California Tax Credit Allocation Committee

901 P Street, Room 102
Sacramento, CA 95814

April 3, 2024

CTCAC Committee Meeting Minutes

1. *Agenda Item:* **Call to Order and Roll Call**

The California Tax Credit Allocation Committee (CTCAC) meeting was called to order at 2:20 p.m. with the following Committee members present:

Voting Members:	Patrick Henning, Chief Deputy Treasurer, for Fiona Ma, CPA, California State Treasurer, Chairperson Evan Johnson for California State Controller Malia M. Cohen Michele Perrault for Department of Finance (DOF) Director Joe Stephenshaw Department of Housing and Community Development (HCD) Director Gustavo Velasquez Tiena Johnson Hall, Executive Director for the California Housing Finance Agency (CalHFA)
Advisory Members:	County Representative – VACANT City Representative Brian Tabatabai – ABSENT

2. *Agenda Item:* **Approval of the Minutes of the February 12, 2024, Meeting** – *(Action Item)*

Chairperson Ma called for public comments:
None.

MOTION: Mr. Velasquez motioned to approve the minutes of the February 12, 2024, meeting, and Ms. Johnson Hall seconded the motion.

The motion passed unanimously via roll call vote.

3. *Agenda Item:* **Executive Director's Report**
Presented by: Marina Wiant

Marina Wiant, Executive Director, reported that Mayra Lozano has been promoted to Staff Services Manager II in the CTCAC Compliance Section. Mayra has been with CTCAC for nearly 19 years, starting as a Program Analyst in the Compliance Section, then as a Program Analyst in the Development Section, and the last five years as a Program Manager in the Compliance Section. CTCAC also has two new staff members in the Compliance Section, Kevin Thai and Ashley Lambert.

Staff submitted CTCAC's 2023 Annual Report to the Legislature last week in advance of the April 1 deadline, and it is available on CTCAC's website.

Since the last meeting, Ms. Wiant issued a memo to stakeholders and the public regarding Placed-in-Service application submission deadlines. The memo clarifies that there was a temporary

accommodation to address some of the challenges related to COVID-19, and effective June 1, 2024, CTCAC staff will expect Placed-in-Service documentation and requests for 8609 forms to be timely. Staff also issued final guidance on the Housing Supplier Diversity Reporting per AB 2873, which is also available on the CTCAC website.

Yesterday, HUD published the 2024 income limits for a variety of its housing programs, including the Housing Credit and Multifamily Bond programs. Staff will be incorporating the 2024 income limits for the Round 2 applications. Round 1 will continue to use the 2023 income limits because of the short turnaround time to make those updates to the application and because most of the development community has already prepared their applications based on the 2023 numbers.

Beginning in 2009, HUD restricted annual income limit growth by allowing increases only up to the greater of 5% of two times the percentage change in national median family income. This year, HUD issued an overall 10% limit on increases, which it is calling a "cap-on-cap." Specifically, the income limit in any given area can increase no more than 10%, even if the change in the national median family income would otherwise result in an increase above that amount. As staff will discuss later in the agenda, they see this cap-on-cap as complementary to the rent increase cap being proposed in the final draft regulations.

Lastly, as part of Ms. Wiant's duties as Executive Director of CTCAC, she is an appointed member of the California Interagency Council on Homelessness (Cal ICH) and attended their quarterly meeting last week.

Chairperson Henning called for public comments:
None.

4. *Agenda Item:* **Resolution No. 23/24-08, recommendation of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to sign Contracts and Interagency Agreements on behalf of the Committee, not to exceed $500,000.** – *(Action Item)*

Chairperson Henning said this resolution is similar to the one adopted at the CDLAC meeting today.

Chairperson Henning called for public comments:
None.

MOTION: Ms. Johnson Hall motioned to adopt Resolution No. 23/24-08, and Ms. Perrault seconded the motion.

The motion passed unanimously via roll call vote.

5. *Agenda Item:* **Resolution No. 23/24-09, recommendation of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to sign an Interagency Agreement (Contract No. CTCAC04-23) with the State Treasurer's Office on behalf of the Committee, not to exceed $1,111,597, for Reimbursement for Executive and Support Services –** *(Action Item)*

Chairperson Henning said similar contracts are signed annually in order for the State Treasurer's Office to support CTCAC.

Chairperson Henning called for public comments:
None.

MOTION: Mr. Velasquez motioned to adopt Resolution No. 23/24-09, and Mr. Johnson seconded the motion.

