California Debt Limit Allocation Committee

901 P Street, Room 102
Sacramento, CA 95814

December 11, 2024

CDLAC Committee Meeting Minutes

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

The California Debt Limit Allocation Committee (CDLAC) meeting was called to order at 9:00 a.m. with the following Committee members present:

Voting Members:
Fiona Ma, CPA, State Treasurer, Chairperson
Malia M. Cohen, State Controller
Evan Johnson for Malia M. Cohen, State Controller
Michele Perrault for Gavin Newsom, Governor

Advisory Members:
Gustavo Velasquez, Department of Housing and Community Development (HCD) Director
Stephanie McFadden for Tiena Johnson Hall, California Housing Finance Agency (CalHFA) Executive Director

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

Chairperson Ma called for public comments:
None.

MOTION: Ms. Perrault motioned to approve the minutes of the October 2, 2024, meeting, and Ms. Cohen seconded the motion.

The motion passed unanimously via roll call vote.

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

Marina Wiant, Interim Executive Director, thanked the CDLAC staff for their hard work this year. Staff received a good response to the annual demand survey, and there is a summary of results in the E-Binder. The survey results indicate a demand for over $18 billion in private activity bonds for 2025, so it looks like 2025 will be another busy year at CDLAC.

The 2025 draft meeting schedule and application due dates have also been provided in the E-Binder. Although CDLAC meetings have typically been held on Wednesdays, the 2025 meeting schedule has some variation, with some meetings being held on Tuesdays and others on Wednesdays. This is due to scheduling issues.

Three QRRP rounds are planned for 2025, as opposed to the two rounds in 2024. Applications will be due for the first round at the end of January, and staff will post an updated E-Application before the end of the year.

Chairperson Ma called for public comments:
None.

4. *Agenda Item:* **Request to Move the Unallocated Portions of the Exempt Facility (EXF) and Industrial Development Bond (IDB) State Ceiling Pools to the Qualified Residential Rental Project (QRRP) Pool for 2024 Round 2 Allocation (Cal. Code Regs., tit. 4 §5021)** – *(Action Item)*
   Presented by: Ricki Hammett

Ms. Hammett explained that after all the rounds, $85 million is remaining from the EXF and IDB Pools. This is tied to Agenda Item 9. Staff recommends moving this amount to the QRRP Pool for Round 2.

Chairperson Ma asked if this is in accordance with the regulations.

Ms. Hammett responded affirmatively. The Committee can move the unallocated portion of the pools into another pool. This is typically what has happened in the past because the Committee has prioritized QRRP.

Chairperson Ma called for public comments:
None.

MOTION: Ms. Perrault motioned to approve staff's recommendation, and Ms. Cohen seconded the motion.

The motion passed unanimously via roll call vote.

5. *Agenda Item:* **Appeals for 2024 Round 2 Award of Allocation of Qualified Private Activity Bonds for QRRP (Cal. Code Regs., tit. 4, §§ 5036, 5038)** – *(Action Item)*
   Presented by: Marina Wiant

Ms. Wiant explained that two appeals are being presented to the Committee today. The first appeal is from VA Building 408 (CA-24-642). The project's sponsor appealed the Preliminary Recommendation List. Prior to publishing the list, the project requested to change their application to replace their entire state tax credit request with a newly committed capital contribution from the U.S. Department of Veterans Affairs (VA). CDLAC does not allow projects to materially change their applications after the application due date, and staff therefore denied the request. While administering the sort, staff skips projects that are requesting state credits after the state credits have been exhausted.

Chairperson Ma invited the developer to speak.

Sara Dabbs from Thomas Safran & Associates thanked the Committee for the opportunity to present this appeal today. VA Building 408 is a new construction project that will provide 100 units of permanent

supportive housing for homeless veterans on the West Los Angeles Veterans Affairs (West LA VA) Campus as part of the larger redevelopment of the campus to address the veteran homelessness crisis in Los Angeles County. About ten days after the project applied for bonds and state credits, the United States District Court issued a landmark ruling mandating that the VA accelerate construction of housing for homeless veterans at the West LA VA Campus. The VA stepped up with significant financial backing to accelerate housing production on the campus, increasing its funding commitment to this project to $16.5 million, in order to fully eliminate the state tax credit request, with the goal of preventing any further delays to the start of construction for this desperately needed housing and to meet the court mandate.

Ms. Dabbs said that on October 4, 2024, the developer received a commitment letter from the VA for this funding and then submitted an appeal to the CDLAC staff requesting the removal of the state credits, considering the VA's commitment of the additional funds. Staff indicated that they were unable to make this change to the application at their level, even though the project was not asking for an increase in the score or tiebreaker and was asking for a reduction in the state tax credit request. Staff's direction to the developer was that this decision could only be made by the Committee. The developer feels that this is an exceptional request under extraordinary circumstances due to the unique situation of the federal court mandate, the increased federal investment, the urgent need to house LA's homeless veterans, and the congressional support for this matter. The developer respectfully requests that the Committee grant the request to not skip over this project based on state credits that are no longer needed.

Ms. Dabbs said the Balance of Los Angeles County Pool has over $98 million of bonds going into the Surplus Pool because of projects getting skipped due to their unfunded state tax credit requests. This is the largest amount of remaining unused bonds in any set aside, less the Geographic Pool, by a large margin. Of the projects competing in the Balance of Los Angeles County that were skipped over due to their unfunded state tax credit requests, VA Building 408 is the highest scoring and the next project in line. There are no projects ahead of it. If the state tax credit request were eliminated, even if the tiebreaker and point score stayed the same, this would be the second project funded in that category. This is a very competitive and high-scoring project, and there are bonds available in the pool to fund it. It no longer needs the state tax credits, so the developer requests that the Committee support the VA's efforts to accelerate the construction of new housing for homeless veterans, enable the VA to abide by the federal court ruling, and demonstrate by example that combining VA resources with the LIHTC program is a viable and repeatable financing structure to address the veteran housing crisis in the greater Los Angeles area.

Chairperson Ma said this case is a little bit different, because unlike other appeals where other private funding was obtained, this VA funding was obtained under a court order. The federal government has set aside this money, and at this point, when federal or state governments have set aside money, it should be grabbed as soon as possible. Otherwise, due to the budget deficits, those moneys may be swept for other emerging programs that may come up. The State of California has seen a big shift in its own budget this year from a $48 billion deficit to $2 billion, which is great for the state, but the Legislative Analyst's Office (LAO) is still estimating $20-30 billion in deficits over the next three fiscal

years. It is great that the federal, state, and local governments are going to jump in and help with the affordable housing crisis, and the Committee needs to think about these precious resources that are available. The Committee should try to secure those resources as soon as possible so nobody else can take them.

Chairperson Ma invited a representative of a different project that is in a similar situation to speak during the public comment period, although that project is not appealing today. The project received a late allocation from the city, but the mayor is committed to affordable housing and rebuilding, and he has allocated money in his budget for that purpose. Chairperson Ma is concerned that the money may be lost if it is not used. She would like to hear from that project before the Committee deliberates on the appeal for VA Building 408.

Joe Boniwell, Counsel for CDLAC, clarified that the public commenter who will be speaking is not discussing a project on the agenda, so the information that will be discussed is not to be deliberated by the Committee because it was not noticed.

Chairperson Ma called for public comments:

Jovan Agee, Founder and CEO of Agee Global Solutions and former Deputy Treasurer for the State of California, said he was impressed by the diverse makeup of the individuals in the room compared to five years ago when he used to chair this Committee. He explained that he has been brought on to assist with a project in the City of Inglewood known as Community Hub at Inglewood First UMC. The project applied on August 27, 2024, and had an oral commitment from Mayor Butts to increase liquid capital to the project that would negate the need for state tax credits. The project made that known to staff upon submission of the application. Mr. Agee advised his clients to wait until a written commitment from the city was received before moving forward with negating the request for state tax credits, and they proceeded to do so. They received the letter about four weeks after their application had been submitted, and then they asked to amend their application, hoping they would be allowed to do so under Section 5231 of the CDLAC regulations.

Mr. Agee said he held intellectual capital on Section 5231 when he was still at the State Treasurer's Office (STO). The section has a two-prong test that speaks to what can happen to projects that have requested and are scheduled to receive state tax credits. In hindsight, seeing that a lot of institutional knowledge has gone from this building, this section should have probably defined "requested" and "scheduled." At that time, "requested" was understood to be the period during which a project submitted an application, and "scheduled" was understood to be the time period in which the list was published, thereby giving a buffer of about six to seven weeks for projects like this one and at least two others that are here today to exercise Section 5231.

Mr. Agee said there was a culture that preexisted Chairperson Ma's administration wherein the developer community expressed that the regulations were too rigid, and people were getting rejected unnecessarily for very minor infractions. The Committee at that time was trying to strike a balance to address the chaos that was ensuing at Committee meetings, where staff would be going through the list trying to figure things out because developers would show up on the day of the meeting and say they

had realized their fate and wanted to negate their state tax credit request because they suddenly had liquid capital. At the time, the Committee was trying to remedy that problem but not go back to the preexisting culture, and Section 5231 became that answer. For whatever reason, the current culture within STO at the staff level continues to behave in a manner that preexisted Section 5231, which flies in the face of the legislative and regulatory intent of that section.

Mr. Agee said he did not want to be the only voice of fact patterns, so he solicited the insight of Goldfarb & Lipman LLP, which is arguably the premier legal counsel in this country and definitely in this state. They have concluded that Mr. Agee's observations are correct and have taken it a step further in their definitions. That opinion was submitted to the CDLAC staff, and Mr. Agee requested a written response justifying their position. That was not received, so Mr. Agee is still unclear, beyond past practice, what the basis is for Section 5231 not being implemented as it was intended. There is a lot of support for this project. Holly Mitchell, Los Angeles County Board Supervisor, was apologetic because she could not submit a letter quickly enough, but her staff is going to be on the call today. Heather Gould from Goldfarb & Lipman LLP is also on the call. This is a good project. Emerging developers who have done the right thing by going to elite universities, are developers of color, have worked for renowned firms, and have branched out on their own, are being sent the wrong message.

Mr. Agee said he has often heard from staff that developers game the system, but if the ruling is not in favor of this project's sponsor, it will incentivize gaming the system because when developers do the right thing and want to adhere to the regulations as intended, and then they are harmed or penalized as a result, that is how trickery occurs. The Committee is sending the wrong signal if they do not uphold the legislative and regulatory intent of Section 5231 and allow Mr. Agee's project, VA Building 408, and at least one other project that William Leach is representing, to move forward and course correct. The Committee should not be consistent for consistency's sake, even if it is bad practice. Once the Committee knows the truth, it is their responsibility to act accordingly. Mr. Agee said he is not pointing fingers, and Ms. Wiant and Mr. Navarrette have been very accessible and responsive, but they are at a disadvantage because they do not have the history to understand what Mr. Agee is talking about. They have been fantastic, along with Patrick Henning, Chief Deputy Treasurer, who assisted with navigating this.

Chairperson Ma asked how much funding Mayor Butts committed to this project.

Mr. Agee said $13.5 million total was committed. The funding committed by the city originated from a fund created by Steve Ballmer, owner of the Los Angeles Clippers, when the new arena was being built. This project is one of the early beneficiaries of that funding. It received an initial allocation of $6.5 million, and then the developer requested another $7 million, bringing the total to $13.5 million.

Chairperson Ma asked if those funds are in the city's budget.

Mr. Agee said yes, and the project has submitted a written commitment to CDLAC.

Ms. Cohen said she has a question for Mr. Agee.

Mr. Boniwell reiterated that this item is not on the agenda, so it cannot be deliberated. However, there is a process for adding an item to the agenda if the Committee would like to do so. It would require a vote of two thirds. Otherwise, this is still a public comment period.

Ms. Cohen said she will refrain from responding.

William Leach from Kingdom Development said that a couple of years ago, when the state tax credits were made available, there was a challenge with projects receiving a state tax credit award but not a bond award, or vice versa. Staff had to help projects figure out if they could accept their awards. There was a lot of flexibility at that time, as well as a lot of chaos. The first sentence of Section 5231 states that if a project is asking for state credits when none are available, it will not receive an award. This is a unique situation where VA Building 408 and Community Hub at Inglewood First UMC are asking to retract their state tax credit requests before the credits are gone because they have alternate short term sources available. Mr. Leach said he is not involved in either of these two projects, but he is involved in the next appeal that will be heard by the Committee. The flexibility that was afforded back then to get through this thrash was gainful, and if the Committee is looking for flexibility to get these projects awarded with a bond-only request, now that they don't need state tax credits, that could be a different type of flexibility from the Committee.

Mark Stivers from the California Housing Partnership said the regulations have never allowed a change in the application, nor has that been the practice. Last year, the Committee denied a similar request to change an application after the fact. Every developer who applied this year did so with the knowledge that if a project applied for state credits and did not receive them, their project would go down in the sort so that other projects would be able to get funded. He is not sure which projects they are, but there are other projects in the sort that are now in line for an allocation and would be disadvantaged if the Committee were to allow this project's application to change. That is not what the regulations allow, and it is not what the practice has been. Also, Mr. Stivers imagines that these funding commitments will remain in place until February, when the next round of applications is due, and because that round will not allow for the award of state credits, these projects will almost surely get funded. Two months is probably not a big disadvantage to these projects, while approving this appeal would upset projects that are scheduled to be awarded today, as well as set a huge precedent for being able to change applications after the fact. That could mean not only changes state tax credit requests, but also changes in any other form. Mr. Stivers encourages the Committee to support the staff's recommendation.

Steve Strain from Sabelhaus & Strain PC said he would like to reiterate Mr. Stivers's comments and piggyback on what Mr. Leach said. He is in favor of flexibility in the program and exploring avenues for flexibility, but he represented the project that Mr. Stivers spoke about from last year. He does not know the details of the projects that are being discussed today, but he knows that his project did all the research at the time and knew that there were no other projects in line behind it, and it would not have impacted the sort. It was also going to use bonds that were just going to get carried over to the following year. By denying that request, the Committee set a precedent to not allow these types of changes. Mr. Strain is in favor of flexibility going forward, but that is not what the program allows now.

Chairperson Ma asked Mr. Strain to remind the Committee about the details of his project's request from last year.

Mr. Strain said his project received a grant from a healthcare organization.

Chairperson Ma asked if the project lost the grant.

Mr. Strain said the project maintained the grant and reapplied, but there was a delay of several months. The project was ultimately successful and is under construction now.

William Wilcox, Bond Program Manager at the City and County of San Francisco Mayor's Office of Housing and Community Development (MOHCD), agreed with Mr. Stivers's previous comment and noted that this is the third year in a row that this exact same discussion has taken place about trying to reshuffle at the end because projects want to retract their state credit request or change their bond amount. MOHCD had a very similar situation with a project about two years ago, Balboa Reservoir Building A. The project had a large state tax credit request, and once the self-scores came out, it became evident that the project would not get an award. The project could have removed the state tax credit request and replaced it with funds from the city to receive an award that year, but they did not try to do that because that is not what the rules allow. That project will now hopefully be funded today if changes like that are not made in this round. The project came back and worked to get additional funds, and MOHCD looks forward to closing in June. This has happened before, both last year and the year before. In each case, the Committee decided that projects could not change their requests for state credits or bond amount, even by decreasing the amount requested. Projects have additional information after the self-scores come out, allowing them to change their position.

