



California Tax Credit Allocation Committee

901 P Street, Room 102
Sacramento, CA 95814

October 2, 2024

CTCAC Committee Meeting Minutes

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

The California Tax Credit Allocation Committee (CTCAC) meeting was called to order at 9:33 a.m. with the following Committee members present:

Voting Members: Fiona Ma, CPA, California State Treasurer, Chairperson
 Evan Johnson for California State Controller Malia M. Cohen
 Michele Perrault for Department of Finance (DOF) Director Joe
 Stephenshaw
 Department of Housing and Community Development (HCD) Director
 Gustavo Velasquez
 Tiena Johnson Hall, Executive Director for the California Housing
 Finance Agency (CalHFA)

Advisory Members: County Representative Michelle Whitman
 City Representative Brian Tabatabai

2. *Agenda Item: Approval of the Minutes of the August 6, 2024, Meeting – (Action Item)*

Chairperson Ma called for public comments:

Victor Mendez said he is a resident at 2222 East First Street, Santa Ana, CA 92705, which is a project that receives \$5.6 million in federal tax credits annually. For 90 days he has been trying to get CTCAC staff to examine many problems at the property, including drugs, prostitution, and crime. Mr. Mendez has presented a case to Marina Wiant, Executive Director. The property is a mess, and it is unsatisfactory. A lot of people are at risk. Mr. Mendez has been contacting both local and federal agencies, and he wants the state to do its job. After 90 days, nothing has been done and there has been no substantial effort made to get this resolved. He has been told by staff that they are trying to reach the property manager. This is a serious situation and there are a lot of problems going on, and Mr. Mendez wants the state to protect the taxpayers and the 500 senior citizen residents from mismanagement by the property management and owner.

Chairperson Ma asked Mr. Mendez to repeat the property address.

Ms. Wiant said staff has the address; the Compliance team has been working with the owner of the property.

Mr. Mendez repeated the address and said the property owners are AMG, Jamboree Housing, and TPC.

Chairperson Ma said the Compliance Department is looking into this right now.



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Mr. Mendez said he knows that they have been looking into it for 90 days and nothing has been done, which is why he has called in to the meeting today. There are frail and elderly people at risk, and there are people with guns and concealed weapons permits. It is not a very good place, and there are drugs all over the place.

Jennifer La Pointe said she is a resident at 2222 East First Street, Santa Ana, CA 92705. She would like to know where the Compliance Department is; there is a vulnerable, elderly population at the property, and they have been living with drugs, crime, and inept management for three years. The management program needs to be changed and the residents want to know how it can be done.

Chairperson Ma closed public comments.

MOTION: Ms. Perrault motioned to approve the minutes of the August 6, 2024, meeting, and Mr. Velasquez seconded the motion.

The motion passed unanimously via roll call vote.

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

Marina Wiant, Executive Director, announced two new staff members, Sal Angrisani and Cameron Kalagher. CTCAC is now close to being fully staffed. Additionally, Ms. Wiant has been participating in several regional housing conferences throughout this conference season, alongside Director Gustavo Velasquez and Director Tiena Johnson Hall. They all participated in the San Joaquin Valley Housing Collaborative Affordable Housing Summit and the San Diego Housing Federation (SDHF) Annual Affordable Housing and Community Development Conference, and they are looking forward to being on panels together at the Non-Profit Housing Association of Northern California (NPH), Southern California Association of Nonprofit Housing (SCANPH), and California Coalition for Rural Housing (CCRH) conferences.

Chairperson Ma called for public comments:
None.

4. *Agenda Item: **Discussion and consideration of appeals filed under California Code of Regulations, title 4, section 10330 for reservations of 2024 second round federal nine percent (9%) low-income housing tax credits (LIHTC) and the impact of any granted appeals on the proposed recommended reservations in Item 5. See Exhibit A for project list, subject to change. – (Action Item)***
Presented by: Anthony Zeto

Mr. Zeto explained that Pacific Street Apartments Nine (CA-24-169) was disqualified because the application failed to meet a basic threshold requirement in CTCAC Regulations Section 10325(f)(8), and the project has submitted an appeal. The appellant was supposed to be on the line today, but they are not here.

Chairperson Ma said this item would be skipped until the appellant was available to speak to the Committee.

Ms. Wiant said the Committee's action on this item would impact the next item.



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Chairperson Ma asked the staff to try to get the appellant on the phone or Teams.

Ms. Wiant said the Committee could hear Item 6 in the meantime.

The Committee skipped to Item 6.

- 6. *Agenda Item: Resolution 24/25-01 to establish a waiting list of pending applications pursuant to California Code of Regulations, title 4, section 10325, subdivision (h) for a reservation of 2024 second round federal 9% and state LIHTCs and delegating authority to the Executive Director to approve reservations for projects on the Waiting List, provided that credit remains available and those applications are complete, eligible and financially feasible – (Action Item)***

Presented by: Anthony Zeto

Mr. Zeto explained that the Committee has approved waiting lists annually. Staff is recommending establishment of the waiting list, which would also delegate authority to the Executive Director to approve projects from the waiting list to ensure that the federal tax credits are utilized by the end of the year. This would allow staff to not have to bring projects back to the Committee and instead allow the Executive Director to approve the projects administratively. The projects are presented on the list in rank order.

Chairperson Ma said this is standard practice.

Chairperson Ma called for public comments:

None.

Mr. Zeto clarified that the waiting list is subject to change.

MOTION: Mr. Velasquez motioned to adopt Resolution 24/25-01, and Mr. Johnson seconded the motion.

The motion passed unanimously via roll call vote.

