing Officer erred in finding that these  
23 claimed salary expenses were unsupported by the record. In support of this contention,  
24 Appellant-Landlord makes reference to documents in the record ("Job descriptions, salaries,  
25 and paychecks were submitted as were the work orders performed"), and improperly refers to  
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27

1 evidence that does not exist in the record and cannot be considered on appeal (“We do have a  
2 licensed contractor, whose license the city has on file”). (Appellant-Landlord’s Appeal at 7-8.)  
3 However, the Hearing Officer’s conclusion that the evidence provided by Appellant-Landlord  
4 did not substantiate the costs claimed in the Petition is supported by the record. The paystubs  
5 provided by Appellant-Landlord demonstrated that claimed salary expenses were paid by  
6 Appellant-Landlord’s management company, and not directly by Appellant-Landlord, and  
7 referenced work performed for several unrelated properties and entities. Further, Appellant-  
8 Landlord fails to address the additional finding that any salary expenses were excluded from  
9 ordinary repair, replacement and maintenance costs because the claimed salaries were properly  
10 classified as management expenses. As the evidence presented by Appellant-Landlord with  
11 respect to salary expenses was extremely unclear, it was reasonable for the Hearing Officer to  
12 determine that Appellant-Landlord had failed to meet her burden of proving these costs by a  
13 preponderance of relevant and credible evidence, and to find that any salary expenses claimed  
14 as ordinary repair, replacement and maintenance costs should be properly categorized as  
15 management expenses.  
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18 In addition to the confusion over the actual exclusion of salary expenses from ordinary  
19 repair, replacement and maintenance costs in the decision, the Hearing Officer also failed to  
20 issue any findings with respect to several of the expenses in these category identified by  
21 Respondent as improper under Regulation 6(E)(2)(d). For these reasons, the Tentative Appeal  
22 Decision to remand the calculation of ordinary repair, replacement and maintenance costs for  
23 additional clarity with respect to (1) whether salary costs have been completely excluded from  
24 this category of expenses and (2) the inclusion or exclusion of costs as either reimbursed or  
25 reimbursable should be adopted in full.  
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### **G. Calculation of Capital Improvement Costs**

Respondent requests that the RHC adopt the Tentative Appeal Decision to remand the calculation of Capital Improvement costs in the Base and Petition Years to the Hearing Officer for the limited purpose of clarifying how the exclusion of the common area paver and parking lot resurfacing expenses affected the total calculations. As noted in the Tentative Appeal Decision, the Hearing Officer found that the cost of common area pavers should be excluded from capital improvement expenses in the Base Year, but this exclusion is not completely reflected in the Hearing Officer's final calculation. It is therefore necessary to remand the decision to the Hearing Officer for clarity as to the extent to which this cost has been excluded in the calculation of Base Year capital improvement expenses. The Hearing Officer's decision also questions the evidence presented in support of the parking lot resurfacing costs claimed as a capital improvement expense in the Petition Year, but does not state that this cost has been excluded from the final calculation. It is therefore necessary to remand the decision to clarify whether Appellant-Landlord has met her burden of proof with respect to this expense, or whether this expense has been excluded from the calculation of Petition Year capital improvement costs.

In her appeal, Appellant-Landlord argues that the Hearing Officer erred in excluding the common area paver costs and in questioning the parking lot resurfacing expense. Appellant-Landlord asserts that "in both written documentation and verbally it was explained that the electrical circuitry under the pool deck had deteriorated and by code the lighting had to be maintained for safety. We were required to remove the pool deck and rewire all connections to pole fixtures around the pool." (Appellant-Landlord's Appeal at 8.) Appellant-Landlord points to no evidence in the record to support these claims, and the record, in fact, contradicts them.

1 (See Appellant-Landlord's Document "Status Report for Del Medio Manor Apartments for the  
2 Period Ending 31 December 2015" at 1, stating that "We have begun the final phase of paving  
3 around the pool deck and remaining walkways. *This has required* the upgrade of 45 year old  
4 electrical lines that were running under the pavement." (emphasis added).)