Victor Cyrus-Franklin said he is the supervising pastor at First United Methodist Church in Inglewood. The project in Inglewood is connected to a faith-based development and it is located on land owned by the church. Mr. Cyrus-Franklin encouraged the Committee to explore creativity and flexibility with the intent of Section 5231. The project's development team is a BIPOC, and the congregation is both BIPOC and working-class. With all the support that the project has engendered, this is an opportunity to do something transformational, not just for the City of Inglewood, but for the State of California, as the project will contribute to Inglewood's resurgence.

Isela Gracian, Senior Deputy for Housing, Homelessness, and Planning for Los Angeles County Board Supervisor Holly Mitchell, expressed support on behalf of Supervisor Mitchell for Community Hub at Inglewood First UMC. As was previously mentioned, this is one of the first projects leveraging a local fund that was the result of a lot of resident participation, organizing, and concern about the housing in Inglewood, given all the different investments in the area, including sporting event locations. The fund is managed by Century Housing and Genesis LA, and they are proactively vetting projects that will provide affordable housing. Ms. Gracian said that after hearing the other testimonies today, she encourages the Committee to look at rectifying some of the past projects and to have flexibility, given the environment overall and the increasing need for housing, as well as the pressure jurisdictions are facing to build housing as quickly as possible for as low cost as possible. Everyone who oversees and manages projects

knows that additional time increases costs – both monetary costs and the cost of not being able to provide access to housing.

Caleb Smith from the City of Oakland Department of Housing and Community Development echoed the comments made by the previous speakers that these projects sound worthy, but there are a lot of worthy projects that were submitted to the Committee. There were 14 applications just from Alameda County, none of which were able to reach the recommendation list this year, including some projects that received local commitments from the City of Oakland for about $28 million along with millions of dollars from other state funding sources. It is fantastic that there are local contributions to the projects that are before the Committee today, but there are also a lot of other locally funded projects. The concern about how to make sure this is a fair system is valid, as Mr. Wilcox and Mr. Stivers touched on. If the Committee were to move forward with granting the appeal for this project today, Mr. Smith would like clear procedures to be established for how future funding commitments received closer to Committee meetings would be incorporated in future rounds. In that case, the City of Oakland would be interested in exploring ways to move forward with some of their projects. Mr. Smith realizes that could be difficult to administer, so that might be a consideration for the Committee today.

Nevada Merriman, Vice President of Policy and Advocacy at MidPen Housing, echoed the comments made by Mr. Stivers, Mr. Wilcox, and Mr. Smith. There is a rigor that a sponsor has to go through to position one of these projects for an award, and there are numerous ways that it would be advantageous to change an application after the Preliminary Recommendation List is published, and more information comes about from local, federal, or state government. It seems like this would open up a very unclear path going forward for future projects and future meetings. Also, every jurisdiction in the State of California has a mandate to pursue housing, and the Housing Element process has just concluded for most jurisdictions.

Sara Dabbs said this is a different situation than the project last year. The issue raised at the last Committee meeting in Round 3 of 2023 was that there were three projects that scored higher than that project, and they were not given an opportunity to reduce their state tax credit requests. That was also a request for a reduction, not an elimination of the state tax credits. The fact pattern here is different, and VA Building 408 is the next project in line. It is one of the highest scoring projects in that pool, even keeping the tiebreaker the same, as if it had the state tax credits. Otherwise, it would have scored much higher. This would cause a four-month delay for this project, and this is an unprecedented situation with the landmark court ruling that came out just ten days after applications were due. The request was submitted almost two months in advance of when the Preliminary Recommendation List was published, so this was not a last-minute scramble.

Elizabeth Selby, Director of Development and Finance at the City of Los Angeles, said she does not want to weigh in on projects because they all have unique circumstances and value in their communities, but she would like to echo some of the sentiments expressed earlier that the development community needs to be able to rely on precedent set by previous years, unless there is an explicit change to the rules, because they plan all of their work around those expectations. Likewise, the City of Los Angeles has stuck projects, and the city also directs its own capital dependent upon its expectations of what is

going to happen at the state level. It is incredibly valuable to be able to anticipate and rely upon what has happened in the past, unless there is an explicit change. In that case, developers can adjust accordingly.

Chairperson Ma closed public comments.

Chairperson Ma said that in the past six years since she was elected, COVID-19 was probably the most challenging situation. Given what happened in November, she is not sure what is going to happen to California, and what programs and services the state is going to have to protect. She has put the STO on alert to try to figure out how to backfill or provide necessary funding in case funding is cut short suddenly. Individuals are depending on certain programs and services for their livelihood that could be severely impacted. Chairperson Ma is concerned and wants to make sure to capture all of the federal funding as soon as possible. There is a trickle-down effect, and if funding is cut at the state, it will affect city and county funding. Everybody will be scrambling and trying to pull money out. If funding is not allocated for housing, city governments are going to look for those pockets of money that are not being used to potentially sustain individuals for whom this is a life and death situation.

Chairperson Ma said she and Ms. Cohen both served at the City and County of San Francisco. She is not bringing this up because she wants to panic anyone. The Committee has had a strong stance on setting precedent and denying these types of appeals, but they need to think about what they are going to do in this first round. In her opinion, funding that is allocated has to be locked up now. They cannot wait four months, because in four months there could be a big change in the environment. All the projects may have to change. Because CDLAC has three voting members, the Committee members cannot talk to each other outside of the public meetings. This is how they have to talk about these issues. She asked the other Committee members to share their thoughts.

Ms. Cohen said that as California State Controller, she has the privilege of looking at the state's finances through the cash on hand and issues a report on a monthly basis. The state has more cash on hand than had been projected, but it is still not enough. She agrees with Chairperson Ma that the environment changes and is very volatile, and markets also change incredibly fast. There is a lot of uncertainty that comes with a new regime change on the federal level. What she heard during the public comment period today is that there seems to be a need for clarity regarding Section 5231. If this is the third year in a row that the Committee has heard about discrepancies in Section 5231, the Committee needs to bring more clarifying language to this section so that they are not in this place again in the future. The beautiful thing about policy and legislation is that they are dynamic, and if the Committee does not get something right the first time, they have an opportunity to come back take another bite at the apple. It seems that the Committee may need to revisit Section 5231 and bring clarity to some of the unclear definitions. Ms. Cohen said she is concerned because institutional knowledge is lost whenever there is a transition. The STO is going to go through a transition in a couple of years, and staff come and go. It is incumbent upon the Committee to make sure they capture the spirit of the intent of legislation as much as possible through a process that is clear and concise.

Ms. Perrault expressed agreement with both Ms. Cohen and Chairperson Ma. This conversation continues to come back up, and there are a ton of amazing projects out there. If the Committee had the ability to fund them all, they would, and they would move them through as quickly as possible. However, the Committee also has to adhere to a process. That does not mean that the process cannot change, and the Committee can go through the steps to do that. They have heard comments about what the intent of Section 5231 should be and how it should be interpreted, and to Ms. Cohen's point, whenever staff members come and go, intent can go with them. If the Committee believes that changes need to be made to allow some flexibility for projects that originally needed state credits and then found other funding sources, in order to not stop those projects from moving forward, then perhaps the Committee needs to direct staff to explore a way to define that in the regulations.

Ms. Perrault said she is hearing comments about the need to know what the process is, with no ambiguity. She feels for VA Building 408 because it is an amazing project, and she is also concerned about what may or may not occur at the federal level in terms of funding coming to the State of California. She wants to make sure the Committee can leverage that. She is hearing from staff that they are implementing an additional round in an effort to try to move funds faster at the very beginning of the year. It is her understanding that VA Building 408 could reapply in the first round if it did not need state tax credits. She understands that would cause a delay of a couple of months, but she is also concerned about changing the process and making changes to the regulations at a meeting. She would prefer to direct staff to explore, prior to the Preliminary Recommendation List coming out, if there is a way to allow a change of application if individuals end up not needing state credits and have found other funding.

Mr. Velasquez said he and Chairperson Ma have been on the Committee for the longest amount of time, and he has not been here for more than four years. CDLAC has gone through multiple rounds of regulation changes. The process is not perfect, nor are the regulations, but what brings them closer to perfection are the staff and the Committee sticking to the rules that are set by the Committee. That brings the Committee closer to bringing forth the uniformity, certainty, and integrity of the process, as imperfect as it is. The market and industry follow the rules, and if the Committee also sticks to those rules, there will be more certainty in the way things work for these projects. This is an example of a small but important deviation to those rules, and he encourages the Committee to continue to be firm in how the uniformity is applied across the board.

Ms. McFadden said she is the newest person in the room, and as a participant in the affordable housing industry for most of her career, she believes clarity of expectations is the key, and this body sets that expectation. It is very important to continue clearly explaining to the industry what the Committee needs. She fully supports Mr. Velasquez's comments. It is also very important to explore possible changes to address what is happening in the market so the Committee can be as nimble as possible.

Chairperson Ma said she is proud that California is transparent and consistent in terms of allocating bonds and tax credits. That is a hallmark for the state and its programs. However, the Committee also needs to think about flexibility and the changing situation. They need to try to capture, retain, and do whatever they can to ensure that governments cannot claw back money that is allocated for housing. In

elected officials' minds, housing that may be built this year or next year may not be the priority for people who cannot get medical help or childcare. The state has been through this situation before and has to weigh what the priorities are, so the Committee needs to lock up money as quickly as possible. She is glad CDLAC is doing an early round. She asked Ms. Wiant to confirm when in January the round will take place.

Ms. Wiant said applications will be due on January 28, 2025, with an expected award date of April 8, 2025. CDLAC posts the applicant list ten days after the applications are due. That is when the self-score information is publicly available. As noted by some of the appellants, the staff is very transparent when applicants ask about their rank and their likelihood of being funded. That is where it becomes challenging to allow application changes once that applicant list is posted. Applicants know their likelihood of succeeding at that point and can make changes based on that. With that said, ten days after January 28 is very early in February, and at that point, next year's applicants will have a very clear indication of whether they will be funded. Hopefully, that will provide enough certainty to the local government and the VA to keep those funds in those projects. As was previously noted, if the projects are high scoring today, they will have higher tiebreakers without the state tax credit requests next year. The staff can work on finding ways to not require additional updated documents as part of the application process to help make the transition from Round 2 this year to Round 1 next year easier for those applicants.

Chairperson Ma asked if there is a motion.

Ms. Wiant clarified that the Committee can also choose not to make a motion.

The Committee members declined to make a motion.

Chairperson Ma said that since there is no motion, the Committee will take no action on the appeal for VA Building 408.

Ms. Wiant said there is another appeal from Vista Heights Apartments (CA-24-718). This project's application contained a few deficiencies that resulted in staff disqualifying it from consideration during this round. There are two remaining deficiencies that are being appealed today before the Committee, and staff will present them one at a time. The primary deficiency is a missing financing commitment from the County of Riverside for $4 million of American Rescue Plan Act (ARPA) funds. Without this commitment, the project is not financially feasible. With their application, American Neighborhood Housing (ANH) submitted a resolution from the County of Riverside Board of Supervisors that committed to award a $4 million ARPA loan to an entity called Alliant Strategic Development (ASD). ASD is not part of the project. The application further included a letter from ASD to ANH assigning those funds, but there was no documentation from the County of Riverside showing that it granted assignment or otherwise showing that ASD is permitted to assign the loan to another entity. This is the first item up for appeal, regarding whether the project is financially feasible without that loan and/or if there is documentation to show that the loan is valid to ANH.

Chairperson Ma invited representatives of the project to speak.

Mihkel Garcia, President of Spada Development LLC, said he is an emerging BIPOC developer who has been in the industry for about a year and a half. He is a co-applicant on this project.

Juan Aguilar, Executive Director of ANH, said his organization is an emerging nonprofit BIPOC. He said William Leach from Kingdom Development would be presenting the merits of the appeal.

Mr. Leach said Kingdom Development serves as a financial advisor in the industry and provides technical assistance to emerging developers. Kingdom Development was hired by ANH to submit the application. Mr. Leach said that if anyone is at fault for this particular enforceable financing commitment not being clear, it is his fault. Kingdom Development has submitted over 200 applications, and approximately 30 or 40 of them have had assignment agreements in them. Not once has staff ever questioned the validity of an assignment agreement, whether it was an assignment of a loan, agreement, DDA, or site control document. Staff has never asked about the legal validity of an assignment agreement, nor has the original grantee ever provided it.

Mr. Leach said he told Mr. Garcia and Mr. Aguilar that they did not need better documentation for this aspect of the application because there is no regulation stating that assignment agreements need to be confirmed or approved, or that a legal opinion has to be provided to state that the assignor can assign it to the assignee. The regulation regarding enforceable financing commitments, which applicants are supposed to use to prove financial feasibility, has six requirements, two of which are for rehabilitation projects and do not apply to this type of commitment. Of the four requirements for enforceable financing commitments that apply, the resolution from the Board of Supervisors clearly meets those requirements. It is in writing from that body and states the terms of the loan agreement. It has everything that an enforceable financing commitment must have, and it was assigned from the previous developer who decided not to move forward with the transaction and disposed of the deal to ANH. There is no regulation stating that any special words have to be in that commitment. Fundamentally, when the developers submitted the application, Mr. Leach said they had a great enforceable financing commitment and assignment agreement from “Party A” to “Party B.” There are no rules on assignments, and Mr. Leach has never seen one ever get questioned. He told them they were good to go.

Mr. Leach said he does not think there is an issue because there is no regulation indicating that the applicants missed the requirement. Secondly, it is not a fundamental concern. There are two financing commitments from the County of Riverside to the project, only one of which is being discussed today. The applicants notified the county prior to applying, and the county informed them that since one of the commitments is for vouchers, they would need a voucher commitment spelling out the rent levels, the amount of money, and the number of years. The county provided an updated voucher commitment to ANH to comply with the very specific requirements in the regulations. However, the applicants did not ask the county to go back to the board and change the resolution committing the $4 million to the project because they thought an assignment would be fine. The applicants confirmed yesterday with the county on the phone that they are not taking any steps to rescind the award, and they have no opposition to the project. In fact, their resolution includes their support of a tax credit and bond application. A representative from the county should be available on Teams or on the phone if the Committee wishes to ask them any questions.

Mr. Leach said there is no regulation of which the applicants ran amiss. Also, there is not a fundamental concern or question about the validity of this award. Those two reasons might give the Committee comfort. A third reason to give the Committee comfort is that even if the enforceable financing commitment were not enforceable, the project would still be financially feasible. The financial feasibility test in Section 10327 of the CTCAC regulations states that a project must have at least 50% of construction and 50% of permanent financing committed. Even without the $4 million commitment, the project has 50% of those financing sources committed. If staff had said that there was a readiness problem – because the project is also receiving readiness points, and everyone needs to score near maximum points to win – the project has commitments that equal more than 100% of its total development cost, absent this $4 million, as construction financing. If the Committee is comfortable that there is no regulation, no problem with the county's commitment to the project, or believes that the project is still financially feasible without that commitment, the applicants hope the appeal will be granted and the project will be considered financially feasible and in line for award with the rest of the applicants.