The motion passed unanimously via roll call vote.

6. *Agenda Item:* **Resolution No. 23/24-10, Adoption of a Regular Rulemaking for Amendments to the Federal and State Low-Income Housing Tax Credit Programs (Cal. Code of Regs., tit. 4, §§ 10302-10337) (Health and Saf. Code, § 50199.17) –** *(Action Item)*
   Presented by: Anthony Zeto

Mr. Zeto explained that staff initially published the proposed changes to the regulations on February 26, which started a public comment period of 21 days. Within that public comment period, staff held one public hearing on March 12 in Sacramento and virtually on Teams. The public comment period concluded at 5:00 p.m. on March 18, and staff received a total of 71 written and verbal comments during that period. Staff posted the final recommendations to the CTCAC website on March 27. Staff considered all the comments, and in some cases, revisions were made to the initial proposed changes. In other cases, staff proceeded with the initial proposed changes. There was one typographical error in Section 10328(a)(4)(A); that section currently reads: "The Executive Director may grant a waiver to exceed this limit provided that the owner shows that the proposed rent increase is necessary to ensure finance stability or fiscal integrity of the property." That section should read "financial stability" instead of "finance stability."

Ms. Wiant said staff tried to balance the comments received from the public and the comments made by the Committee at both the January and February meetings regarding the developer fee proposal. Regarding the annual rent cap, staff received significant feedback from stakeholders and tried to balance the needs of the residents living in affordable housing units with the needs of the development and investment communities to provide the right amount of flexibility in the event that a project has financial stability issues. For that reason, staff included a couple of additional exemptions, and there is a waiver provision in the event a project needs to exceed the rent cap for financial stability reasons. Staff appreciates the comments from the stakeholders who requested more detail about the waiver process, but it would have been challenging to include that detail in this regulations package. They would like to spend the next few months working with members of the public to develop a waiver process and present it to the Committee as part of another regulations package later this year.

Mr. Velasquez expressed appreciation for Ms. Wiant's willingness to explore what the waiver process would look like. He asked her to explain how the waiver process would be implemented in the regulations later this year.

Ms. Wiant said there are two different approaches the Committee could take. There are several circumstances already in the regulations in which the Executive Director has a waiver, and this mirrors that language. If adopted today, staff could either come back to the Committee with a regulation package or publish guidance on what the waiver process would look like, incorporating stakeholder thoughts.

Mr. Velasquez asked Ms. Wiant to elaborate more on the exemptions she mentioned.

Ms. Wiant said there are three exemptions in the final proposed regulations. The first exemption is that an owner may exceed the limit without a waiver to increase the rent up to 30% of the household's monthly income, in the event the household has a large income increase and their rent was far below the existing maximum. This allows their rent to be increased to what the household can afford, even if it goes above the limit specified in the regulations. The second exemption is for projects with terminated project-based rental assistance or operating subsidies, as described in the regulations. Typically, similar to HCD, if those subsidies are terminated, there is a float up provision that allows rents to come back to what is allowed per the Regulatory Agreement. The third exemption is for when a household is transferring from one unit in the property to another hypothetical unit due to a raise in income. For example, if someone occupied a 30% AMI unit and then qualified for a 40% AMI unit, that would allow for a higher increase in their individual household rent than the cap would allow. This would allow a deeper targeted unit to open up. In the event of those types of transfers, or if a household requested a transfer to a two-bedroom unit from a one-bedroom unit, the transfer would be exempt from the cap.

Mr. Velasquez asked if a developer in the second exemption scenario Ms. Wiant described would likely seek a waiver regardless of what is specified in the Regulatory Agreement. There is already a method of dealing with those situations in the regulations.

Ms. Wiant said stakeholders expressed a desire for a specific exemption for the termination of rental assistance because of some underwriting requirements, to provide assurance to the investor community that if the rental assistance is lost, the float up can still take effect. However, this is fairly rare and could have been done through a waiver.

Ms. Perrault asked staff to provide monthly reports to the Committee until the waiver process is established. She said the Committee should consider convening a working group on that issue, which could include the Administration. Additionally, she said that the Administration is set on a developer fee cap of $5 million instead of $6 million. Based on the current data, there is not much usage above $5 million.