5 Appellant-Landlord also argues that the Hearing Officer erred in questioning the evidence  
6 provided in support of the parking lot resurfacing expense because she "supplied 2 pictures and  
7 was never asked for more. I have about 50 that I could supply if needed." (Appellant-  
8 Landlord's Appeal at 9.) The fact that Appellant-Landlord failed to supply all relevant evidence  
9 in her possession to support her Petition is not a proper basis to challenge the Hearing Officer's  
10 findings and any evidence not in the record below cannot be considered in this appeal.

12 As the Hearing Officer's decision is unclear as to the extent to which common area pavers  
13 and parking lot resurfacing expenses were excluded from total capital improvement expenses,  
14 the Tentative Appeal Decision remanding the decision for clarification with respect to these  
15 issues should be adopted in full.

#### 17 **H. Calculation of Operating Expenses in the Base and Petition Years**

18 Respondent requests that the RHC adopt the Tentative Appeal Decision remanding the  
19 calculation of total operating expenses in the Base and Petition Years for the limited purposes  
20 of (1) incorporating any changes made to individual categories of expenses on remand and (2)  
21 clarifying whether a preponderance of evidence in the record supports a finding that the  
22 \$1,100.00 P.W. Stephens Environmental expense was double-counted in the Petition.

24 As several of the issues on remand may result in changes to one or more categories of  
25 expenses, it will be necessary for the Hearing Officer to recalculate total operating expenses to  
26 address these changes. In addition, the decision does not address the issue of unsubstantiated  
27

1 expenses raised by Respondent, including the \$1,100.00 check referenced in the Tentative  
2 Appeal Decision; therefore, it will be appropriate for the Hearing Officer to clarify this issue on  
3 remand. For these reasons, the Tentative Appeal Decision remanding the calculation of total  
4 operating expenses for these limited purposes should be adopted in full.

5 **I. Allocation of Upward Adjustments**

6 Respondent requests that the RHC adopt the Tentative Appeal Decision to affirm the  
7 Hearing Officer's finding that any upward adjustment should be allocated equally across all  
8 units on the property and remanding the decision regarding allocation for the limited purpose of  
9 incorporating any revisions necessitated by the other issues on remand. In the decision, the  
10 Hearing Officer adhered to the language of Regulation 6(J) and allocated the awarded rent  
11 increases evenly among all units on the property. This decision was supported by substantial  
12 evidence in the record; including Appellant-Landlord's own statement that "all expenses are  
13 considered evenly applied across all units." (See April 4, 2018 Petition, Worksheet 6.)  
14

15 In her appeal, Appellant-Landlord argues that the Hearing Officer erred because "[T]he  
16 Petition process established by Chapter 4 of the regulations is directed only at those tenants  
17 who were renters before the CSFRA went into effect." (Appellant-Landlord's Appeal at 9.)  
18 Appellant-Landlord does not cite any provision of Chapter 4 of the CSFRA's implementing  
19 regulations to support this position and no provision of Chapter 4 contains any language  
20 restricting the petition process based on a tenant's initial date of occupancy. As this statement is  
21 a complete misrepresentation of the requirements of the regulations, it was properly afforded no  
22 weight in the Tentative Appeal Decision and should be given no weight in the RHC's final  
23 decision.  
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1 Appellant-Landlord also argues that the Hearing Officer erred because allocating the rent  
2 increases evenly across all units “would be inconsistent with the intent and specific provisions  
3 of the CSFRA.” (Appellant-Landlord’s Appeal at 9.) Appellant-Landlord does not provide any  
4 explanation as to how her proposed distribution, which would allocate her requested upward  
5 adjustment among only 56 of the 104 units on the property in arbitrary amounts ranging from  
6 \$115 to \$445, would be consistent with the intent or any specific provision of the CSFRA. On  
7 the contrary, apportioning the upward adjustment in inconsistent, excessive amounts to only  
8 those tenants exercising their rights in the petition process—rather than applying a modest  
9 increase to all units in the property, as provided in the decision—clearly conflicts with the  
10 CSFRA’s purpose of promoting affordable rents “to the greatest extent allowable under  
11 California law.” (CSFRA, Art. XVII, Sec. 1700.)