Ms. Wiant said she would like to respond to Mr. Leach's assertion that there is no requirement in the regulations. Section 10325(f)(3) of the CTCAC regulations states that enforceable financing commitments must "be subject only to conditions within the control of the applicant." Therefore, Ms. Wiant would argue that the conditions of this loan are not within the control of the applicant, as the loan is made to somebody else. Additionally, in the resolution from the Board of Supervisors, the conditions that are precedent to the loan have certain requirements, one of which is that the CDLAC/CTCAC applicant be ASD or a to-be-formed development entity that will act as the sponsor and developer for the purpose of the project. That condition has not been met because if ASD were an affiliate of the BIPOC entity, they would be ineligible for the BIPOC Pool. Second, the other condition precedent requires that the project be owned, constructed, and operated by a limited partnership in which ASD or an LLC affiliate acts as a managing general partner. That condition is also not being met. These reasons are fundamentally why, based on the regulations and conditions that were precedent to the loan, staff discounted this loan. Staff has rejected loans for similar projects in the past based on the resolution of the county and the conditions of the loan.

Mr. Leach said it is very common for a funding commitment to a project to acknowledge that the entity that applied may not be the ultimate ownership entity because a partnership will be formed, and the loan may be transferred to an affiliate of the project. Broadly, every government funding agency has an understanding that the person applying today might not be the ultimate ownership entity. That is widely known in the industry. The fact that staff is making a legal determination that the loan is not within the applicant's control is overreaching. It is the county's determination whether the applicant meets the conditions and whether the ultimate ownership structure is adequate. The applicant notified the county of the intended change of general partner, and they had no objection. Even if the Committee finds that the enforceable financing commitment is not valid, the project still has enough construction period and permanent financing committed to meet the tests of feasibility and readiness. The Committee may side with staff and say that enforceable financing commitments need some special evidence, in which case Mr. Leach would appreciate a regulation to that effect. However, if the Committee agrees with the

staff's legal determination about the enforceable financing commitment, the project still has enough financing without this commitment.

Chairperson Ma said she would like to hear from the County of Riverside.

Juan Garcia, Deputy Director at the Department of Housing and Workforce Solutions at the County of Riverside, said that a lot of the previous comments were correct. ASD applied for county ARPA funds specifically for this project, and the board took action on July 11, 2023. In late July of this year, ASD informed the county that they had a new strategy to partner with ANH and apply to the BIPOC Pool. At the staff level, the county agreed with the new strategy, but they did not have enough time to take an item to the board to approve an updated resolution. The county's staff would recommend the board to approve this loan to this new entity, but it is up to the board to make the decision. Mr. Garcia cannot confirm whether the board would approve it, but at the staff level, they would make that recommendation to the board at a later date if the project were to move forward.

Chairperson Ma asked Mr. Garcia if he sees a problem with the assignment or the changes to the names of the entities.

Mr. Garcia said he does not see a problem at the staff level, but ultimately, the board has final say on whether an assignment or a loan can be made.

Ms. Cohen asked if the board has agendized this item or expressed any interest in moving this forward.

Mr. Garcia said that at the staff level, no action has been taken on the assignment to the new entity.

Ms. Cohen asked when the board recesses.

Mr. Garcia said the last board meeting date is next week, and then they will go on Christmas break until January.

Ms. Cohen asked if the agenda has already been determined for the next board meeting in 2025.

Mr. Garcia said no.

Ms. Cohen asked what the County of Riverside's process is for determining the agenda for the January 2025 board meeting.

Mr. Garcia said it takes about 60 days to get an item onto an agenda, so if they were to bring an item to the agenda for the loan commitment for this project, it would be agendized sometime in February or March.

Ms. Cohen asked Mr. Garcia if he said it takes 60 days for an item to get onto an agenda.

Mr. Garcia said that is correct.

Ms. Wiant said the second reason for the project's disqualification is implicated by some of the comments that were just made by the County of Riverside stating that there was a strategy by ASD to pivot and apply with a BIPOC entity. That gets to the bigger issue for the disqualification; the relationship between the BIPOC entity and ASD would invalidate their qualification for the BIPOC Pool because ASD would have to be an affiliate of the BIPOC entity, which goes against the intention of the BIPOC Pool.

Chairperson Ma asked if the initial application was not from a BIPOC.

Ms. Wiant said the application was from a BIPOC, but as the County of Riverside just noted, ASD let them know that their new strategy was to pivot to work with a BIPOC entity. ASD is not on the application, but that begs the question whether the BIPOC entity is really an affiliate of a non-BIPOC entity.

Mr. Leach said he can provide some context. ASD is a for-profit developer that develops land. They will buy land, entitle it, and sell it, or they will buy land, entitle it, build housing, and sell it. They are market rate developers, but two or three years ago, they said they would try their hand at affordable housing. They got the site tied up and received commitments from the county for vouchers and gap financing, and after a little bit of review and analysis, they determined that they had no chance at success. Their score was not good enough, the County of Riverside median income is lower, and they would not compete as well as others in the pool. They decided to pivot and dispose of the land, which is common; Mr. Leach has discussions with market rate developers all the time about disposing of their land and whether there are affordable housing strategies to do so.

Mr. Leach said ASD wanted to dispose of their land, and when they spoke internally, Juan Aguilar, one of the employees at ASD, said he would love to start up as a non-profit emerging developer and use this deal to hit the ground running. He knew he did not have enough experience and would probably need to bring on Mihkel Garcia as a partner because Mr. Garcia had completed a transaction and met the minimum experience requirements. Mr. Aguilar asked ASD not to dispose of the land to somebody else because it would be great opportunity for him. Mr. Aguilar and his nonprofit, ANH, got the first shot at the opportunity by being "affiliated" – a term Mr. Leach said he was using loosely – with ASD. ASD was disposing of the land and needed an affordable developer to take it home for them. When that decision was made, ANH hired Mr. Leach to help them through the process. ANH made a partnership agreement with Spada Development LLC so Mr. Garcia could provide the minimum one project experience required to be partners, and then they submitted their application. At that time, Mr. Leach told them to get the voucher commitment fixed because it had to have exact amounts and dates, and the county fixed that document. Mr. Leach told the developers he did not think they had to fix the assignment agreement because the verbiage in the resolution allows the loan commitment to be made to the ultimate project.

Mr. Leach said he is in 100% agreement with Ms. Wiant that if one were to say the enforceable financing agreement is within the applicant's control because the applicant is an affiliate of ASD, then one would still have to wrestle with how affiliated they are, and whether they are so affiliated that it should taint the BIPOC status. These developers would not win without the BIPOC Pool; the BIPOC Pool is what gives

them an opportunity to be able to emerge as developers and get access to financing earlier in the sort with a lower tiebreaker. This is the developer's opportunity to succeed. The fact that Mr. Aguilar works at ASD and got the first opportunity to do the transaction is due to a real-life affiliation. The question is whether that is wrong or evil, or if there is any way to emerge other than to get lucky by having a great opportunity available. The question for the Committee is whether it causes them any consternation that Mr. Aguilar's opportunity to emerge came from his former employer.

Chairperson Ma said she does not have a problem with new developers having opportunities because someone wants to sell them land. She asked Ms. Wiant what the regulations state about qualifications for BIPOC developers.

Ms. Wiant said the requirement to be considered a BIPOC entity is 51% control by a BIPOC. In a nonprofit, the Executive Director and at least 51% of the board makeup must be BIPOC. The applicants would meet this requirement, but both of the other members that are part of ANH also appear to be directly affiliated with ASD; they are all employees of ASD-affiliated organizations. This brings up the question of whether the organization is really controlled by 51% BIPOC or if it is controlled by ASD, which does not meet the BIPOC definition.

Mr. Leach asked Mr. Aguilar to speak to the makeup of the board of ANH.

Mr. Aguilar said the board is comprised of himself, Dudley Benoit, and Brian Goldberg.

Chairperson Ma asked what Mr. Benoit does professionally.

Mr. Aguilar said he is their secretary.

Ms. Wiant said that when staff looked at the board member makeup, they found that Mr. Goldberg is Executive Vice President of Credit Affordable Equity at Alliant Capital, which is an affiliate of ASD, and Mr. Benoit is Senior Managing Director of Affordable Equity Investor Relations at Walker & Dunlop, which is ASD's parent company.

Mr. Aguilar said Alliant sold all of its assets except ASD, so the two companies are completely separate.

Ms. Cohen asked when that separation took place.

Mr. Aguilar said it occurred in December 2021.

Mr. Leach summarized that Mr. Aguilar started the nonprofit with a board of people he knows. He reached out to finance professionals he used to work with three years prior when they met working for the same parent company. Mr. Leach said it would be like him asking Dan Horn, his former employer, to be on a board with him; although he has been gone for ten years, he still respects Mr. Horn and thinks he knows a lot about the industry. If all the people on Mr. Aguilar's board have some reference to Alliant in their biographies, it is because those are the people in Mr. Aguilar's circle of professionals. They are not ASD, if that gives the Committee any comfort.

Ms. Wiant said the staff made the determination based on the facts before them, which they have shared with the Committee today. Based on their reading of the regulations and the intent of the BIPOC Pool, they did not feel that this was in the spirit of the BIPOC Pool. It is up to the Committee to make the policy decision.

Mr. Boniwell said he had looked at ASD's website and would pull it up now.

Mr. Leach said that when the BIPOC issue was raised to his clients, the letter they received stated they were ineligible for the BIPOC Pool because they were affiliated with ASD.

Chairperson Ma asked if they terminated the affiliation.

Mr. Leach said that is not grounds for disqualification from the BIPOC Pool. The BIPOC Pool's definition states that a developer may not be affiliated with somebody who has maximum experience. The intention is to protect the emerging status of the BIPOC Pool to help emerging BIPOCs. When staff determined that this did not meet the spirit of the pool and they were not comfortable because of the affiliation, Mr. Leach and his clients tried to show how minimal the affiliation was. Mr. Aguilar is still an employee at ASD, but he will no longer be employed there once he gets the chance to emerge. They discussed the spirit of the affiliation. Mr. Leach is not saying there is no affiliation; there is an affiliation, similar to Mr. Leach's affiliation with Dan Horn even after he left his company. The question is what the regulations state about being affiliated. Even if Mr. Aguilar is affiliated, the regulations state that affiliates cannot have maximum experience. To Mr. Leach's knowledge, ASD does not have experience with affordable housing transactions.

Ms. Wiant read from ASD's website: "Alliant Capital, AC's [Alliant Communities'] Affiliate, is a national leader in the world of affordable housing, having capitalized over $8 billion in affordable housing and Low-Income Housing Tax Credit (LIHTC) developments. ASD leverages Alliant Capital's experience to develop and build unique properties…"

Ms. Wiant said it is always a tough call in this pool. Based on the publicly available information that staff had, and the information received from the applicant, the staff disqualified the project from the pool for all those reasons.

Mr. Boniwell said it is important that the resolution from the County of Riverside Board of Supervisors clearly awarded the federal funds to ASD as the developer, subject to the conditions precedent that Ms. Wiant spoke about. Staff from the County of Riverside made it clear today that at the staff level, the county is allowing the applicants to be substituted in for ASD, but that has not gone before the Board of Supervisors. This indicates to Mr. Boniwell that this award is not with the applicant, the county acknowledges that the award was not made to the applicant, and the county has yet to agree to make the loan to the applicant or otherwise approve an assignment of the funds which do not yet exist because the loan does not yet exist. Those are his concerns.

Chairperson Ma said Ms. Cohen questioned when the Board of Supervisors meeting would take place, whether this item would be on the agenda, and if this would all be clear, concise, and transparent,

because there is confusion regarding who the real developer is. The county staff said there was not a problem, but ultimately it has to be legal.

Mr. Boniwell said there is a resolution from the Board of Supervisors that awards the $4 million in ARPA funds to ASD, but CDLAC does not have a resolution or anything else in writing from the county stating that they support the project and agree to this. The Committee does not have to determine if there has been a legal assignment. Under the regulations, the Committee has to look at financing commitments and decide how comfortable they are with this financing commitment to determine whether the project is ready to go forward.

Ms. Perrault said she appreciates trying to move projects forward. As she stated previously, there are a lot of amazing projects in the queue, and she hears the comments stating that regardless of what is occurring with the funding from the County of Riverside, there is still adequate funding. There are two conversations; first is the conversation about funding sources, and whether the county is going to be comfortable and reassign the loan, or whether the project does not need those funds at all and will utilize a different funding source. The second conversation is whether the applicant qualifies as a BIPOC entity. This feels messy, and it also brings the Committee back into a conversation about allowing substitutions on an application that was already received. The Committee needs to be careful and continue to be consistent based upon the knowledge that was included in the application. Ms. Perrault is concerned about oral commitments when the county has not even agendized the item.

Mr. Leach said he would like to make a technical clarification. When he makes the claim that absent the $4 million, the application includes commitments for 100% of construction financing, he is not substituting in other financing. Those commitments are on the application.

Ms. Perrault said she appreciates that, but the $4 million was included for consideration, so if the project had 100% of financing committed, she is not sure why it was included.

Ms. Cohen asked why it was included.

Mr. Leach said 110% of the total project costs were included to show that the project had a lot of financial support.

Ms. Perrault said this is why the Committee is asking these questions about the need for the commitment.

Ms. Wiant said Mr. Velasquez looked like he had something to add, so she wanted to ensure he had an opportunity to speak.

Mr. Velasquez said Ms. Wiant might have seen his expression when Mr. Boniwell was speaking about what the County of Riverside Board of Supervisors is expecting to commit to. That was a very good point that was made. Mr. Velasquez said he does not think the staff is legally misinterpreting anything in their review of this appeal. It is all consistent with two very important aspects of the regulations, and Mr. Velasquez is concerned about the timing of the final commitment from the county, as Ms. Cohen

alluded to. He urged the Committee to be concerned about that as well as the commitment period. Additionally, although he cannot find a better, more ceremonial way of saying it, the rearranging of the entities involved in this application is a bit messy. It is important to see the facts of how this appeal was evaluated, and Mr. Velasquez believes the staff is correct and the Committee should consider not granting the appeal because it is not consistent with things the Committee has done before.

Mr. Leach said that if the Committee were to deny this appeal, he would ask them to explain mathematically how this project does not meet readiness or financial feasibility. If the application shows enough money without this commitment, he would appreciate a mathematical answer as to why it does not comply. The Committee could invalidate the commitment, and the application would still meet all the requirements. Mr. Leach would love for the Committee to validate it, but if they were to invalidate it, the application mathematically complies, and he would appreciate that proof.

Chairperson Ma asked Ms. Wiant if applications are supposed to be substantially correct when they are submitted.

Ms. Wiant said the staff reviews applications and financial commitments, and this financial commitment was included both as construction financing and permanent financing. Staff does not make a determination that particular financing is not needed if there are more commitments than necessary. To Ms. Perrault's point, removing this commitment would be an application change, similar to the previous appeal where the state tax credit request was being removed.

Mr. Leach said the applicant is not asking to remove the commitment. The staff is asking to disqualify it. If it is disqualified, there are other qualified moneys. He does not know the exact numbers, but pretending this is a $50 million project, the applicant showed $55 million of committed construction financing. If $4 million of that were invalidated, not removed, there would still be $51 million remaining, and $51 million can build a $50 million project. As an application preparer, Mr. Leach often recommends that clients put in some cushion to make sure their contingency is good, their developer fee is not the wrong amount, and their construction period financing is locked in. If they have a question about whether a commitment is going to be invalidated, Mr. Leach instructs them to put more in to give everybody confidence that they can build the project. This applicant put in $55 million to cover a $50 million need, and if the Committee invalidates $4 million, $51 million is sufficient to cover $50 million. That is why Mr. Leach is asking for math, so that he can rely on that for his client.