Ms. Wiant said staff received many comments from the public in favor of either no developer fee cap or a much higher cap. Staff was mindful that under the current developer fee structure, projects containing up to 275 units would still receive the same developer fee and would not be capped out. That was one of the reasons that the $6 million cap was included in the final proposed regulations, as opposed to a lower cap.

Ms. Perrault expressed appreciation for the staff's work on the proposed regulations and for the continued dialogue.

Mr. Johnson echoed Ms. Perrault's comments regarding the waiver process. He expressed concern about the interim period between now and a future update to the regulations, and how that process would be handled.

Chairperson Henning asked if Mr. Johnson would be comfortable if Ms. Perrault's suggestions were implemented.

Mr. Johnson said that despite the suggestion of staff providing regular updates to the Committee, he still questions how the waiver process will be handled. It would be good for the Committee to have transparency with that process, but it is important to acknowledge that there will be a bit of regulatory limbo in this interim period.

Chairperson Henning said staff is attempting to come up with the most ideal regulations.

Mr. Johnson said he understands that there was a working group to discuss to developer fee cap, and it would be great to have insight into the discussions and processes that occurred between then and now, since the State Controller's Office was not a member of that working group due to the number of Committee members. Additionally, he asked Ms. Perrault to explain why the Administration supports a $5 million cap instead of $6 million.

Ms. Wiant explained that at the February 12 meeting, Gayle Miller from the Department of Finance requested that a working group be established, including the Administration and stakeholders. Stakeholders who emailed staff and expressed interested in participating were added to the working group. Throughout that process, a variety of approaches were suggested, and the working group brainstormed different ways to calculate the developer fee. The outcome was the somewhat complex calculation that is included in the final proposed regulations package: the greater of 15% of eligible basis, up to $2.5 million; or $1 million plus 5% of eligible basis in excess of $6,666,667. This formula is tied to costs and attempts to balance some of the stakeholders' interests. Previously, the Committee looked at increasing the existing structure, which is based on an additional multiplier per unit. The working group considered a per-unit multiplier based on 50, 75, or 100 units, but there was concern about how high that would have gone and the potential disadvantage it could have had on smaller, more complex, projects. That is why staff ended up proposing this formula, which is a percentage that is still based on the basis.

Ms. Johnson Hall thanked the staff for putting together this information and considering input from stakeholders. She expressed support for Ms. Perrault's suggestion to convene a working group. It is important to define the parameters and discuss the details of how the process will work. Regarding the $5 million developer fee cap versus $6 million, CalHFA supports whichever the Administration prefers. Everyone's goal is to contain costs, and CalHFA has observed pressure to forego the payment of the developer fee to accommodate all manner of issues, but that also makes it difficult to get that money back to be used for future projects. Ms. Johnson Hall expressed that she is somewhat conflicted on the issue of developer fees, in part because she used to work for non-profit organizations and served on several non-profit boards. However, everyone can agree that this system is not working as well as they would like it to work. She applauds all efforts to figure out a better solution that results in building more units, in order to help the individuals who need it most. That should be the Committee's priority.

Ms. Johnson Hall said developer fees do not look the same for all parties. She is concerned about what it might mean for emerging developers and small non-profit organizations, including one that she started working for years ago, if the developer fees were capped. Those are very hard positions that many people in the room wrestle with every day. These projects require a 55-year commitment, and it is difficult to ensure that there are adequate resources to keep them stable. Ms. Johnson Hall suggested looking at all aspects of affordable housing, including both a policy component and a financial component. The Committee would be missing the point not to realize that making a move on the policy side of the lever could have a disparate impact on the financial side, in terms of the capital stack and how deals survive over the long term. Nobody is looking for an opportunity to hurt anyone in the industry, and the Committee's goal should be to come up with the best way to create more units and keep the units that are already in place safe.

Ms. Johnson Hall said that the maximum state tax credits per unit should be data driven. CalHFA's portfolio does not include any projects that exceed $100,000 per unit. She asked staff to do additional

work to ensure that the $200,000 proposed maximum makes sense. Using the Mixed-Income Program (MIP) as a baseline, she is concerned about whether $200,000 is the right maximum. Regarding rent increases, she does not want to hurt renters living in the low-income units. She recognizes the need for the Committee to do something on this issue, and she is glad they are considering the recommendation presented. She is concerned, however, that the Executive Director's authority to issue waivers is too broad, and there should be additional measurements and structures around that process.

Chairperson Henning asked if Ms. Perrault's suggestions would help address Ms. Johnson's concerns.