13 For these reasons, the Tentative Appeal Decision affirming the Hearing Officer’s finding  
14 that the upward adjustment must be allocated evenly across all units on the property, and  
15 remanding only for the limited purpose of incorporating any changes to the total upward  
16 adjustment, must be adopted in full.

### 18 **III. ISSUES NOT ADDRESSED IN TENTATIVE APPEAL DECISION**

#### 19 **A. The decision to reject, without explanation, Respondent’s challenge to Regulation** 20 **6(C)(4) should be reversed so that the Hearing Officer can render a decision in** 21 **accordance with the CSFRA**

22 The Tentative Appeal Decision states that “[a]ny appeal to the RHC challenging the  
23 validity of regulations adopted by the RHC pursuant to its authority under the CSFRA are  
24 denied as improper.” (Tentative Appeal Decision at 7.) The decision provides no legal authority  
25 or analysis to support this conclusion.

1 As explained in Respondent's Appeal, the Hearing Officer's decision to automatically  
2 apply Regulation 6(C)(4) in the decision below was in error. The authority of the Hearing  
3 Officer to render the decision in this matter is granted by, and subject to, the provisions of the  
4 CSFRA, (Art. XVII, Sec. 1711(a)); therefore, it was beyond the authority of the Hearing  
5 Officer to apply a regulation which unlawfully contradicts the purpose and provisions of the  
6 CSFRA. Regulation 6(C)(4) grants landlords access to unfair, unwarranted, and excessive rent  
7 increases, in direct contravention of the CSFRA. (*See* Respondent Del Medio Manor Tenants  
8 Association's Response in Opposition to the Petition Requesting Upward Adjustment of Rent  
9 at 28-34; Supplemental Response at 33; Expert Declaration of Stephen Barton, Ph.D in Support  
10 of Response in Opposition to Petition Requesting Upward Adjustment of Rent.) As Regulation  
11 6(C)(4) unlawfully undermines the CSFRA, it is void, and it was error for the Hearing Officer  
12 to apply it to the decision in this case. On remand, the RHC should direct the Hearing Officer to  
13 apply a lawful definition of the Consumer Price Index in her calculation of any upward  
14 adjustment.  
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16  
17 **B. Appellant-Landlord's appeal based on "delay" should be denied as improper**

18 The Tentative Appeal Decision notes that Appellant-Landlord "expresses frustration  
19 regarding alleged delays, inconsistencies, and errors in the process." (Tentative Appeal  
20 Decision at 2.) However, the decision does not render any findings with respect to Appellant-  
21 Landlord's invocation of "delay" as a substantive reason for appeal of the decision below.  
22

23 In her Appeal, Appellant-Landlord offers no legal authority in support of this argument and  
24 requests no specific relief other than listing her complaints regarding the process as an  
25 "additional cause for appeal." (Appellant-Landlord's Appeal at 11.) Contrary to Appellant-  
26 Landlord's assertions regarding delay, California courts have recognized that "[s]ome delay is .  
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1 .inherent in all rent control procedures,” and have found that “only those delays which are  
2 longer than practically necessary to achieve the legitimate purposes of the legislation are  
3 constitutionally proscribed.” (Carson Mobilehome Park Owners' Ass'n v. City of Carson (1983)  
4 35 Cal.3d 184, 192.) Appellant-Landlord’s Appeal complains that a decision in the case was  
5 rendered more than 150 days after her Petition was initially submitted. (Appellant-Landlord’s  
6 Appeal at 11.) However, Appellant-Landlord’s summary of the proceedings does not mention  
7 that the original hearing date was continued at the March 7, 2018 meeting between the parties  
8 and the Hearing Officer in part to accommodate Appellant-Landlord’s request for an additional  
9 month to gather supporting documentation that was not provided with the initial Petition. As  
10 Appellant-Landlord contributed to any alleged delay through her failure to provide required  
11 supporting documentation when she submitted her initial Petition, it is improper for her to now  
12 claim delay as a basis for criticizing the decision and petition process.  
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14 As Appellant-Landlord’s claim of “delay” as a basis for appeal is unsupported by both the  
15 law and the facts in the record below, the RHC’s final decision should clarify that any appeal  
16 by Appellant-Landlord predicated on alleged delay is denied.  
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## IV. CONCLUSION