Ms. Wiant said staff would have to go back and re-review the application with that fact, which they have not done.

Chairperson Ma asked Ms. Wiant if staff reviews and validates financing commitments when applications are received.

Ms. Wiant said the applications present their math and they have different sources, and staff confirms whether they are enforceable commitments that meet the rules of the program or not.

Chairperson Ma said it is not necessarily staff's job to determine if the $4 million seems minor and redo all the calculations to determine if it can be taken out.

Ms. Wiant said that she does not review applications as the Executive Director, but Chairperson Ma is correct; that does not happen.

Chairperson Ma called for public comments:

Cherene Sandidge from Sandidge Urban Group said she is speaking today on behalf of the Black Developers Forum (BDF). She said she is so happy this issue has come up because BIPOC developers do not know who they are applying against because applicants are sending in applications with one set of people and then someone else is going to be receiving the funds. This is exactly the issue that BDF brought up about the regulations, and they are calling for people to stop gaming the system. Five years ago, Ms. Sandidge advocated for the establishment of the BIPOC Pool, and she was instrumental in that effort along with her fellow BDF members. She has said time and again that people are going around knocking on doors talking about how they have free land, or saying they will put new pews into a church, if qualifying individuals will come along and be used to qualify for the BIPOC Pool. That is why BDF has been advocating for better definitions in the regulations. Small emerging developers do not need to be competing with Los Angeles, Alameda, and San Francisco counties, but this is what is happening when folks are creating new organizations and hiring high-priced consultants. Everyone knew that it was going to take some time to get though the system and get the quirks out of the process, but this issue of reading the specific words is inappropriate. The Committee needs to go back to the spirit of why the pool was established. Otherwise, these are the same people who would have scored in the geographic pools. Unless the Committee continues to adhere to the spirit of community-based emerging developers, not folks who have other folks knocking on their door, as is happening a lot in Southern California, the Committee will always run into these issues.

Ms. Sandidge said staff knows that BDF has been working on regulations and trying to clarify all this because they know this is how it goes in America. The bottom line is that the voices of the disenfranchised community developers are sidelined behind folks coming along and saying they have free land and need to find a BIPOC to get in bed with. That was never the intent or the spirit, and in fact, BDF's recommendation is to only qualify BIPOC developers, not their joint venture partners who bring all the experience points. A BIPOC may only get 90 points, but at least they are fairly competing against other BIPOCs. BIPOC developers cannot compete because they do not know who is going to be swapped in or out. That is where the problem lies. Ms. Sandidge supports staff's recommendation to not allow this blind switching in and out. Whether or not the project puts in the $4 million or has 50% of its financing committed, the Committee cannot lose track of the fact that in the housing arena, someone is always going to try to game the system. Ms. Sandidge thanked the staff for their recommendation and said she will speak more on the regulations during the next agenda item.

Jovan Agee said there has been a decision at the staff level on this issue to align with the spirit of the regulations, but there were two projects prior to this where the spirit of Section 5231 was made known, but there has been a decision to just go with current practice or past practice, even though the truth,

facts, and spirit have now been uncovered. The question becomes what the Committee will do with the reality where the spirit of a situation has been made known and staff is upholding it. Mr. Agee was part of the early BIPOC regulations, and he is not advocating one way or the other but would like to know when consistency is going to start. If projects have been harmed for the past three years, there is no better time to do the right thing than right now. They all have children and young people who look up to them, and they need to walk what they talk at some point.

Mr. Agee said he has not been here in five years because of these kinds of inconsistences from item to item. The Committee's decision on this item could undermine the decision they just made on two projects. Mr. Agee is here to bring that into clarity because a lot of people have said a lot of things that had nothing to do with the prior item or this item. They said not to do things that would hurt their project, or not to do things because last year they had something that was kind of similar and the Committee misapplied regulations, so they should keep misapplying them, even though the truth is now known. The Committee has to correct this. What Mr. Agee sees here now is what he saw then: a group of people who want to keep the status quo, many of whom were removed from their duties in their office because of it, and they are still advocating for the status quo. People like Ms. Sandidge and Mr. Leach would not be here if they wanted to keep the status quo. When regulations are introduced, there is a spirit of them, and individuals are trying to interpret them to keep the status quo. Mr. Agee wants to bring back clarity rather than convoluting the situation with regional lobbying or people saying their projects will be bumped.

Mr. Agee said he loves the words used by Mr. Velasquez: "integrity" and "messiness." Truth, fact, and integrity matter. If they don't matter, he hopes nobody goes to church on Sunday or mentors any young people because they are not setting the right standards and examples for leadership. Mr. Agee said that if the Committee is going to deny the spirit of something, like they did on the last appeal, he would ask them to be consistent. That is the word he has heard ring out today, even if it means being consistent with bad practices. He asked for clarification on what happened because he is not clear that a motion cannot be made, however he is learning new things all the time. He would like clarity on the Committee's motion, or lack thereof, on the appeals. He does not want the Committee to continue bad current practices. His project is now relegated to the January application date, although now he is hearing February, March, and April, so there is also no consistency in that. He wants to know how he will be held harmless because he does not want to hear from the Committee that they have harmed him but will work on the regulations for the next round. He wants clarity, because if he is being harmed and is asked to concede and not fight the battle of continuing bad practice, he would like prioritization and to not have to go back to staff, have the argument again, and end up back here in April debating what was said and what was not said. He would like consistency as far as whether the Committee is going to uphold the spirit of the regulations. If so, they need to go back to the last appeal. Secondly, he would like clarity as to what actually happened with the last appeal because he is not clear on what happened today versus what might happen in January.

Chairperson Ma closed public comments.

Chairperson Ma asked the Committee members if there will be a motion.

Ms. Cohen said Mr. Agee was asking about the action taken on the last appeal, and she was also surprised that there was no motion. There was a lot of discussion but no action.

Mr. Boniwell said he can speak to that.

Ms. Cohen said she is curious why he recommended that no motion be made.

Mr. Boniwell said it is not a requirement under the Bagley-Keene Open Meeting Act that the Committee necessarily take an action on every item on the agenda. It has been historic practice for this Committee to choose not to take action on an appeal, however the Committee can decide to handle it however they would like.

Ms. Cohen said she appreciates the clarity. She is not a woman of inaction. She is a woman of action. She wants to make a motion on the previous appeal, so she would like to know if she can make a motion to reopen the previous appeal.

Mr. Boniwell said the Committee is still within that item, and there was no motion or action on that item, so if Ms. Cohen would like to make a motion related to that appeal, she can do so.

Mr. Cohen said there are a couple of things happening here. She would like to make a motion to propose that staff review and propose clarifying revisions to Section 5231 of the CDLAC regulations, so they are implemented in a consistent fashion. The Committee sets the rules, so they should be consistent in their application, and they want to communicate that clearly so that even people who speak English as a second language understand the rules in which they are engaging.

Mr. Boniwell asked if he could make a recommendation.

Ms. Cohen responded affirmatively.

Mr. Boniwell said the regulations package is an upcoming item on the agenda subsequent to the appeals. The Committee could carve out a request for staff to drill down on specific regulatory language as part of the approval of the regulatory package at that point.

Ms. Cohen asked why Mr. Boniwell is suggesting that and why they cannot do what she wants.

Mr. Boniwell said the action item here is for the approval or denial of the appeals, and there has been no opportunity yet for public comments on the regulations because that item is not open right now.

Ms. Cohen said the regulation she is interested in is not on the agenda.

Mr. Boniwell said the entire regulations package is up for review.

Ms. Cohen said she has not personally worked closely with the CDLAC staff because she works through one of her own staffers. She asked if it is not customary to bring an advisor or outside counsel in so that

she can trust that staff's review process is unbiased, and opinion is not filtered into the recommendation.

Mr. Boniwell asked if Ms. Cohen is referring to a potential appeal to staff's decision on a point letter.

Ms. Cohen said that is not what she means. The motion she wants to make is for the staff to go back and review Section 5231. In addition to that, she wants to know if there is an independent outside third party who can also either tag team on the review process or also have their own independent review process, and then present both perspectives.

Mr. Boniwell said that historically, in terms of regulation development, there have been working groups formed by individuals in the industry. Additionally, the STO provides counsel independent of CDLAC and CTCAC.

Ms. Wiant said staff proactively seeks input from stakeholders and the public before they publish draft regulation changes. When issues have come up over the course of the year, and when there have been clarifications that staff wanted to make as the result of an appeal, they have included those and also solicited direct feedback. Third parties are always invited to come and meet with staff to talk through what would be better language to include in the regulations.

Ms. Cohen asked how those third parties are selected.

Ms. Wiant said the staff sends out a general email.

Ms. Cohen asked if people just respond to the email.

Ms. Wiant said yes, there was a general call to the public for input and recommendations on a regulations package that went out in September, and then staff published draft regulations in mid-October.

Ms. Cohen said she does not personally know this process, and she does not want to make an action that could lead the Committee right back to where they are.

Mr. Boniwell explained that the regulatory process involves a required public comment period and a public hearing, both of which are held before the regulations come before the Committee.

Ms. Cohen said she has indicated the direction she wants to go, but she will save her motion for the agenda item in which the regulatory package is discussed.

Mr. Agee approached the dais to speak.

Mr. Boniwell asked if public comments are closed.

Chairperson Ma said yes, public comments are closed.

Mr. Agee said he will save his comment for later, but he appreciates the additional transparency.

Ms. Cohen thanked Mr. Agee but said there are rules, and public comments are closed. She said she has expressed where she wants to go, but she will save her motion for later. She said that on the other issue, Mr. Leach makes an interesting argument that has brought some clarity. He is asking why the project is being disqualified if the math works. It sounds like there are some general semantic issues happening. It is almost like two issues, because Mr. Leach is saying that if the math works, the project should be able to go forward. Ms. Cohen is uncomfortable because the County of Riverside has not agendized this item and has not said whether they are in or out on the project in an official capacity. It is nice that someone came in and made comments on the project's behalf, but that does not move Ms. Cohen, and it actually makes her concerned. However, Mr. Leach is saying not to worry about that because the clients already have the money to supplement if the $4 million does not come through from the county. Ms. Cohen asked if she understood that correctly.

Mr. Leach responded affirmatively.

Ms. Cohen said that is certainly one issue, but the larger issue is that Mr. Leach is presenting a client that is trying to draw down on the BIPOC Pool. Ms. Cohen has a deep understanding of BIPOC issues, both because she is a member of the community herself, and also because she came from San Francisco, where she saw the same thing happen in construction and cannabis businesses. There is a tendency to find a person from a community of color who has the physical qualifications and deep rooting in the community, and then create a partnership in a joint venture and put in an application. That is, in her opinion, against the spirit of the BIPOC Pool. The pool is intended to help people who need help and are traditionally locked out of mainstream funding streams.

Ms. Cohen said she sees the push and pull of the issue here. She is looking to the Committee and staff because there has to be a defining point where they are very clear about what the spirit and intent of the BIPOC Pool are, and that needs to be written down and held to, so that when Ms. Wiant, Mr. Boniwell, and Ms. Cohen move on, the policy still stands and will withstand. The Committee can appreciate and understand that. This is probably another point where they will have to go back and bring clarity because she understands that there has been a lot of consternation around the BIPOC Pool. That is because the spirit is there, but it is soft and squishy. The Committee needs to be definitive, clear, and hard-edged. She is happy to help in this process so that they are not in this space in three or five years, and they can move forward and create a fund that the Committee is proud of and will be exemplary, not just here in the State of California, but across the entire nation. It should set the gold standard for how businesses in the BIPOC community, communities of color, women, minorities, LGBT, and everyone else interacts with government and state dollars.

Mr. Aguilar said he agrees with having a definition in the spirit of the program. When he first read about the program, he thought it was an amazing program, and he is not being used. On the contrary, he is using the failure of ASD to be able to forward and advance their ownership of this land. Second, he is not partnering with ASD going forward. This is his own BIPOC entity. Third, no one is being swapped. From the very beginning, his nonprofit emerging BIPOC has been the sole applicant, and there has been

no swapping of anything. He heard the comments, and he largely agrees with the content, but none of those comments apply to his situation, and he wants to make the facts clear. Lastly, the Alliant that Ms. Wiant was talking about is a totally different Alliant. Mr. Aguilar's board members never worked there.

Ms. Cohen asked Mr. Aguilar why he changed the name.

Mr. Aguilar asked what name she is referring to.

Ms. Cohen said that Mr. Aguilar said it was a totally different Alliant.

Mr. Aguilar said it was never changed; they were two separate entities.

Ms. Cohen asked why he selected the name.

Ms. Wiant said Mr. Aguilar's company is ANH.

Mr. Aguilar said that is correct, but he is currently an employee of ASD. His emerging nonprofit BIPOC is ANH. When he worked at ASD, his other two board members, Brian Goldberg and Dudley Benoit, were not part of ASD. They were part of a different Alliant. What is getting misaligned is that they were part of a separate entity. There was a common owner, but they were never part of his company.

Ms. Cohen thanked Mr. Aguilar for the correction and apologized if she insulted him; she was speaking in generalizations about people being substituted out or marriages being made as a matter of convenience, not specifically about him. However, the Committee would be naïve and foolish to think that these issues do not exist. That is the issue that the Committee wants to prevent. She appreciates the clarification on the different Alliant companies, although it is still a little bit confusing. She asked staff how they could go about reprioritizing the applicants the Committee is hearing from today. She imagines that the applicant who lost the appeal will go back and make course corrections. She said she does not need an answer now, but she would like to plant the idea because she does not know the answer. When the Committee talks about regulation changes and people coming into compliance with the regulations, she wants to know if they will be sent to the back of the line. She is trying to figure out what is the fairest process.

Ms. Wiant said there is no preference given to projects that have previously applied. In a new application round, everyone comes in as equals to compete freshly. The concern about giving a preference has always been that just because a project has previously applied, it does not mean it is inherently better than a brand-new project. There are a lot of projects that have applied for years, so those projects would bump all of the projects that are getting awarded today. Every application round is treated as a new round.

Ms. Cohen said that if she is hearing Ms. Wiant correctly, these projects would go to the end of the line.

Ms. Wiant said they would not go to the end of the line because CDLAC does not maintain a queue. It would be a fresh application with fresh competition, using the same rules and criteria.

Chairperson Ma said she thinks there has been an exception because she recalls discussing applicants being able to roll over their application.

Ms. Wiant said she was not suggesting giving a preference. She was suggesting that in the same application year, staff would accept materials that were submitted with an application for Round 1 and not require an update to those materials. For instance, a financing letter would not have to be re-dated for Round 2. Staff typically would not roll documents from Round 2 of one year to Round 1 of the next year for those types of documents. However, since Round 1 of next year is so close to Round 2 of this year, they could look at issuing a memo that would apply not just to these projects but to any project that applied in Round 2 this year, allowing them to not have to update documents for Round 1 of next year.

Ms. Perrault asked for clarification that that would only apply if nothing had changed.