Ms. Johnson Hall responded affirmatively. She supports Ms. Perrault's suggestions. Talking to stakeholders with boots on the ground will help ensure those metrics are something that everyone can live with long term.

Chairperson Henning said that the Treasurer shares Ms. Johnson Hall's concerns about the developer fee cap. The Governor, the Treasurer, and CalHFA are all driven to produce more housing. It is a careful balance to consider and is being weighed heavily.

Ms. Wiant said that staff looked at the data and received several public comments requesting a lower per-unit cap for state tax credits, and staff saw a drop off around $200,000 for outliers. Staff's concern with implementing a lower cap at this time is that it would have more of a material impact on some of the projects applying for Round 1 due to the close application deadline. Staff attempted to find a way to curb outliers rather than changing behavior at this point. If there are enhanced state credits next year, staff could consider something different.

Mr. Johnson expressed concern about the nature of a sunset date on the developer fee cap. He recommended adding language to the regulations stating that the Committee would come back and reevaluate the cap at that date, rather than having it disappear.

Chairperson Henning called for public comments:

Tia Boatman Patterson, President and CEO of the California Community Reinvestment Corporation (CCRC), explained that her organization is one of the most significant permanent lenders for Low-Income Housing Tax Credit (LIHTC) deals in California. CCRC has about $1 billion of capital that it recycles and a $1 billion portfolio and is a Certified Development Financial Institution. CCRC's banking consortium, which provides its funding, is comprised of over 40 banks. Last April, the Committee received a letter stating that it had been 20 years since the developer fee cap had been raised. Developer fees are earned fees that allow the developers to pay for the work they do. Lenders are looking at developer fees, and specifically the cash out on developer fees, as a mitigant of risk. This is the amount of money available to developers in the event of cost overruns or if anything else happens. This is how a lender looks at the developer fee as part of the entire underwriting process.

Ms. Boatman Patterson said that CTCAC should have lifted the cap on the developer fee altogether. It is problematic to come up with complicated calculations to solve what may be a perceived problem. If the Committee is trying to limit or contain costs, the fee should be uncapped for projects that do not have any state funding. In the current era, there are historic rising inflation and interest rates, as well as historic problems with construction, supply, labor, and demand. CCRC has projects that did not have a gap three years ago, but they do have a gap when they get to the closing table if their term and rate lock have expired. Various state policies, as Ms. Johnson Hall stated, act as levers; pushing one lever down raises another lever elsewhere. The unintended consequence of capping the developer fee may be

incentivizing smaller, more costly, and more complex developments, while disincentivizing larger, more cost-efficient, developments. If the state's goal is production, that is fundamentally a supply issue. Several of the decisions made by the state actually reduce production. Looking at the past five years, every small decision made by the Committee has led to the production of fewer units. This is not necessarily due to a lack of resources; it is because of certain policy decisions that have been made without a fundamental understanding of the capital stack and how financing actually works. The Committee thinks it is a good idea to cap the developer fee at $6 million, but these deals are complicated, and developers are deferring the developer fees and helping to pay down costs and mitigate risk. If the Committee wants to incentivize production, it should be looking at things that are less costly and ask whether the capital stack is being reduced or if a project is using less subsidy. The Committee should consider how to incentivize bigger production. Capping the developer fee is not going in the right direction.

Ms. Boatman Patterson said that she has previously been in the staff's position and has sat on the Committee, so she recognizes the political consequences. However, sometimes things that look like good ideas do not necessarily make sense in practice. She urged the Committee to think about lenders; the Committee is supposed to be creating a system to bring in more private money. Each time the Committee makes one of these decisions, less private capital is brought in. The most vulnerable populations should be housed, but each time policies are created that drive to the lowest common denominator, it directly opposes what the Committee says it wants to do, which is to create more housing.

Ms. Boatman Patterson said that she is a former development attorney. Everyone wants to backfill redevelopment, not necessarily due to the money but rather the framework of redevelopment. Redevelopment made about $2 billion per year available for affordable housing, and that money went to the continuum of housing needs, including everything from homeless shelters to entry level homeownership. If the Committee wants to have financing coming in, it needs to support that program in proportion to the unmet need. It was a requirement under redevelopment law that every dollar that went toward affordable housing needed to be spent in proportion to the unmet need. Over the last several years in California, almost all the resources have been directed toward the lowest common denominator. The state has limited rents and is now limiting the developer fee, and with each of these actions, the private sector is driven further away. However, this is a system that is supposed to be bringing in private dollars.