For the aforementioned reasons, Respondent Del Medio Manor Tenants Association respectfully requests that the Committee adopt the tentative ruling with the following limited modifications:

- (1) On remand, the RHC should direct the Hearing Officer to use lawful standard for the definition of the Consumer Price Index.
- (2) The RHC should deny Appellant-Landlord's appeal based on alleged delay.

Respectfully submitted, this 22<sup>nd</sup> day of August 2018.

By: Margaret McBride  
Margaret McBride, Community Legal Services in East Palo Alto  
Counsel for Respondent Del Medio Manor Tenants Association

**ATTACHMENT A:  
Sample of Evidence in Support of Denial of Vega Adjustment**

Factor supporting denial of Vega Adjustment	Substantiating Evidence
The property is aging and this aging causes issues which affect the tenants' use and enjoyment of the property	Del Medio Manor Narrative Q2 2015 ("We continue to chip away at the list of maintenance projects that are inherent to a 40+ year old building"); ("After many years of patching leaks, Durafoam has applied a coat of high-density foam that will insulate the third floor and prevent leaks for many years to come")
The property is location next to significant noise pollution, including Caltrain and a lumberyard	Declaration of William Yu in Support of Response; Declaration of Tatiana Bartz in Support of Response; Declaration of Keith Ellis in Support of Response; Declaration of Freddie Farris in Support of Response; Declaration of Klaus Schumacher in Support of Response; Declaration of Kathy Anyanwu in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Elena Francois in Support of Response; Declaration of Emrah Onur Toprak in Support of Response; Declaration of Beth Eisenman in Support of Response; Response by Lindsay Properties, LLC, dated April 18, 2018, at 7 ("The location of the building has been the same for 50 years. The train tracks have been there as has the lumberyard.")
The original windows in the property are ineffective at abating noise and/or providing weather protection	Declaration of Leah Symekher in Support of Response; Declaration of William Yu in Support of Response; Declaration of Tatiana Bartz in Support of Response; Declaration of Keith Ellis in Support of Response; Declaration of Flor Rogel in Support of Response; Declaration of Freddie Farris in Support of Response; Declaration of Klaus Schumacher in Support of Response; Declaration of Kathy Anyanwu in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Sergey Buyntsiy in Support of Response; Declaration of Emrah Onur Toprak in Support of Response; Declaration of Sonya Allen in Support of Response; Declaration of Beth Eisenman in Support of Response; Del Medio Manor Narrative Quarter 2 Report (2017) ("We began a program this year to replace all windows on the railway side of the complex with double-paned glass for noise abatement"); Petitioner's Response to Respondent's Attachments at 3 ("Many windows in the building are original")
The building's elevator breaks down frequently	Declaration of Leah Symekher in Support of Response; Declaration of Marion Pauck in Support of Response; Declaration of Kathy Anyanwu in Support of Response; Declaration of Elena Francois in Support of Response; Del Medio Manor Narrative Quarter 2 Report (2015) ("The front lobby elevator has been on life-support for quite a while")
Units on upper levels of the building suffer from excessive heat in summer months	Declaration of Sonya Allen in Support of Response; Declaration of Sergey Buyntsiy in Support of Response; Declaration of Beth Eisenman in Support of Response; Del Medio Manor Narrative Quarter 2 Report (2015) ("We have already have reports of cooler temperatures on the third floor" following roof replacement project)
The wall heaters and thermostats are old and inefficient and have previously needed replacement	Declaration of Sergey Buyntsiy in Support of Response; Declaration of Leah Symekher in Support of Response; Declaration of Keith Ellis in Support of Response; Declaration of Klaus Schumacher in Support of Response; Declaration of Ryan Shelley in Support of Response; Petitioner's Response to Respondent's Attachments at 3 ("we have only had one work order request regarding a heating unit over the past 18 months. . . When notified, wall heaters are tested and replaced as needed.")
Units of longer term tenants do not have same upgrades as units on the property that command higher rents	Response by Lindsay Properties, LLC, dated April 18, 2018, at 7-8 ("Many of the tenants have been offered remodeled units . . . but they have chosen to stay in their older apartments at the lower rates;" "Upgrades that are performed on turnovers take place because we can charge market rent for the unit."); Del Medio Manor Narrative Q4 2015 at 1 ("With the extensive remodeling that must be done with older apartments it is taking longer to perform turnovers."); Declaration of Leah Symekher in Support of Response; Declaration of William Yu in Support of Response; Declaration of Tatiana Bartz in Support of Response; Declaration of Keith Ellis in Support of Response; Declaration of Danuta Przygurski in Support of Response; Declaration of Shiovawn Farrar in Support of Response; Declaration of Marion Pauck in Support of Response; Declaration of Freddie Farris in Support of Response; Declaration of Kathy Anyanwu in Support of Response; Declaration of Denis Khitrik in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Elena Francois in Support of Response; Declaration of Sonya Allen in Support of Response; Declaration of Jamie Hollander in Support of Response
The building commands lower rents than average market rates in Mountain View	Recording of May 22, 2018 Hearing at 47:40 (Testimony by Elizabeth Lindsay Walsh that "I have specified the difference between what we consider the market rent for a move in at Del Medio compared to Mountain View average market rent, there's a substantial difference;" "We do not charge anything close to market"); Response by Lindsay Properties, LLC, dated April 18, 2018, at 8 ("we have always kept our rents 10-15% below market")