Ms. Wiant said yes, it would apply as long as nothing had changed. These applications would still have to be resubmitted because the facts are now different. They have different commitments that they did not have before. Certain documents that are attachments to the application, like evidence of site control, could be allowed to be copied and resubmitted.

Mr. Boniwell said that could be allowed provided that the documents were not expired.

Chairperson Ma said that over the last six years, the Committee has made a lot of exceptions to try to make sure that they did not stop the process and continued to fund as many applications as possible. Her concern right now is the federal funding and what can be done. She heard Mr. Agee express his concern that the Committee would talk and consider changes but still do things as usual. If the Committee is concerned about the federal, state, city, and county funding, they need to determine if there can be some priority for making sure those funds are tied up.

Ms. Wiant said that would require a regulation change to add criteria and scoring in the application to allow a priority for certain things. She believes a written public comment period allowing for responses would be required for such a material application change.

Chairperson Ma said the flexibility could be that the Committee does not require everybody to resubmit all the documents and treat Round 1 next year as if it were a third round this year.

Ms. Wiant said the applicants would have to re-apply for Round 1, but staff could issue a notice to allow certain documentation to not have to be re-dated or re-gathered. It would be the same as what is currently allowed to roll over from Round 1 to Round 2, in the 9% program in particular. Staff could issue that same memo to allow a rollover from Round 2 of 2024 to Round 1 of 2025. Staff could issue guidance to all applicants about what that would look like. That should provide a little bit of relief to the cost of reapplying in January.

Chairperson Ma said that otherwise, applicants would need to re-hire attorneys, who would essentially double charge them.

Ms. Wiant said perhaps that could be the case.

Chairperson Ma asked how much the application fee is.

Ms. Wiant responded that the fee is $1,200.

Chairperson Ma called a recess at 10:56 a.m.

The meeting resumed at 11:04 a.m.

Chairperson Ma asked if there is still another appeal left in this agenda item.

Ms. Wiant said that appellant withdrew, so there are only two remaining.

Chairperson Ma said this item is still open and the Committee may make a motion.

Ms. Wiant said that the Committee can make a motion to deny an appeal, but typically the practice has been to not have to do that on the record. They could just choose to not make a motion to approve an appeal and move on.

Mr. Aguilar said that whatever happens is the Committee's decision, but he would like clarification on if his appeal were denied, if he would be disbarred from applying again in future rounds with his entity as it is today. This process has not been clear to him, and he has done everything to the letter of the law. He has tried to make his application as clear and concise as possible, but it seems to be impossible.

Ms. Wiant said that there are two items before the Committee today for appeal. If Mr. Aguilar is asking in terms of the BIPOC Pool, the staff is proposing a prequalification process as part of the regulations package, so that will happen provided that the regulations package moves forward. There will be a prequalification process for BIPOC Pool eligibility, and staff can work with BIPOC applicants to figure out how to make sure their entity is solid when they apply.

Chairperson Ma said it would not disqualify Mr. Aguilar if his appeal were denied today. He could come back and apply again in January.

Mr. Garcia said the question seems to be whether they are "BIPOC enough." He asked if that is the issue because he is unclear on their BIPOC status.

Ms. Cohen said they are BIPOC enough and they qualify.

Ms. Wiant said there are two issues before the Committee today: BIPOC eligibility and the missing $4 million commitment.

Chairperson Ma said she thinks she heard that when the staff went to check on all the project's revenue sources, the $4 million was not clear or clean. When they looked at the County of Riverside's documentation, the name of the company approved was not Mr. Aguilar's company but rather ASD.

Mr. Garcia asked if there is no issue on the BIPOC qualification.

Chairperson Ma said that is right.

Ms. Wiant said the Committee does not need to make a decision on the BIPOC issue if the $4 million is still in question.

Chairperson Ma said staff's job is to look at the application. They do not know who the applicants are. They will check and make sure everything pencils out. This application had a flag, so staff dug deeper and found that the commitment does not state the name of the applicant; it states the name of ASD.

Ms. Cohen asked why the name of ANH is not on the commitment.

Mr. Leach approached the dais to answer Ms. Cohen's question.

Ms. Cohen said the applicants are Mr. Leach's clients and asked why they cannot answer the question.

Mr. Garcia said he and Mr. Aguilar partnered on this project after Mr. Aguilar came to Mr. Garcia and said he had a great project and needed Mr. Garcia's help because he had the necessary experience.

Ms. Cohen said she understands Mr. Garcia is the co-applicant.

Mr. Leach said he is answering the question because he has a better memory. The county made the commitment prior to Mr. Garcia getting involved in the transaction. They made the commitment to ASD, and then after the fact, ASD decided to dispose of the property and transfer their funding commitments to someone else. The county made the commitment to ASD because they asked for the money. The county awarded roughly $9 million in two awards of $4 million and $5 million. ASD determined that they could not win, and they needed to dispose of the property.

Ms. Cohen asked why ASD said they could not win.

Mr. Leach said their score was not good enough to win.

Ms. Cohen asked what happened next.

Mr. Leach said they needed to dispose of the property, and Mr. Aguilar said he would love the opportunity to develop the project with ANH and asked ASD to assign the county loan and vouchers to him. When he realized he did not meet the one project minimum in terms of experience, he asked Mr. Garcia to join him. That is why the old commitments are in the name of ASD. ASD was the original developer and has since moved on.

Ms. Cohen asked Mr. Leach if he understands how it would have been confusing for staff when they were reviewing the application because everything Mr. Leach described was happening behind the scenes. Staff made the recommendation for the denial based on the application. Ms. Cohen said Mr. Leach is now here saying that he has an explanation.

Chairperson Ma said they are talking about an assignment, not a sale, so instead of sale documents, the documents are all assignment documents. Those documents do not state that the award has been transferred to the applicant.

Ms. Wiant said the issue is that CDLAC has nothing in writing from the County of Riverside stating that the funds are being given to ANH.

Ms. Cohen asked who cares if the County of Riverside says they are receiving the funds when the applicants have enough to fill the $4 million gap from other sources.

Ms. Wiant said it is inappropriate to say that the project's construction loan is big enough to cover this because that lender made the loan under the assumption that the project had the funding sources that were in the application. Staff does not go through the sources and decide if an application can move forward without a particular source of funds. These were all conditions that were part of why the construction lender gave the loan to the project in the amount that they gave. The project may not have that loan at that size without the $4 million commitment.

Mr. Leach said the applicant has a letter from a construction lender stating that they will loan the money. It does state anything about the loan being contingent upon receiving the $4 million ARPA loan. It is not conditioned upon those things. It is a commitment to make a big loan to build a project.

Ms. Cohen said she is ready to make a motion and move on.

MOTION: Ms. Cohen motioned to deny the appeal for Vista Heights Apartments (CA-24-718), and Ms. Perrault seconded the motion.

The motion passed unanimously via roll call vote.

Chairperson Ma asked the Committee if they would make a motion on the first appeal for VA Building 408 (CA-24-642).

Ms. Cohen said she would like to leave that open until after the conversation about the regulations.

Chairperson Ma said they cannot not go back. She asked if they could leave this open until after the conversation about the regulations.

Mr. Boniwell said the Committee can move agenda items around, so they could leave this agenda item open until after the conversation about the regulations.

Ms. Wiant said the challenge is that Agenda Item 6, the approval of the Final Recommendation List, is dependent on the actions of the Committee taken or not taken on Agenda Item 5.

AMENDED MOTION: Ms. Cohen motioned to deny the appeals for both for Vista Heights Apartments (CA-24-718) and VA Building 408 (CA-24-642).

Ms. Cohen said she motioned to deny both appeals so there is consistency, but she will be taking action to work to bring more clarity so that the Committee is not continually in this place.

Mr. Boniwell said there is already a vote on Vista Heights Apartments, so this would just be a motion to deny the appeal for VA Building 408.

Chairperson Ma said Ms. Cohen would like to take a definitive vote.

Mr. Boniwell said that is fine.

Ms. Cohen said she does want to vote, but she asked what the impact of a vote would be.

Chairperson Ma said the impact would be the same.

Ms. Cohen said they can leave it as is.

Ms. Perrault said the Committee will just not approve the appeal.

Mr. Boniwell said the Committee should table the current motion.

Ms. Cohen said she is tabling the current motion and asked if they need to take a vote on that.

Mr. Boniwell said no, because it was just tabled.

AMENDED MOTION: Ms. Cohen motioned to revisit the decision on the appeal for Vista Heights Apartments (CA-24-718).

The motion passed unanimously via roll call vote.

Mr. Boniwell said the item is now open, so Ms. Cohen can decide not to make a motion, close this item, and move on to the next agenda item.

Ms. Cohen said that is what she would like to do.

The Committee took no action on this item.

6. *Agenda Item:* **2024 Round 2 Award of Allocation of Qualified Private Activity Bonds for QRRP (Cal. Code Regs., tit. 4, § 5037, § 5080)** – *(Action Item)*
   Presented by: D.C. Navarrette

Mr. Navarrette reported that 193 applications were received on August 27, 2024, and staff is recommending 79 awards for Committee approval. This includes 8,789 total units, 8,680 low-income units, and 1,219 units for homeless individuals. The total allocation is $2,752,007,768. The applications have been reviewed for completeness and compliance with federal and state laws.

Chairperson Ma called for public comments:

Mali LaGoe, City Manager for the City of Scotts Valley, asked the Committee to turn to page 468 in the E-Binder, which is the Project Staff Report for 4575 Scotts Valley Apartments (CA-24-771). Ms. LaGoe said she is joined in the room today by Derek Timm, Vice Mayor of the City of Scotts Valley, as well as Council Members Jack Dilles and Allan Timms, who are joining today on Teams. Ms. LaGoe asked the Committee to consider removing 4575 Scotts Valley Apartments from the recommendation list. She said she is not making this request because Scotts Valley does not support affordable housing. In fact, they are working with the same developer on three additional projects in the community for a total of 365 units.

Ms. LaGoe passed out a handout to the Committee members and asked them to review the first page, which describes the Scotts Valley community. Scotts Valley is a small mountain community with 11,000 residents. It is the founding location of several technology companies, including Seagate, Netflix, and Borland, and the city has more patents per capita than Palo Alto. Ms. LaGoe said the second page of the handout has information about the city's Certified Housing Element. Scotts Valley supports affordable housing and is incredibly proud to have worked with the HCD staff to get an on-time Certified Housing Element. On page two of the handout, there are photos of the properties in the city's Housing Element that need to be redeveloped. The city supports redevelopment of those specific properties. The city has identified over 20 properties on the same road as 4575 Scotts Valley Apartments. Additionally, the city has also completed its year one requirements for staying in compliance with its Housing Element.

Ms. LaGoe said 4575 Scotts Valley Apartments is shown on page three of the handout. This is a building that was built by Seagate Technologies, along with an identical building right behind it. It was built as one of the company's three worldwide data technology centers, and it has 42,000 square feet of professional office space. It is currently occupied, and it is one of only five commercially zoned professional buildings in Scotts Valley that does not allow residential development. This is a high-tech building, and it should not be torn down. Page four of the handout lists some issues that have been highlighted by the neighboring property's attorney because the two Seagate buildings are now under separate ownership. However, because they were constructed at the same time, there are multiple easements as well as utility and property line issues that intertwine the two buildings. The city has received a letter from the attorney outlining these issues, and it is attached to the back of the handout provided to the Committee. The attorney should also be on Teams today.

Ms. LaGoe said the last page of her handout speaks to the financing of the project. The project has an $813,000 per-unit cost. That is an unreasonable cost in the community for building housing. The developer is paying more than double the value of the land to acquire the property. The construction costs have probably been driven by having to demolish a 42,000 square foot steel and concrete building as part of the project. There is no local dollar match in the financing for this project because there is no local support for the project. The project is not financially prudent, and the city does not believe it is a good use of taxpayer dollars. The city's request is to remove the project. Ms. LaGoe does not understand why it scored full points in the scoring criteria for cost containment, project readiness, and local incentives. However, Ms. LaGoe has been educated this morning about how this is a complicated process and there are so many projects that staff is reviewing. Ms. Lagoe hopes some of the other projects she mentioned will make it to this Committee and will be selected for funding, but this specific project is not a good use of taxpayer dollars, nor is it supported by the local community.

Chairperson Ma asked which category this project is in.

Ms. Wiant said this is the first Affordable Housing and High Road Jobs Act of 2022 (AB 2011) streamlined project that CTCAC has received. AB 2011 is legislation that passed the legislature two years ago and was signed by the Governor that allows a streamlined approval of projects that are not consistent with the general plan or zoning if they meet other criteria that was set by the legislature.

Chairperson Ma said this is a moment of celebration.

Ms. Wiant said this is the first project received using this streamlining tool.

Chairperson Ma asked for confirmation that this is one of three projects than won in the Rural Set Aside.

Ms. Wiant said it won because it scored highest according to staff's review of the application.

Chairperson Ma said it sounds like Ms. LaGoe is saying that the project should not have scored highly because it is not wanted in the community.

Ms. LaGoe said the project is not ready because of the easement issues with the neighboring property owner. It also has a very high cost per unit, which was noted by staff in their review. It was justified by the developer, but Ms. LaGoe does not think those justifications are ample in this case.

Chairperson Ma asked who the developer is.

Ms. LaGoe said CRP Affordable Housing and Community Development is the applicant, but the developer is Workbench.

Ms. Wiant said the developer may be on the line today.

Mr. Boniwell clarified that under the CDLAC regulations, individuals who are not applicants cannot appeal applications, so this should not be treated as an appeal under the regulations. This should only be considered public comment.

Ms. Perrault said she knows there was a note about the fact that this project does not conform to the city's general plan, but she believes that issue will be addressed as part of the conversation about the regulations in the next agenda item. It does not need to conform to the plan because it is under AB 2011.

Ms. Wiant said that is correct. Under the existing regulations, there is a requirement for projects to be zoned for the intended use and to have obtained all applicable land use approvals, which allow the discretion of local elected officials. Because this project is using AB 2011, which does not require the underlying zoning to be consistent, and because it does not require the discretion of locals, staff deemed that that component of the readiness requirements did not apply to this particular project. Any ambiguities about that are cleared up in the regulation package that will be presented to the Committee later in the meeting.

Vig Kamath from CRP Affordable Housing and Community Development, the co-developer with Workbench, said 4575 Scotts Valley Apartments is a 100-unit, 100% affordable, Large Family project in the city of Scotts Valley. As Ms. Wiant stated, it is high scoring in the Rural Set Aside. The 45,000 square foot office building onsite right now has been significantly vacant for the past seven years. Currently, there is one month-to-month tenant. The developer believes it is an excellent candidate for the use of AB 2011, and they have submitted SB 330 [Housing Crisis Act of 2019] and AB 2011 applications for the city's review. The city is in the process of reviewing those applications. If there are any questions as to the project's AB 2011 qualifications, Russell Morse, CRP's outside land use attorney, is available to answer questions and clarify qualifications.