Ms. Boatman Patterson said that the 4% tax credit program is a debt program, which is why it is mixed with private activity bonds. The 9% tax credit program is equity, and there is no need to bring in debt. The more the Committee puts very costly and vulnerable populations into 4% tax credit projects, the less they can support that debt. Around 50% of CCRC's portfolio is permanent supportive housing units in Los Angeles, and about three of those developers are barely hanging on. The Committee has pushed for certain targeted populations, and those costs have gone up exponentially. Some insurance premiums have gone up a thousand times. Capping the developer fee hurts the sustainability of some of these developments. Ms. Boatman Patterson urged the Committee to consider the various levers it pushes, ensure an understanding of the entire system and the continuum of affordable housing finance, and spend the public resources in proportion to the unmet need.

Cherene Sandidge from the Black Developers Forum (BDF) thanked the speakers who have been in the position of a developer and understand the incentives for them to be successful in developing projects. She opposes the proposed regulations for two reasons. First, BDF is part of the Treasurer's working group, but they were not notified that a working group had been created on this issue. She expressed that

she would like to have that connection reestablished with the new Executive Director. Second, the words "waiver," "exemption," and "or" are too subjective for developers who are diving into hundreds of millions of dollars' worth of projects. The ideology behind the developer fee cap and/or the rent cap will cause problems for developers with 100% Housing Assistance Payments (HAP) agreements since they will not have the luxury of telling the federal government that they cannot raise rents because of the state's lower cap. Ms. Sandidge asked what impact this would have on secondary covenants on projects. Developers already have to balance several different capital stack providers, and the Committee should think about how it will handle the HAP agreements. If the developer fee is capped and smaller projects are no longer viable, developers will not develop those projects, and the housing stock will not be available.

Ms. Sandidge asked what the incentive would be for a developer to stay in a project for 55 years if the developer fee were capped at $6 million, since that is a low amount. Because developers have been funding extremely low-income projects and the cost of the service providers associated with those projects through the cash flow, even a deferred cash flow is not guaranteed. Developers are beholden to costs that are raised by third party individuals, including service providers and long-term caseworkers. There is no need to cap the developer fee at stage one. In 25 or 30 years, the Committee will see the project come back. The state thinks developers are trying to pull the wool over someone's eyes, and the programs are being written too tightly for developers to respond to and make work. The bigger projects may be able to move forward with the developer fee cap, but there is also an opportunity for developers to develop smaller projects that will all fall under these caps. There will either be small projects with 25 units or less, or large projects with 100 or more units to get to an economy of scale. The mid-sized projects, which could provide housing to the people who need it most, will be left out. Ms. Sandidge understands the desire to house the homeless, but urged the Committee not to design programs that go against developers who want to want to provide that service in the long-term. Now, the programs are punishment rather than incentives to the developers. Developers following those programs have no longevity in the industry.

Alex Pratt from AMCAL Housing agreed with Ms. Boatman Patterson's comments. He said his company has been in the business for the past 25 years, and he has been in the business for 28 years himself. AMCAL develops a lot of large projects and is vertically integrated. They have developed projects as large as 394 units, and multiple projects with units in excess of 200. These projects start with the lender, and the idea that developers are getting huge amounts of money is illusory. If the Committee were to audit files, they would find that it is rare for a developer to maximize the developer fee. Additionally, developers have to essentially pledge that entire developer fee in order to get loans. There are economies of scale for larger projects, which provide a tremendous advantage to providing housing, but the risk also increases for those projects. Mr. Pratt has a 200-unit project right now that is almost completed with $350,000 per month in interest carry. That is real money, and the slightest mistake or a small problem with a utility or public agency can be significant. There are problems with utilities and public agencies all over the state. AMCAL works all over California, Texas, and Washington, and those are huge issues. Even dealing with HCD is causing six-month delays for projects. The Committee is asking developers, in this uncertain environment with interest rates and construction costs increasing, to shoulder even more risk by telling them not to develop projects over 200 or 275 units because the developer fee will be reduced. State tax credits are disappearing in the near term, which means developers will have to find other creative methods and more equity has to be put up. This means developers will have to take on even more risk.