**ATTACHMENT A:**  
**Sample of Evidence in Support of Denial of *Vega* Adjustment**

The on-site manager is very difficult to reach	Declaration of William Yu in Support of Response; Declaration of Tatiana Bartz in Support of Response; Declaration of Shiovavn Farrar in Support of Response; Declaration of Marion Pauck in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Sergey Buyntitskiy in Support of Response; Declaration of Elena Francois in Support of Response; Declaration of Emrah Onur Toprak in Support of Response; Declaration of Laura Ikuta in Support of Response
Large vehicles noisily idle in front of the building	Declaration of William Yu in Support of Response; Declaration of Tatiana Bartz in Support of Response; Declaration of Freddie Farris in Support of Response; Declaration of of Kathy Anyanwu in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Elena Francois in Support of Response; Declaration of Emrah Onur Toprak in Support of Response
Multiple tenants lack dishwashers	Declaration of Leah Symekher in Support of Response; Declaration of Keith Ellis in Support of Response; Declaration of Freddie Farris in Support of Response; Declaration of of Klaus Schumacher in Support of Response; Declaration of Ryan Shelley in Support of Response; Declaration of Elena Francois in Support of Response; Declaration of Laura Ikuta in Support of Response; Declaration of Jamie Hollander

**ATTACHMENT B:**  
**Sample of Appellant-Landlords Conflicting Statements**

Initial Statement	Citation	Contradictory Statement/ Evidence in the Record	Citation	Contradictory Statement/ Evidence in the Record	Citation
Reported Petition Year Owner-Performed Labor as "NONE"	December 22, 2017 Petition, Worksheet 3.4	Reported Petition Year Owner-Performed Labor as \$6,144.00	April 4, 2018 Petition, Worksheet 3.4		
Reported Petition Year "Salaries" as \$177,151.00	December 22, 2017 Petition, Worksheet 3.1B	Reported Petition Year "Salaries" as \$215,505.92	April 4, 2018 Petition, Worksheet 3.1B		
Reported Base Year Management Expenses as \$84,747.00 (5.2% of Gross Income)	December 22, 2017 Petition, Worksheet 2	Reported Base Year Management Expenses as \$71,709.00 (4.1% of Gross Income)	April 4, 2018 Petition, Worksheet 3.2	"The base year paid a 2.2% management fee and paid additionally for bookkeeping [sic]. This put overall costs at over 6%."	Response by Lindsay Properties, LLC, dated April 18, 2018, at p. 6
Accusation that tenants in Unit 222 committed perjury because "The unit received a new stove and hood shortly after moving in"	Appellant-Landlord's Response to Respondent Del Medio Manor Tenants Association Response Brief, dated May 8, 2018, at 15	Tenant statement that "The only major items in my apartment that have been replaced since 2000 are the stove and the toilet."	Declaration of Elena Francois in Support of Response in Opposition to Petition Requesting Upward Adjustment of Rent at 3		