Rafa Sonnenfeld from YIMBY Law, a 501(c)(3) nonprofit housing advocacy organization, said he lives in Santa Cruz County and is a lead with the local housing advocacy organization Santa Cruz YIMBY, which strongly supports this project. Santa Cruz YIMBY is a community-based organization with hundreds of members and strongly supports affordable housing in the City of Scotts Valley. It is important to note that Santa Cruz County is one of the least affordable areas in the country and has one of the highest rates of homelessness per capita in the country. The City of Scotts Valley is contributing to that problem by having developed almost no affordable housing in the past couple of decades. This is a very much needed project, and it is shameful that the city is trying to undermine an affordable housing project such as this one. They have already been violating the law via the Permit Streamlining Act in attempting to undermine the approval of this project. Mr. Sonnenfeld encouraged the Committee to approve the funding for the project because it is desperately needed in the community.

Cherene Sandidge said she had a successful conversation with Ms. Cohen's office yesterday. She is concerned about where and how much BIPOC money is still available. She believes two projects should have been on this list, but she is confused and would like some simple math. There was $74 million in this round, and $28 million was paid out, so she wants to know what happened to the other $48 million and why another BIPOC project could not be funded. Ms. Sandidge said Ms. Wiant said something about supplements, but simplistically, if there was $74 million in the round and $28 million was given out, she wants to know where the rest of the money is because there are certainly projects that could have been funded.

Ms. Wiant said Ms. Sandidge is referring to how carryforward gets allocated. At the end of last year, CDLAC had more than $579 million in unallocated carryforward that came to 2024. That was lumped to the top of the stack, alongside 2024 allocation. That led to a total of a little over $5 billion in allocation of combined 2024 allocation and carryforward. The BIPOC Pool received 5% of that total divided between the two rounds, which led to around $74 million being available for Round 2. The project that is recommended for award is Viscar Terrace Apartments (CA-24-756), which is requesting a little over $52 million. That $52 million is being allocated using some carryforward and some 2024 allocation. CDLAC does not roll over carryforward to augment the existing pool for the next year. Whether a project has carryforward or not is irrelevant to what the pool has. After Viscar Terrace Apartments was awarded, there was about $22 million available. There was one project that requested less than that, but the regulations state that if projects are skipped to get to another project, that project has to be within 75% of the tiebreaker of the previous project that would have received the allocation, and that

project did not meet that requirement. That is why only $52 million is being allocated from the BIPOC Pool to one project. Ms. Wiant is happy to revisit how projects are skipped in the BIPOC Pool as part of the longer-term conversation about how to make the most efficient use of the BIPOC resources. Ms. Wiant believes the Committee will be having that conversation later. As the regulations read, and according to the way carryforward is allocated, there was no allocation lost or taken away from the BIPOC Pool. That is just the way it works.

Chairperson Ma asked if the allocation would go to the next project if the second highest project did not qualify.

Ms. Wiant said there were many projects skipped to get to a project that requested as little bond allocation as was remaining in the pool. Based on the rules related to skipping and tiebreaker scores, that project did not get funded.

Chairperson Ma asked where the excess allocation went.

Ms. Wiant said everything keeps moving through the sort, and projects are funded with whatever remaining bond allocation is available after the pools, set asides, and geographic regions. It then goes into the surplus, and then whatever is left remaining at the end of the year, which is expected to be around $18 million, will be handled in a later item on the agenda. That will be unallocated carryforward for next year.

Chairperson Ma said the Committee discussed skipping about four years ago.

Derek Timm, Vice Mayor of Scotts Valley, said he heard the previous public comment stating that Scotts Valley is not interested in affordable housing, but nothing could be further from the truth. The city's Housing Element is looking forward to building 25% growth in the city, and they have allocated for 2,600 units. Over 50% growth is what has been updated in the city's full general plan, and that is just over the next few years. The city is doing its part and overbuilt during the last Regional Housing Need Allocation (RHNA) cycle. They built more than what was required in the Housing Element. The city is supportive of affordable housing, but the project on the recommendation list today in Scotts Valley is just not right. There are still issues to be worked out with the neighboring property owner. Mr. Timm is not sure if the Committee will hear from the neighboring property owner's attorney today. There are easement and access issues and challenges with utilities between the properties. This project might be better to come back for a later cycle when these issues have been resolved.

Mr. Timm said there is also an unusually high cost per unit, which the City Manager spoke about. Within the project's fees, there is a $10 million developer fee that is contributing to the per-unit cost of over $800,000. Also, one of the co-developers on the project is an architect, and the project has allocated over $2 million toward architectural fees, which feels like a double dip on costs that is contributing to the high cost at the end. The project does not meet the city's objective design standards. There is a host of other reasons. As staff said earlier, this is the first project of this type from which the state has seen a funding request, and Mr. Timm does not know if the state wants to get off on the wrong foot on this first project because it is not being supported by the local jurisdiction and there are no matching funds

available for the project. The same developer has three other projects, totaling 365 units, that are in the city's Housing Element and are supported by the city. The city wants to work with the developer to make those projects happen, but this project is not right. Mr. Timm asked the Committee to remove the project from the funding queue.

Chairperson Ma said she views CDLAC and CTCAC as providing funding once everything on a project is done. CDLAC and CTCAC do not get in the middle of local planning decisions because they assume everything has been worked out when projects apply. It has not been the Committee's role to decide which projects they like and which ones they do not. Projects apply and either qualify or not. If they get on the list, they are going to get awarded. Chairperson Ma asked Mr. Velasquez to comment on whether this is going to be a new phenomenon for these types of projects.

Mr. Velasquez said he did not plan to make a comment on 4575 Scotts Valley Apartments, but now he is compelled to say something as the Director of HCD. He also has another comment as a reminder to the Committee. Mr. Velasquez said his first comment is directed at the developers in the room and those who are joining virtually. A Certified Housing Element in any jurisdiction in which a developer is considering applying to produce affordable housing does not waive the local jurisdiction's obligations to comply with over a couple dozen ministerial approval and streamlining legislations that the Governor has signed into law, whether the site that a developer is proposing to use for affordable housing is in that Housing Element or not. It is very important for the developers to know that, and they should also know that if they are using the Housing Accountability Act, or in this case AB 2011, or any other streamlining bill that has been codified into law, and they continue to face hurdles to get their project through, HCD has a very effective and capable Housing Accountability Unit that works closely with the Attorney General to make sure local jurisdictions are fulfilling their obligations under state law. It is important for the development community to understand that HCD is on their side. The state is short more than two million new homes to stabilize the market, and HCD is going to be on their side to make sure the localities comply with state law.

Mr. Velasquez said his second comment is a reminder to the Committee. The Committee is evaluating what the staff is putting forth for allocation of tax-exempt bonds on the merits of those applications, not as to whether projects comply with anything outside of the merits under the regulatory framework of the tax-exempt bonds and tax credit programs. He knows the Committee knows that, but he wanted to remind them.

Anthony Carroll from the Nor Cal Carpenters Union (NCCU) said 4575 Scotts Valley Apartments is the first AB 2011 project to go before CDLAC and CTCAC for funding, and this should be a moment of celebration. This is a significantly underused commercial property in a county that desperately needs every unit of housing it can get. Approving this project is not getting off on the wrong foot. This is an applicant using a piece of legislation that is cutting through the roadblocks the legislation was designed to cut through. Funding 100 units of 100% affordable housing built with strong labor standards and healthcare for workers will never be getting off on the wrong foot. Mr. Carroll thanked Mr. Velasquez for his input and said he hopes this conversation sets a precedent that this body cannot be used for an

argument of last resort for communities that are trying to jam up projects that they do not necessarily agree with.

Kyle Swarens said he has been a union carpenter for 21 years, doing multiple types of work in the industry. He is here to speak in favor of 4575 Scotts Valley Apartments. The developer has not just made a commitment to the community to provide affordable housing, but they have made a commitment to labor also. Often, labor is overlooked when it comes to construction. Mr. Swarens tends to ask people what the cost is to the workforce in the community when construction workers are not taken into consideration when a project is built. The workers on this project will have healthcare and apprenticeship training. Mr. Swarens went through his apprenticeship program 21 years ago when he had never used a tool in his life. Apprenticeship training is a useful tool to make sure workers are successful in the industry. This developer has made these commitments, so not only are they trying to make a good commitment to the community, but also to the workforce by providing well-paying jobs to the next generation of workers.

Harvey McKeon from NCCU echoed the comments made by the last two speakers wholeheartedly supporting 4575 Scotts Valley Apartments. Mr. McKeon expressed the importance of working toward funding the Venn diagram of projects that work for the development community and workers. This project ticks both of those boxes, and Mr. McKeon thinks it also works for residents. He hears the concerns that the representatives from Scotts Valley raised, but he agrees with Chairperson Ma that some of these issues are not matters for this body to opine on. NCCU fully supports this project and hopes to see it move forward today.

Tim Gordin, one of the owners of Workbench, the co-developer of 4575 Scotts Valley Apartments, said he had a list of things to talk about, but he decided to scrap that and thank the Committee and everyone online who is showing them support, not only through what they do here, but also at the state level to change housing policies. 100% of Workbench's multifamily projects get approved using state policies because that is the only way to make projects work when there are local policies and ordinances that do not do enough. He said thank you to everyone here and said he is happy to answer questions.

Russell Morse, Land Use Attorney at Meyers Nave in Oakland, thanked Mr. Velasquez for his comments. He said he was surprised by the city's last minute unannounced protest of 4575 Scotts Valley Apartments. Not only does the project meet the requirements of AB 2011, but at every stage of this process, the applicant has been responsive to the city's requests, of which there have been many. The applicant has acted with openness and transparency throughout the process. Whoever said earlier that this is a moment of celebration that an AB 2011 project came to the Committee is absolutely right. This is state law working and doing what it is supposed to be doing. The last 100% affordable housing project in Scotts Valley was over 30 years ago.

Mr. Morse said he does not want to get into the details of AB 2011 and how this project is eligible, but it meets both the intent and the black letter law of AB 2011. The comments raised by the Vice Mayor that this project is not ready, whether because of easement issues, access issues, or utility issues, are unfortunately red herrings. Those things can all be worked out, and often those are a reflection of the

city asking for studies or other types of exactions which are not appropriate. The project is ready, and the only reason it would not be ready would be due to city delay. Mr. Morse said this is not the appropriate forum to discuss whether the property is eligible for AB 2011; the project meets the CDLAC application criteria, and it should be approved.

Chairperson Ma closed public comments.

MOTION: Ms. Perrault motioned to approve staff's recommendation, and Ms. Cohen seconded the motion.

The motion passed unanimously via roll call vote.

7. *Agenda Item:* **Resolution No. 24-007, Adoption of Regular Rulemaking for Amendments to the California Debt Limit Allocation Committee Regulations (Cal. Code Regs., tit. 4, § 5000 et seq.) (Gov. Code, § 8869.94.)** – *(Action Item)*
   Presented by: D.C. Navarrette and Marina Wiant

Mr. Navarrette said staff is presenting a regulations package for Committee approval. Staff requested feedback on the regulations on September 10, 2024, and released proposed regulation changes on October 29, 2024. A public hearing was held on November 12, 2024, and staff received comments through November 10, 2024. After reviewing comments and making adjustments, staff created a final set of regulations for Committee approval.

Ms. Wiant said there are two technical changes that failed to make it into the final package, which staff would like to add when there is a motion. The first item is in Section 5170; under the definition of a BIPOC project, staff made it clear that it is a qualifying BIPOC entity, which is consistent with the prequalification process. This further clarifies that an applicant needs to prequalify in order to be eligible. The second item is in Section 5231; in the final regulations, staff proposed an addition in the rent savings benefit to clarify the difference in how it is calculated for projects with federal project-based assistance. Staff added that a similar local program that is approved by the Executive Director can also count. That item was added in one place but not in the second place, so they wanted to also include it in the second place. Staff is requesting that those two technical changes be included when there is a motion. Staff will not go through all the regulation items, but they will answer questions.

Chairperson Ma called for public comments:

Caleb Roope, Board Member at the California Housing Consortium (CHC), said CHC constituted a working group four or five years ago, which has been kept active even after the major lift of the regulations and new scoring was done. CHC is still working on that and appreciates staff's work on the regulations and all the changes that were made in response to various stakeholder concerns and ideas. Mr. Roope said his colleague, Kevin Leichner from Community Housing Works, co-chairs the CHC working group with Mr. Roope. Mr. Roope introduced Marina Espinoza, CHC's new Policy Director and leader of the working group.

Ms. Espinoza said she worked for the State Assembly prior to becoming the Policy Director at CHC, and prior to that, she worked for the State Association of Counties. Since she is still relatively new to CHC, she wanted to introduce herself. She staffs the CTCAC/CDLAC working group at CHC. She thanked the Committee and staff for the proposed changes to the regulations and for reviewing all the feedback provided to them.

Mr. Roope said he has a couple of comments on the regulations for staff to consider in the context of the changes the Committee may make today. One great change is the percentage of a project that needs to be permanent supportive housing for it to qualify. It used to be 50%, but that number was brought down to 25%. That is a good, bipartisan supported change. Mr. Roope said Nevada Merriman at MidPen Housing pointed out in the working group that in the Affirmatively Furthering Fair Housing scoring category, that number is still 50%. Perhaps CDLAC intends to change that to 25% like the rest of the regulations. It is not necessarily required, but it would be a great fit for program consistency.

Mr. Roope said his other comment is regarding the concept of a "fiscal agent," which has been introduced into the process. He requested that there be flexibility. He understands that there have been some reporting things [Annual Debt Transparency Reports (ADTR)] that have been in question over the years. The bond issuers have always consistently filled those out and completed them, and there is no need for the introduction of a fiscal agent. Not all issuers are necessarily doing that on a regular basis, but Mr. Roope would like flexibility in that provision so if a bond issuer is doing it, a fiscal agent is not needed. Fiscal agents cost money to the operation of the project and can cost anywhere from $3,000 to $5,000 per year. It may not sound like a lot, but every dollar matters when operating these properties. It would be helpful to have another qualified party also be able to perform that task. If the issuers are not doing it, CDLAC should be issuing negative points. It is the law and needs to be done, and staff has been key in putting this in the regulations, so it is very clear that it needs to get done. Mr. Roope would just like flexibility for the issuers that are already doing it, so projects do not have to introduce the concept of adding another party to the transaction. He asked the Committee to consider his ideas, preferably today, but if not, then in a future package.

Ms. Wiant said that on the fiscal agent point, if a bond issuer is already completing the ADTR, they likely have a fiscal agent that is serving in that role, and the project would meet that requirement through the bond issuer. Regarding the Affirmatively Furthering Fair Housing point, those comments were received between the draft and final regulations. That is a much bigger issue that the staff needs to spend more time on to figure out the policies in general around the 120th point.

Chairperson Ma asked if that is unclear.

Ms. Wiant said she thinks it is clear, but staff can clean up the language to be clearer about the intent if necessary.

Cherene Sandidge thanked the staff for being helpful and trying to clear up and better define the BIPOC issue. As the Committee can see from the conversation today, there is still work to be done. One of the things Ms. Sandidge would like to be considered in the regulations package is for a BIPOC to be qualified on its own merits. It is confusing for BIPOCs because they do not know who they are actually competing

against when larger organizations are putting in their experience, money, time, etc., and then community-based developers cannot qualify. This brings up the skipping issue because some folks are never going to score as high as other folks who are stacking the deck against them. Ms. Sandidge is concerned because two smaller developers could have used the funding. The qualifications vetting process needs to be as near perfect as possible, which means that CDLAC should be looking at things like obtaining state certificates from these organizations and ensuring they have paid their taxes. Developers need to have experience with these very complex properties, which is why there is an experience requirement of one project. Ms. Sandidge knows the scoring will go down; it is okay if an emerging BIPOC comes in with a 65% score. That means that CDLAC is looking at them on their merits, not someone else's property management experience that is pushing their score up. A score of 120 for an emerging developer set aside was never envisioned, but because everyone has learned how to game it, that is where the scores are coming in. Ms. Sandidge has been in the industry long enough to know that having a 150% tiebreaker is not unusual. Projects used to be simpler with less tiebreaking, but because of the complexity of the industry now and the scarcity of money, it has become an issue.