Mr. Pratt said that the most important factor is the level of sophistication needed to develop larger projects. AMCAL used to develop projects that were between 40-100 units, and only in the past seven or

eight years have they started developing projects over 100 units. They had to learn how to do that and put all the infrastructure in place. There are a lot of things that can go wrong in a large project. The level of sophistication that the developer has to bring to the table in order to develop large projects is significant, and that comes with more expensive staff because they must be more knowledgeable. The same person who has done a 25-unit deal is not prepared to do a 394-unit deal on 18 acres with streets and infrastructure. The developer fee cap is misguided and contrary to basic economic theory, and the Committee should rethink how to generate units. Additionally, the Committee should not get lost in the concept that there are a bunch of rich developers who are making a bunch of money. Rich, greedy, developers are doing something else entirely. These are developers who are committed to the affordable housing realm and are trying to survive and make a decent living without going into the red.
Mr. Pratt reiterated that he supports most of Ms. Boatman Patterson's comments, and the Committee is going in the wrong direction, along with HCD, which has back-end caps that structure deals so that functionally, they could never be sold. The idea that developers are making a huge amount of money on these transactions is inaccurate; in actuality, the amount of money is only tracking with the amount of risk that developers have to absorb. If the Committee wants better, more cost-efficient, developers driving more cost-efficient projects, the fee should be uncapped so that the developers can compete in the American capitalist system.

Chairperson Henning asked the remaining public commenters to limit their comments to two minutes in length.

Kim Pipkin, Executive Director of the Black Developers Forum (BDF), agreed with Ms. Boatman Patterson's comments. Ms. Pipkin is adamantly opposed to capping any developer fees. She asked Ms. Wiant to meet with members of BDF and other BIPOC developers because their input was not included among the members of the public Ms. Wiant mentioned earlier. Because Ms. Wiant is new to the role, she should listen to the members of BDF about how much it costs to be a developer and what the risks are. Developers are here to provide a service and are also taxpayers. Ms. Wiant should meet with the BIPOC developers in California and not create policies without their input.

William Leach from Kingdom Development thanked the staff for holding the public hearing, which allowed for developers to ask technical questions about the changes to the regulations. Mr. Leach pointed out a calculation ambiguity during the hearing, and staff was able to clarify that in the final proposed regulations package. Mr. Leach expressed that he loves cost containment as a goal, but he believes the Committee is doing it wrong. He agrees with higher developer fees; there is a lot of risk, and he believes that the sentiment behind the regulation change is to ensure that there is a more reasonable developer fee for the risk being taken. However, if the Committee's goal is cost containment, they should create per-unit policies. Unit production should be incentivized, and the more often the regulations specify "per unit," the more costs will be contained. Mr. Leach supports increasing developer fees, but the method in the proposed regulations, which crosses out the words "per-unit" and replaces them with a certain percentage multiplied by the eligible basis, allows the developer to increase project costs to get a better developer fee. The developer does not have to increase unit production; they can just increase project costs. Mr. Leach said he is creative and will find a way to help his clients accomplish their goals of creating housing and getting paid a reasonable fee. He asked the Committee to consider basing as many regulations as possible on per-unit measures.

Mr. Leach echoed Ms. Boatman Patterson's comment that if the Committee wants to maximize the resources made available by the federal government, they should strive to have the higher income, 50-80% AMI, units served by the 4% tax credit program. This is because when net operating income (NOI) is increased on a 4% deal, the benefit of the tax exemption is amplified. If the Committee wants to reach

deeper targeted populations, such as 30-40% AMI households and permanent supportive housing, where the costs to provide the services that those populations need drives down the NOI, those projects should be pushed into the 9% tax credit program, where the developer is not losing a tax exemption and is allowed to have a deeper subsidy when it comes to tax credits. Regarding the rent limit increases, Mr. Leach would have been more comfortable if the cap were 15%, but the difference between 10-15% may not matter much. However, he does not support the concept of a retroactive rule. Developers who did not raise rents for a couple of years following COVID-19 should be able to raise rents now to catch up. The retroactive rule is a terrible idea.

Jimmy Silverwood, President of Affirmed Housing, thanked the staff for the public outreach and for taking public comments on the rent cap. The public comments seemed to be integrated into the final proposed regulations. This is complicated, and there are a lot of different scenarios for which Mr. Silverwood does not want to have to come to the Executive Director to obtain a waiver. He is generally supportive of the proposed regulations, but he does not support the cap on developer fees, for the reasons stated by Ms. Boatman Patterson. Additionally, he recommends an increase from 5% to 6% for the non-special needs eligible basis calculation for the developer fee.