Accusation that tenants in Unit 222 committed perjury because "Carpet was newly replaced prior to move-in and steam-cleaned before move-in"	Appellant-Landlord's Response to Respondent Del Medio Manor Tenants Association Response Brief, dated May 8, 2018, at 15	Tenant statement that "When I moved into the unit in 2000, the apartment had been partially renovated. The kitchen had not been updated or renovated and contained older countertops, cabinets, and appliances."	Declaration of Elena Francois in Support of Response in Opposition to Petition Requesting Upward Adjustment of Rent at 3		
Statement that trucks from the lumberyard "do not park or idle in front of the building on the public street."	Appellant-Landlord's Response to Respondent Del Medio Manor Tenants Association Response Brief, dated May 8, 2018, at 9	Photos showing semi-trucks parked in front of the building on two separate days	Supplemental Declaration of Tatiana Bartz in Support of Response	Declarations from tenants in street-facing units swearing under penalty of perjury that large trucks park on the street in front of the property and idle for long periods of time	Declaration of Tatiana Bartz in Support of Response at 2; Declaration of Kathy Anyanwu in Support of Response at 2; Declaration of Freddie Farris in Support of Response at 2; Declaration of William Yu in Support of Response at 2; Declaration of Sonya Allen in Support of Response at 2
Claim that Unit 233 is a "junior one-bedroom" apartment	December 22, 2017 Petition, Worksheet 1A, April 4, 2018 Petition, Worksheet 1A	Tenant statement that "I live in a studio apartment. It is not a one bedroom. There is neither an accordion wall nor a physical wall dividing my sleeping area from my living area."	Declaration of Laura Ikura in Support of Response in Opposition to Petition Requesting Upward Adjustment of Rent at 2		
Statement that concerns about structural integrity of some balconies are unfounded	Appellant-Landlord's Appeal at 3	Landlord's statement that "After 40 years of weather, sections of the structure have dry rot and/or termite infestation. We continue to identify damage as we turn over units and we repair it before handing the keys to a new tenant."	Del Medio Narrative Quarter 4 Report (2015), "Balcony Repair"	Landlord's statement that "We have even purchased scaffolding in order to access all balconies for necessary maintenance and repairs and use it regularly"	Appellant-Landlord's Response to Del Medio Manor Tenants Association's Supplemental Response Attachments, dated May 17, 2018 at 7
Claim that Landlord paid an "Accountant" \$140/hour for 88 hours of work	April 4, 2018 Petition, Worksheet	Admission that hourly rate for "Accountant" was never \$140 as claimed in Petition in addition to contradictory claims about actual rate during May 22, 2018 hearing	Recording of May 22, 2018 Hearing at 1:14:00-1:18:16	Statement that "Accountant" was paid \$70/hour for hours worked	Appellant-Landlord's Response to Del Medio Manor Tenants Association's Supplemental Response Attachments, dated May 17, 2018 at 1