Ms. Sandidge asked for two things to be added to the vetting process in addition to the recommendation for the definition of a qualifying BIPOC. First, the entity should be vetted through the state process and be required to submit certificates of good standing evidencing that they have complied with the State of California's rules and regulations, including Franchise Tax Board, in order to receive money. Second, the entity should be required to qualify on its own merits. In other words, one of the organizations that came here before should not have even been dealing with ASD. The BIPOC developers could have applied on their own. Ms. Sandidge knows that BIPOC entities will not achieve top scores, but this is the only fair way for this to play out. Additionally, BDF has a working group, and they have put forth a six-page letter to the staff. Staff asked them to submit this through public comments, which they did, and a lot of the comments are reflected in the regulations, so staff did a good job. However, changes are still needed, including the two requests Ms. Sandidge outlined. Additionally, Ms. Sandidge would like to restrict the BIPOC Pool to one award per applicant per year. In the last round, about three of the same people applied supporting different organizations. The Committee should have a better look at that and understand that BIPOCs are applying on their own merits, not coming up with an organization that submitted three applications in one year.

Ms. Sandidge said BDF is also asking for a little bit more clarity and specificity on the Executive Director qualifying who is a BIPOC. Right now, BDF is happy if it is Ms. Wiant, but she might move on, so for the next person coming in, they would like to have specific definitions of what a BIPOC is. This was a recent issue that Ms. Sandidge wanted to comment on since there was such a short period of time to comment on the regulations. Additionally, Ms. Sandidge does not want anyone to be taken advantage of, and what she is seeing is organizations taking the lion's share and still requiring the smaller BIPOC entity to bring to the table things like equalization. Based on that, Ms. Sandidge thinks these issues can be solved by diving down and clearing up the definition, including building in the original spirit and intent of the pool.

William Leach said CDLAC and CTCAC staff have done a fabulous job this year with multiple rounds and regulation packages. Regarding the regulations, he agrees with Ms. Sandidge that any documentation

that can be done by the Executive Director for the BIPOC prequalification process will provide that position a lot of coverage regarding how they came to that determination. It will be a tough process, so he would love if it that would end up being a memo or procedural document. More coverage about how those hard decisions will be made would be excellent. Mr. Leach also thanked staff for the recommended change to the Special Needs project requirements. He thinks more developers are going to be willing to build Special Needs housing into their projects with the 25% requirement rather than the 45% requirement. Additionally, he commends CTCAC for putting in regulation changes that will potentially offset if there are fewer units in each project, and maybe more Special Needs projects can be done. It is a good idea to do Special Needs projects and increase the number of projects that have Special Needs units. Mr. Leach likes that strategy. Also, he thinks allowing the BIPOC Pool to use an experienced nonprofit to help them get the welfare exemption will streamline a lot of projects and provide more options for BIPOC developers, and he supports that regulation change.

Greg Comanor from Daylight Community Development said he wanted to talk about the Special Needs Set Aside. His understanding of the regulations is that if a project is less than 75% Special Needs under the current regulations, the project has to have a housing type for the other non-Special Needs units. It is very challenging for projects to elect a certain percentage of units to be Special Needs while the other units have to have a housing type. For example, the other units would have to be Senior or Large Family, and in Mr. Comanor's opinion, the non-Special Needs units should be able to be non-targeted.

Ms. Wiant said the consistency between the changes being made at CTCAC and CDLAC should solve that problem because the housing type definitions will be different now for CTCAC also.

Reese Jarrett, President of E. Smith and Company, said he would like to briefly discuss the BIPOC Pool regulation changes. He thanked Ms. Wiant, Mr. Navarrette, and the staff for their excellent work with the stakeholders and for providing outreach and input that resulted in significant and useable regulation changes. Mr. Jarrett is in favor of the regulation changes that would allow for the admission of a nonprofit experienced developer to assist a BIPOC developer in achieving, obtaining, and maintaining the real estate tax exemption for a project. It is a very significant part of the financial structure of a project, and it has to not only be obtained, but also maintained for the entire compliance period, which is significant for the investors and lenders. This particular change is significant and important, and Mr. Jarrett encourages the Committee to support it.

Anthony Yannatta from TSA Housing said he would like to comment on the potential addition of two project types into the Preservation Pool. First and foremost, to the extent that these new project types were or were not accounted for in the demand survey, he would like to ensure that the demand that will come from them will be added to whatever was previously considered for the Preservation Pool. He also emphasized the importance of federal investment in community and economic development by way of HUD-assisted projects. A lot of those projects have been on the sidelines for the past two or three years awaiting allocation and are now in line to perhaps receive prioritization for their preservation and rehabilitation. Adding two additional project types at this time could reduce that investment and further deprioritize them. Some of the concepts and themes that have been discussed throughout the meeting today about the dynamics between local, state, and federal priorities, indicate

that the Committee is now going to be prioritizing HCD's Portfolio Reinvestment Program (PRP) ahead of federally assisted programs. Mr. Yannatta would like HCD, as a constituent that understands local and federal needs, to evaluate and communicate exactly what its demand will be and ensure that the Preservation Pool is adequately and fairly shared amongst the other program constituents.

Mr. Yannatta said he would like the Committee to consider SRO conversions and perhaps look at the most recently passed $6 billion bond for mental health and treatment facilities. It seems as though CDLAC is now reducing Special Needs requirements for new construction while adding requirements in the Preservation Pool. Investors, lenders, partners, sponsors, and guarantors are seeing Special Needs projects in their portfolios and have been digesting this shift in the industry for the last few years. Mr. Yannatta asked the Committee to recategorize SRO conversions perhaps into their own category with more of a Special Needs emphasis and listen for more anecdotal evidence from the investors, financial sources, and institutions that have provided the backbone of investment and long-term safe yields and returns that have allowed the industry to add more provisions, services, and additions to the underlying tax credit programs. The bottom line is that as the Committee is allocating the Preservation Pool, they should take into consideration HCD's role at the table, the impact of Special Needs, and the extreme importance of locally prioritized projects that are federally assisted and their long-term preservation.

Mike West from Inland West said that as an emerging BIPOC developer, he supports the proposed change to the definition of a BIPOC project. The proposed change to allow a BIPOC project to include an experienced nonprofit partner will help BIPOC developers gain access to local and state programs that require full experience while also giving investors and lenders more confidence in BIPOC developers and their projects. Providing more opportunities for developing quality affordable housing throughout the state will benefit everyone.

Chairperson Ma said in response to Mr. Yannatta's comments that she was a supporter of an SRO set aside when she first started because San Francisco has a lot of SROs, and as part of the Governor's plan to try to house as many people as possible, SROs are usually the first step. Chairperson Ma likes the idea of having a separate SRO set aside because they are so specific, versus having them compete in another pool. She asked Mr. Velasquez to share his thoughts.

Mr. Velasquez said he agrees, generally speaking, but he does not know if the demand survey caught that. HCD struggles every day with many of the sponsors and partners who want to bring SROs into more financial solvency and have a clear path. SROs are a critical part of housing, especially in urban cores, for chronically homeless persons. Mr. Velasquez sees the benefit of it, and typically the Committee follows what is indicated in the demand survey. If more data can be brought to the Committee explaining the demand, he is happy to consider that in future meetings.

Ms. Wiant said there are a lot of requests to find a way to address some of the extremely old SRO properties. The expansion of the Preservation Pool is also specific to SROs that are being turned into units that include both a full kitchen and a bathroom, as opposed to just rehabilitating and maintaining existing SROs. It is a little bit narrower. To Mr. Yannatta's point, this would potentially increase the demand to the Preservation Pool, and as staff are reviewing the demand survey, they may be looking to

increase the Preservation Pool to address a lot of these concerns when they come back to the Committee in January. Every unit being lost and offset with a new unit is breaking even. Staff has heard from the stakeholders, and although there are limited resources and new construction has been prioritized, they still want to make sure preservation projects have a place.

Chairperson Ma said new construction has been the priority, and she thought things would slow down this year. She is surprised, given the financial situation, that the program is oversubscribed, and more applications have been received. She will still continue to push for rehabilitation projects because those projects are getting older and have deferred maintenance, and if they get to the point that they potentially have to be red tagged, they may not be able to be brought back. Chairperson Ma is still pushing and knows that many people have been waiting patiently to be able to bring their rehabilitation projects forward. She thought this was going to be the year, but it still was not. She had previously asked Ms. Wiant what she was seeing for next year, and Ms. Wiant indicated that next year is still not the year.

Ms. Wiant said staff will look at the numbers and see what they can do, and they will come to the Committee in January with the breakdown of their recommendations for the amount of bonds for each set aside.

Mr. Yannatta said there is also the PRP with HCD, to which almost $200 million was awarded. He asked what impact that would have. He said if the demand survey is excluding both SROs and the PRP, then perhaps CDLAC is looking at the regulations without the full set of facts. Even if there are dollars left for preservation, it looks like they will be swept by the PRP.

Chairperson Ma asked what PRP stands for.

Mr. Velasquez said it is a preservation program that HCD launched a couple of years ago for projects that had HCD funding with expiring commitments within the following three years, and it was then expanded to projects with commitments expiring in the following five years. He can bring that data to augment whatever the demand survey indicates, and he would like to discuss this with Ms. Wiant in early 2025. This would give the Committee a better sense of the trend with respect to SRO conversions and general preservation.

J.T. Harechmak from the Non-Profit Housing Association of Northern California (NPH) thanked the staff for the amount of work that has gone into this update, and he echoed CHC's previous comments. He thanked staff specifically for the new 25% requirement in the Special Needs Set Aside, and he appreciates them hearing this request. Mr. Harechmak understands staff's hesitance to amend the 120th point to make what he believes is a conforming change to accommodate this new 25% requirement, but without this change, he does not expect to see the impact of these changes to the Special Needs Set Aside. He is happy to resume this discussion in the next round of regulation updates.

Ben Barker from the California Municipal Finance Authority (CMFA) said that at this point, it is probably fine to push the fiscal agent conversation back a little while. If the issuers have not done their ADTR, which are due to the California Debt and Investment Advisory Commission (CDIAC) at this point, adding a fiscal agent is not going to help. They should have already been done. The fiscal agent implementation

is supposed to help issuers file those reports. Mr. Barker has worked with a number of fiscal agents, and he thinks the total cost should be around a couple hundred dollars per year to get this done. They are not looking at doing draws or anything else; they are strictly filing the ADTR to CDIAC. Unfortunately, it is a law that does not make any sense that was implemented seven or eight years ago and does not do what it is supposed to be doing, but it is still a law through CDIAC and a regulation that needs to be followed by all issuers. He wants to make sure that the industry does not see a gap in these reports being done and people being out of compliance.

Chairperson Ma said CDIAC is also under the STO, and if it does not make sense, Mr. Barker should reach out to her.

Mr. Barker said legislation needs to be passed to fix the CDIAC reporting standards as opposed to just a regulation. A bill needs to be carried to fix this. He will reach out to Chairperson Ma about it.

Chairperson Ma said now is the time to reach out to her because the STO is putting together a bill package.

Richard Montes, President and CEO of Oculus 1 Development, said he is supportive of adding the nonprofit managing general partner provision. His company is a for-profit developer, and they have found that being a for-profit entity has allowed them to streamline a lot of their decision making, which has helped with projects. However, they lack the exemption status, and without having been able to partner up with a nonprofit on the project they just completed, which was a 35-unit chronically homeless project, they would have never been able to make that project work. He is speaking from experience, and he thinks this is a great addition. He thinks 10% is a little low, and it may need to be a little higher to garner interest in helping the BIPOC entities. He is 100% supportive of this added provision.

Shawn Bolour from the Mogharebi Group echoed the support from other commenters for the final proposed changes to the BIPOC project definition. One important item is that bringing an inexperienced nonprofit to the table to qualify for the exemption is an added hurdle for BIPOC groups, so the new proposed regulation changes level the playing field and allow developers to bring an experienced nonprofit to the table, similar to what all the other developers are doing. Getting another inexperienced nonprofit up to speed is just an added hurdle that disadvantages the groups the way the regulations are outlined.

William Wilcox thanked the staff for the great improvements to the regulations that address a lot of critical things. MOHCD is particularly excited about the changes to the Preservation Pool to include SRO conversions. San Francisco has a very large stock of SROs, as Chairperson Ma mentioned, that are in desperate need of rehabilitation. MOHCD has also found that making these conversions can be a great improvement to lease-up, operations, and the overall functioning of the properties. They appreciate this change and think it will be a great improvement going forward. The only issue they have outstanding with the regulations is related to the per-unit and per-project limits on allocations. The Committee brought up this issue previously and asked why they never talk about this and instead just approve it. The addition of the waiver for the per-unit limit is great, but it does not solve the problem the

Committee brought up before. It also creates a weird issue where an applicant can get a waiver for the per-unit limit if the project does not get a waiver for the per-project limit. This feels like it will negatively impact larger projects because it allows for smaller projects to go over the per-unit limit. That does not seem to make sense or be in line with the spirit of that effort. To address this, in Section 5233(b), the Committee could simply strike the words "total allocation does not exceed $80 million," or strike Section 5233(a) in its entirety along with Section 5232, which has the per-project and per-unit limits, if the Committee would like to avoid having to address this so regularly at the meetings. It takes up a lot of meeting time, to very limited insight. Mr. Wilcox does not believe the Committee is really looking at the waiver requests when they are discussed at the meetings, and it would be a better use of time to let the tiebreaker control those requests. As was mentioned previously, very few of the very large requests get funded, so mostly it is dealt with by the tiebreaker, which is better and more efficient.

Alexis Laing from Laing Companies expressed appreciation for all the work the staff put into updating the regulations. She said she heard Ms. Wiant mention that there were two changes she would recommend as part of the regulations after public comments, and it would be good to know what those changes are, in case people have public comments on the changes.

Ms. Wiant said she spelled out those items at the beginning of this agenda item. The first item is that in Section 5170, in the definition of a BIPOC entity, she is proposing to add the word "qualified" to make clear that it is a qualified BIPOC entity. The second item is in Section 5231 to include a different calculation in the rent savings tiebreaker for projects with federal public rental assistance. It also allows for similar local programs that are approved by the Executive Director to fulfill that same objective. That was added in another section of the regulations, and it needs to be added to Section 5231 to conform to the other section.

Chairperson Ma closed public comments.

Ms. Cohen said she thinks Ms. Wiant already knows her questions and desires, but she asked if Ms. Wiant had any questions for her.

Ms. Wiant said she looks forward to working with Ms. Cohen and others to further refine how to make the BIPOC Pool work more effectively across the board as part of the prequalification process. This is all new, and the pool has only existed for four years. The prequalification process is new, and staff intends to put out a memo with guidance on requirements. In Round 1, because there are no state tax credits, Ms. Wiant imagines that the BIPOC Pool will be less subscribed and there will be fewer applicants. That might also buy more time if needed for further refinement and additional changes to be presented to the Committee before Round 2.