Alice Talcott from MidPen Housing spoke on behalf of the California Housing Consortium (CHC) and the Tax Credit Subcommittee. They met and came up with some proposed slight revisions to the rent increase language in the proposed regulations. They are generally supportive, but they are concerned because there are some circumstances that are not included within the exemption language. Property owners need clear rules so that they are not stuck between two conflicting sets of regulations, particularly for projects with project-based vouchers or any other kind of rental assistance. There is a provision in the regulations that allows the tenant's portion of the rent to be raised to 30% of the household income, and that should handle most cases where a household's income increases substantially, and their rent has to increase. However, that will not handle all the cases. There are some rental subsidy providers that do not have a 30% cap on tenant household incomes, particularly those that may be run by Moving to Work (MTW) housing authorities. Owners do not have control over the tenant-paid rent; that is set by the rental subsidy programs. CHC would like to see those programs added to the list of exemptions so that if there is a different standard set by a rental subsidy provider, it prevails over the CTCAC regulations. Similarly, if there is a difference between HCD and CTCAC regulations, it should be clear that the HCD rules would apply. Lastly, CHC understands what the actual percentages are, but they do not quite understand how this works, and they do not know what the allowed increases are. CTCAC should provide that information in an easily digestible format and make everyone aware of it, so that developers can just look up what the cap is for the year. This will be important for developers as they try to implement the regulations.

Caleb Roope from The Pacific Companies (TPC) echoed Ms. Boatman Patterson's comments on the developer fee. Mr. Roope is an advocate for production in California, where there is a housing crisis, so he is continually focused on that. TPC develops small, medium, and large projects, and has a well-rounded portfolio of projects. Mr. Roope always wants to be able to develop projects that are larger in scale because they are the most efficient and productive, and they take the least public subsidy. One of TPC's projects that Ms. Johnson Hall has assisted with through CalHFA's MIP is 330 units in Roseville. Under the new developer fee rules, Mr. Roope would be incentivized to cut a project of that size to about 180 units and leave 150 units on the table to do in a subsequent phase someday in the future. That is not what Mr. Roope wants to do as a developer, but if he is trying to manage the risk of developing a project with the resources that he has – mainly the developer contingency – that is exactly what he will do, and others will do the same when they try to balance risk. The 330-unit project Mr. Roope cited would collect a $7.1 million developer fee under the current regulations, and Mr. Roope would always like to

be able to do those kinds of projects because there is no subsidy from the city; there is just the MIP and state tax credits. That is an example of how this new policy will stop those kinds of projects from happening.

Tim Soule from Meta Housing Corporation praised the staff for the regulatory roll out process. He echoed the comments made by Ms. Boatman Patterson and Mr. Roope and urged the Committee to adopt a developer fee regime that incentivizes the production of projects that maximize economies of scale. He asked the Committee to increase the fee factor from 5% to 6% and do whatever possible to embrace the efficiencies provided by larger scale projects.

Cheri Hoffman from Chelsea Investment Corporation agreed with the comments made by Ms. Boatman Patterson and Mr. Roope. The proposed change to the developer fee limit disincentivizes developers from building larger projects for the reasons that have been expressed today. Ms. Hoffman does not support this change; the $6 million cap is too low, and as Ms. Boatman Patterson stated, it is true that the developer fee, the majority of which is not paid until permanent loan conversion, is looked upon by lenders and investors as a form of contingency to cover cost overruns and unforeseen issues. Developers have used a portion of the developer fee to cover rising interest rates. Ms. Hoffman asked the Committee not to make this change.

Anthony Yannatta from Thomas Safran & Associates asked the Committee to continue to exempt federal project-based or tenant-based rental subsidies from the proposed cap on rent increases because it creates a tremendous amount of confusion.

Chairperson Henning closed public comments.

Chairperson Henning listed the following revisions to the proposed regulations that have been suggested by the Committee members thus far: the clerical correction in Section 10328(a)(4)(A) mentioned by Mr. Zeto; the expectation of monthly reports from the Executive Director to the Committee regarding the rent cap waivers; a working group to convene on the waiver process between now and the next regulation change package; and a come back provision regarding the sunset date on the developer fee cap, to ensure the Committee readdresses this issue prior to that sunset date.

Mr. Velasquez thanked the commenters for speaking. The Committee understands the very difficult challenges that developers are experiencing, such as cost increases, insurance increases, and rising interest rates. This is why, when the Committee began the conversation about the developer fee, it was not a conversation about a cap. The conversation about caps was regarding rent increases. The conversation about the developer fee was that the developer fee had not increased in many years, and it was time for CTCAC to address an increase in the fee to reflect the increasing costs incurred by developers in these transactions. That is exactly what the Committee is doing, and it is being done thoughtfully, based on data. This is why Mr. Velasquez agrees with Ms. Perrault's assertion that the Committee is not seeing many projects, with just a few exceptions, that are 275 units or more. The Committee has to be data driven in its proposal to increase the developer fee, and that is why a $5 million cap is reasonable. The development community should know that the Committee is trying to address the fact that the developer fee has not increased for many years.

Mr. Velasquez said that he was initially concerned with some of the exemptions to the proposed rent cap, but he agrees with the staff. He also agrees with Ms. Perrault and Mr. Johnson that the Committee should be informed about the waiver process. That is how the Committee will address projects that could potentially be subject to a higher request. Rather than continuing to exempt situations, the Committee

should establish a waiver process that is thoughtful and will allow them to make meaningful decisions about when a project can exceed the established cap.

Chairperson Henning restated the following revisions to the proposed regulations that have been suggested by the Committee members thus far: the clerical correction in Section 10328(a)(4)(A) mentioned by Mr. Zeto; the expectation of monthly reports from the Executive Director to the Committee regarding the rent cap waivers; a working group to convene on the waiver process between now and the next regulation change package; and a come back provision regarding the sunset date on the developer fee cap, to ensure the Committee readdresses this issue prior to that sunset date. He asked Mr. Velasquez if he is also proposing to lower the developer fee cap from $6 million to $5 million.

Mr. Velasquez responded affirmatively. The initial proposal was $5 million, and it has increased to $6 million.

Chairperson Henning said that as Ms. Wiant previously stated, the cap was adjusted to $6 million because of public comments that staff received. He confirmed that Mr. Velasquez is proposing to reduce it to $5 million as originally proposed.

Mr. Johnson said he appreciates the discussion about lowering the cap to $5 million, but he also wants to be mindful of the work that staff has done with stakeholders to arrive at the $6 million figure. He is not in a position to be able to argue down to $5 million based on the data presented today, and he would prefer to land on the staff's final recommendation, on which they have done their due diligence.

Mr. Velasquez said the Committee heard from many public commenters about the disincentive that reducing the cap would represent for larger projects. He asked staff if they ran the data using a 275-unit project, and what they found in the data in terms of a project that size, based on the applications that have been received recently.

Ms. Wiant said staff looked at a hypothetical project under the current developer fee structure to see where $6 million would fall. A 275-unit project today would qualify for a $6 million cash developer fee under the existing regulations. That is why staff proposed the $6 million cap, in order to prevent reducing the developer fee for projects up to 275 units. Ms. Wiant looked at the historical data of CTCAC's entire portfolio and found that about 5% of those projects are over 275 units. It is a fairly small percentage of projects. Looking at the data from the past year, only a handful of projects were over 200 units.

Ms. Perrault thanked everyone who provided public comments. She said the Administration is more comfortable with a $5 million cap, but either $5 or $6 million is a substantial increase and is the direction in which the Committee should be going.

Chairperson Henning restated that the following revisions to the proposed regulations that have been suggested by the Committee members: the clerical correction in Section 10328(a)(4)(A) mentioned by Mr. Zeto; the expectation of monthly reports from the Executive Director to the Committee regarding the rent cap waivers; a working group to convene on the waiver process between now and the next regulation change package; and a come back provision regarding the sunset date on the developer fee cap, to ensure the Committee readdresses this issue prior to that sunset date. Additionally, there is a question about the Administration's desire for a $5 million developer fee cap and the staff's recommendation of a $6 million cap.

MOTION: Mr. Johnson motioned to adopt the proposed regulations with the revisions outlined by Chairperson Henning, with the $6 million developer fee cap as recommended by staff. Mr. Velasquez seconded the motion.

AYE: Michele Perrault, Evan Johnson, Gustavo Velasquez, Patrick Henning

ABSTAIN: Tiena Johnson Hall

The motion passed via roll call vote.

7. *Agenda Item:* **Public Comment**

There was no public comment.

8. *Agenda Item:* **Adjournment**

The meeting was adjourned at 3:41 p.m.