Ms. Cohen asked Ms. Wiant to speak to her original concern about Section 5231.

Ms. Wiant said she is happy to review that language and make sure it is clearly understood.

Chairperson Ma said it is very vague right now.

Ms. Cohen said she wants a whole new statement.

Chairperson Ma asked if there is a way for projects to adjust their applications before a certain period if they require fewer resources. She is not referring to new resources, but rather unexpected federal or state funds. The Committee has not allowed this in the past.

Ms. Wiant said staff can work on this and bring further refinement to the Committee about what it means to request and not be scheduled to receive tax credits. Staff can also bring back options for what application changes might be allowed. The regulations require CDLAC to put the applicant list out after ten days, and allowing changes after that applicant list is published would be detrimental to the competitive process. Staff is happy to look at it and meet with stakeholders who have clarifying language to address some of those concerns or to discuss what swapping out funding sources might look like. Staff can do that and bring it to the Committee for discussion as well as put it out for public comment on regulation changes.

Ms. Cohen asked what that process looks like. She does not want to waste energy and have the staff come back with something similar to what already exists. That is why she asked about having an independent consultant come and help shape the language. She does not know if that is a resource that is available.

Ms. Wiant said CDLAC does not usually hire third parties to help write regulations.

Chairperson Ma said CDLAC has an extensive stakeholder group that they call upon to provide input whenever they are at a juncture where they are not sure about something. They could call for the stakeholder group to get together and provide input.

Ms. Cohen said she likes that idea. A stakeholder group needs to help bring clarity to Section 5231 to clearly define the spirit of the intent of the legislation so the Committee can use that as a tool to move forward.

Ms. Wiant said she was not here at CDLAC at that time, but there are staff members who were here then. The final statement of reasons provides direction on the intent of the language. It is not necessary to rehash it, but the intent was to avoid a project getting an award of bonds without state tax credits if they had requested state tax credits, because they would arguably not have been able to use the bonds. The question is less about Section 5231 and more about what application changes are appropriate and when.

Ms. Cohen said she disagrees. She thinks clarification is definitely needed in Section 5231. She will work with the staff and stakeholders to work that out, and anyone interested can look forward to more meetings in the future. Her other outstanding question is whether CDLAC is in a position to prioritize VA Building 408 when they reapply at the beginning of the new year.

Ms. Wiant said that would require a regulation change to the scoring to allow prioritization.

Ms. Cohen asked if that is currently in the regulations.

Ms. Wiant said that is not currently in the regulations, and it is a significant change that would require public comment.

Ms. Cohen said she will let that rest.

Chairperson Ma asked Ms. Wiant to go over the regulation process since there are new Committee members at the table, and it was recently changed so that the regulations no longer have to be submitted to the Office of Administrative Law (OAL).

Ms. Wiant said the CDLAC regulations process is now identical to CTCAC's, and it is still a public process. Staff posts draft regulations that are open for a 21-day public comment period. There is also a public hearing for discussion of the regulations. Then staff puts out final regulations to the public, and finally, they are brought to the Committee for adoption.

Mr. Boniwell said that is substantively correct.

Chairperson Ma said the regulations do not usually happen until the end of the year.

Ms. Wiant said it has been fluid the past few years, and there have been several packages throughout the year to address specific issues that have come up. Staff is trying to get back to a once-a-year regulations package each fall so the rules are clear for the next year and everyone has notice well in advance of the application deadline. Staff is going to try not to make changes in the middle of the year.

Ms. Cohen said that makes sense.

Chairperson Ma asked if the SRO issue could be addressed because she thinks there should be a separate SRO set aside.

Ms. Wiant said there was previously an SRO set aside in the 9% tax credit program, so that would be a CTCAC conversation. There was push back to no longer have that set aside, which is why it ended at some point. A discussion can take place about bringing that back, but in the meantime, staff feels like looking at those projects as preservation projects within CDLAC makes sense.

Chairperson Ma asked if the Committee would have to wait until next fall to change anything if they passed these regulations, or if there is any flexibility in the CTCAC regulations.

Ms. Wiant said that if the Committee votes to adopt this change for CDLAC, they can have a discussion during the CTCAC meeting about changing it in the CTCAC regulations. It would be a big change to create an SRO set aside today, versus having the conversation at some point next year.

Chairperson Ma asked if it would not happen until 2026 if they discussed it next year.

Ms. Wiant said CDLAC can always choose to bring a regulations package in the middle of the year, so it can be done sooner if that is the direction the Committee wants to take.

Ms. Perrault said part of the rub the Committee is hearing from the public is the ability to update an application in a fair way if a project were to receive additional funding that would negate the need for state tax credits. The Committee wants to encourage less use of state tax credits and to have other sources of funding coming in. Ms. Perrault recognizes that the way the process is laid out now, staff publishes the applicant list ten days after the application deadline. She asked if that list is published in rank order.

Ms. Wiant said the applicant list includes the applicants' self-scores.

Ms. Perrault asked if there is a requirement for the list to be published within ten days.

Ms. Wiant said it is a requirement in the regulations.

Ms. Perrault said that is a narrow window between the application deadline and when the applicant list is published, and applicants likely will not know during that time if they have additional funding. She asked if there is flexibility to make changes to that ten-day requirement and if it would have a downward impact on the rest of the process to have a longer period of time when changes could be made to the application.

Ms. Wiant said the regulations could be changed to extend the period of time between the application due date and the applicant list being published.

Ms. Perrault said she is wondering because the Committee is looking for opportunities to add flexibility so entities can provide updates. She is interested in having staff look at that, but it will not be included in the regulation package today.

Ms. Wiant said staff will look at that. They could choose not to post an applicant list at all, but the public likes that.

Ms. Perrault said she understands that, but it may be possible to strike a balance in order to provide flexibility for projects to not give up critical funding sources. It is just another option to look at.

MOTION: Ms. Perrault motioned to adopt Resolution No. 24-007 with the two additional changes mentioned by staff, and Ms. Cohen seconded the motion.

The motion passed unanimously via roll call vote.

At 12:38 p.m., Ms. Cohen excused herself from the meeting. Deputy Controller Evan Johnson joined the meeting on her behalf.

8. **Supplemental Bond Allocation Request for QRRP, Above the Executive Director's Authority (Cal. Code Regs., tit. 4, § 5240)** – *(Action Item)*

Presented by: D.C. Navarrette

Mr. Navarrette reported that three projects are requesting supplemental allocations above the Executive Director's authority. All three projects are consistent with previous supplemental requests of this type, and they all would have still been awarded if these requests had been added to their original requests.

Ms. Perrault asked staff to address the project requesting 52.08% of its aggregate depreciable basis plus land basis.

Mr. Navarrette said that project is Sunrise at Bogart (CA-24-793). The applicant may be present to address that, but Mr. Navarrette's guess is that they were shooting for a round number that would get them above the 50% test and fit their need, and $1.6 million was the number they landed on. That just happens to round to 52.08%.

Ms. Perrault asked if the typical rule is that projects must be under 52%.

Mr. Navarette said that is correct, but staff felt that 52.08% was very close.

Ms. Perrault said this moves the needle a little bit and asked if the project could be modified to not exceed 52%.

Mr. Navarrette asked for a representative of the project to address Ms. Perrault's question.

Ms. Perrault said she knows this sounds picky, but she is always mindful of the rules.

Ben Barker from CMFA, the applicant, said he has not talked to the developer about this yet, but he is assuming that the project could modify the request by whatever amount is needed to get to 52%.

Ms. Wiant said staff would have to do the math to figure out that amount.

Chairperson Ma called for public comments:
None.

MOTION: Ms. Perrault motioned to approve the supplemental allocations as requested, with the exception of the modification to the request for Sunrise at Bogart to reduce the amount to 52% of the aggregate depreciable basis plus land basis. Mr. Johnson seconded the motion.

The motion passed unanimously via roll call vote.

9. **Request to Waive Forfeiture of the Performance Deposit for the Return of Allocation for an EXF Project (Cal. Code Regs., tit. 4, §§ 5052, 5132)** – *(Action Item)*
   Presented by: Ricki Hammett

Ms. Hammett explained that the McClellan Food Recovery Plant Upgrade Project (CA-23-106) received an allocation in 2023 and received an extension through the end of this year. However, the project informed staff that they would not be able to issue bonds by then, so staff encouraged them to return the bonds so that they could be awarded to another waste management project. That freed up 2024 allocation that could be used for QRRP. The project is requesting to waive forfeiture of the performance deposit. They intend to apply again in the future, but they are experiencing some technical challenges. They have new technology that allows them to turn organic materials into agricultural or pet food ingredients before it turns into waste. A representative from the project is here today.

Chairperson Ma invited the representative to speak.

Daniel Morash, CEO of California Safe Soil LLC, said the delay was unanticipated and unavoidable. The project experienced an unexpected technical glitch, for which they have found a solution. They are working with a large pet food company, and that company acknowledged that the problem was fixed. However, they also agreed that it would not be realistic to try to close by year end. As soon as they came to that conclusion, they informed the CDLAC staff so they would have time to make adjustments and go through the process to allow someone else to use the allocation rather than it going to waste, so there would not be any damages associated with this project's unexpected problem.

Chairperson Ma asked if the problem was an act of God.

Mr. Morash said it was not an act of God. The project has been working for three years to figure out how to create a palatant, which is something that is sprayed on the outside of pet food kibble. The project had over 50 successful trials, and the pet food company did its own successful tests. The pet food company had one more test to do before signing a contract with the project, but that test failed because of the presence of a chemical called D-limonene, which is common in citrus peels. One of the project's supermarket customers has a juice bar, so they often receive a big pile of citrus peels. The citrus peels went into a batch that was used for the last test. When the test failed, they discovered the problem by chemical analysis. It was an easy fix because the project has a sorting line, and they can take the citrus out. They did that and subsequently had very successful trials. Food waste is a huge problem, and a typical supermarket throws away 500 pounds of food per day – mostly fruits and vegetables that are very high quality. This project is figuring out ways to upcycle that product and make good use of it. There are over 500 tons of food waste per year across the country.

Chairperson Ma said she appreciates that. She sponsored a bill that would allow food waste to be reused and turned into energy, but unfortunately, it did not get out of the Senate committee last year. Due to franchise fees and other issues, people are fighting over garbage.

Mr. Morash said his company has experienced that issue and has found good ways to solve the problem. The Environmental Protection Agency has its own food recovery priority. Upcycling, like this project is doing, is considered way ahead of anaerobic digestion and composting because those technologies allow the food to rot and ferment, so the nutritional value is lost. Those technologies are beneficial compared to landfill, but not compared to food recovery. This project comes right after the food bank.

Chairperson Ma thanked Mr. Morash for coming today and for returning the allocation.

Chairperson Ma called for public comments:
None.

Chairperson Ma said it has been the Committee's precedent over the past six years not to refund performance deposits for applicants like Mr. Morash who are very honest about what is going on and give back their allocation. However, the Committee also does not assess negative points, so she hopes the project will apply again.

Mr. Morash asked if the performance deposit could be applied to next year's application.

Chairperson Ma said the performance deposit is usually forfeited if a project cannot meet the deadline because other projects could have used the allocation. That is why the Committee does not refund performance deposits or apply them toward the next round.

Mr. Morash asked if the project would be forfeiting the performance deposit.

Chairperson Ma said that is correct, but the Committee needs to vote first.

Mr. Johnson said he used to work at CalRecycle and was part of the SB 1383 world for a long time, so this type of novel technology is near and dear to his heart. This pool is different from the residential pool in the sense that technologies can go awry or take longer to develop, and one of the benefits of this pool is that it gives the state an opportunity to support that technology. With that said, the Committee has set precedent, and that is important.

Chairperson Ma said everything is so competitive these days, so the Committee wants applicants to come when they are shovel-ready or ready to turn on the switch because other people have been waiting as well.

Mr. Morash said the allocation is being used, so there is no damage.

Ms. Wiant said the allocation was returned timely enough that staff was able to use it as carryforward for a different waste management project that was approved in October. That freed up the $75 million to be able to go toward housing this year. Staff appreciated the project's openness to ensure that the allocation could be most efficiently used without losing any allocation or being stuck with excess allocation in the EXF Pool.

Chairperson Ma asked if there has been a situation like this before.

Ms. Wiant said there has not been a case where the Committee waived the forfeiture of the performance deposit, but there was one time previously when the Committee allowed the performance deposit to roll over to a future application. It the project had never reapplied, it would have been forfeited. The deposit was held and applied as a credit to a future application.

Chairperson Ma asked how much the deposit was.

Ms. Wiant said it was $100,000.

Chairperson Ma said that is a lot.

Mr. Johnson asked for details about the previous instance in which the performance deposit was allowed to roll over to a future application.

Ms. Hammett said it was another EXF application for the Brightline train project. The project applied a couple of times, and it did not work out, so the Committee allowed them to roll over their performance deposit. They eventually forfeited the performance deposit, but they were granted some leeway.

Ms. Perrault said she agrees with Mr. Johnson. While consistency is important, there is some priority with this kind of a project. She appreciates staff informing the Committee that a performance deposit was allowed to roll forward in the past. She is not interested in setting a precedent where the performance deposit is returned, but she supports denying waiver of forfeiture of the performance deposit while waiving the performance deposit if and when the project reapplies.

Mr. Evan said that sounds logical because these projects are different from residential projects. There are novel technologies that take time to develop and unexpected circumstances that need to be taken into consideration. Since there is precedent on this, it makes sense to apply that precedent in this case. This circumstance is different than what might be seen in the QRRP Pool.

MOTION: Mr. Johnson motioned to not to waive forfeiture of the performance deposit but allow it to be applied to this project if it were to reapply. Ms. Perrault seconded the motion.

The motion passed unanimously via roll call vote.

10. **Resolution 24-008, Delegating Authority to the Executive Director to Allocate Remaining and Reverted 2024 Volume Cap (Government Code sections 8869.83, 8869.84)** – *(Action Item)*
    Presented by: Ricki Hammett

Ms. Hammett reported that after all the rounds, there is about $18 million of bond allocation left. Staff recommends it to be carried forward to 2025 to be used for the QRRP Pool. Staff recommends dividing the allocation between the top issuers, CMFA and CalHFA. This has been the Committee's practice for the past few years.

Chairperson Ma asked if the practice has been to divide the remaining allocation between the two issuers.

Ms. Hammet said there have been more than two issuers in the past, but the top two are CMFA and CalHFA, and it is a small amount.

Chairperson Ma called for public comments:

None.

MOTION: Mr. Johnson motioned to adopt Resolution No. 24-008, and Ms. Perrault seconded the motion.

The motion passed unanimously via roll call vote.

11. **Public Comment**

Tommy Beadel from HVN Development asked when CDLAC would be publishing the pool and set aside recommendations for the 2025 debt ceiling.

Ms. Wiant said the recommendations would be approved by the Committee on January 15, 2025. Staff aims to publish those with the meeting materials approximately ten days beforehand.

Chairperson Ma clarified that they should be published on approximately January 5, 2025.

12. **Adjournment**

The meeting was adjourned at 12:56 p.m.