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

Harvey McKeon from the Nor Cal Carpenters Union (NCCU) said he is here today to talk about labor exploitation in residential construction, including LIHTC-backed projects. In August, an LA court issued an arrest warrant for the owner and payroll manager of US Premium West. The Attorney General has charged these individuals with 31 felony counts, including wage theft, forgery, and tax fraud, totaling over \$2.5 million. This is not a fly by night contractor; this contractor has worked with entities on numerous occasions that may sound familiar, such as Integrated Community Development, Corporation for Better Housing, and BLH Construction. On at least three projects, these entities that contracted with US Premium West received state LIHTC allocations of over \$35 million and federal LIHTC preliminary reservations totaling roughly \$7.5 million or \$75 million over 10 years. That is roughly \$100 million in total tax credit assistance for projects involving a contractor that is now the subject of 31 felony charges and arrest warrants for two individuals associated with the business.

Mr. McKeon said that in this round alone, there are players such as Danco Communities being recommended for tax credit financing. Even a cursory glance at federal records would reveal that Danco was the subject of recent wage and hour division violations and conceded to pay substantial back wages to 14 affected workers. Mr. McKeon asked if this is the type of player the Committee wants to invite into

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local communities with public funding. Another player on the waiting list today is Pacific West Builders. Mr. McKeon reminded the Committee that he came here in May and explained how an entity affiliated with Pacific West Builders certified to CTCAC that it was required to pay prevailing wages and then turned around and attempted to avoid those obligations to workers. The Department of Industrial Relations (DIR) has now confirmed that this was not lawful. This type of behavior not only holds workers in contempt but also California's state institutions, which some bad actors arrogantly assume will not look out for the workers harmed by bad business practices. Caleb Roope of Pacific West Builders has characterized California as a state where "laws are ignored and businesses can't count on government to keep its word." Mr. McKeon expects, contrary to what such individuals think, that the state will pursue remedies for harmed workers in residential construction, and in CTCAC's case, avoid subsidizing entities that will cheat and steal from workers. One of those workers has come to the meeting today to tell his story about a separate incident involving a different contractor. Mr. McKeon thanked the Committee for engaging with his organization and the workers.

Cesar Sanchez, Field Representative at NCCU, said he is here today because the Committee will hear testimony from a harmed worker, Hector Perez, who has bravely come today to share his experiences working for another subcontractor, West Coast Rival. This subcontractor also worked on LIHTC projects, including two led by developers Integrated Community Development and Corporation for Better Housing, as well as general contractor ELH Construction, for which US Premium West was operating. Mr. Sanchez thanked the Committee for hearing the workers; many more workers also stand behind them who routinely suffer due to low standards in residential construction. This harms not only the workers, but also the taxpayers to whom the Committee is answerable. Each year, construction worker families disproportionately rely on public safety net programs at an annual cost to California of around \$4 billion. Nationally, 1.1 to 2.1 million construction workers are estimated to be misclassified or paid off the books. This poses a significant cost to individual workers through lost workers' compensation insurance, unemployment insurance, and overtime pay. State and federal social insurance programs meanwhile also rely on employer taxes.

Hector Perez gave his public comment in Spanish, which was translated by Mr. Sanchez. Mr. Perez said he was a victim of wage theft when he worked on two affordable housing projects funded by the State of California. These projects are in Santa Rosa and are known as Santa Rosa Apartments and Kawana Springs Apartments. Mr. Perez was working for West Coast Rival, which was not paying overtime or allowing him to take any breaks. He was working at least 10 hours a day, and he was never given any benefits, even though the company was deducting money for benefits from his paycheck. He needed medical and dental treatment when he was working, but since he did not have any benefits, he had to pay out of pocket. Currently, he is asking for Medi-Cal.

Anthony Carroll, Field Representative at NCCU, said developers and contractors receiving millions of dollars of public subsidies through the tax credit program have been caught committing or allowing labor exploitation for their own profits. The Committee has also heard the voices of those affected by that labor exploitation. Mr. Carroll thanked them for being brave enough to share their stories. NCCU has been advocating for years to require prevailing wages and enhanced enforcement mechanisms on state LIHTC-backed projects. Such changes would make these projects less prone to labor exploitation, first by setting a wages and benefits standard that would level the playing field for high road contractors, and second by increasing the ability of the private Labor Management Compliance Council (LMCC) to pursue legal action against companies whose business model relies on cheating workers. The lack of strong labor standards has a clear negative effect on workers.



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Mr. Carroll said that nearly half of California construction worker households have at least one member dependent on a social safety net program, which costs the state upwards of \$4 billion per year. Additionally, safety net dependency is concentrated among residential contractor employees whose pay is 30% less on average than non-residential specialty contractor workers. NCCU's priority for this legislative cycle, AB 3190, would attach strong labor standards to all statewide tax-funded projects. The need for this type of policy was affirmed by its passage in the California State Assembly and the California State Senate, and by being signed into law by the Governor. Unfortunately, this law will not go into effect because it had a companion bill that was not signed into law. NCCU believes that CTCAC should feel just as strongly about ensuring that LIHTC funds are not used just to fund affordable housing but also to lift up the residential construction workers who build that housing. Addressing California's housing crisis will require the Committee to do both. Mr. Carroll is looking forward to working with CTCAC staff in the upcoming year to refine improvements to the regulations and to gain the Committee's support in NCCU's legislative effort to end practices that for too long have allowed billions of dollars – \$2.5 billion of state LIHTC funds from 2020-2023 – to be awarded without any prevailing wage or other labor standards.

Jan Harnik said she would like to comment on Item 4.

Chairperson Ma said the Committee will go back to that item and asked Ms. Harnik to hold her comment until then.

Ms. Perrault said prevailing wages are enforced by the DIR, but she asked the staff to consider whether CTCAC could do anything on that issue.

4. ***Continuation of Agenda Item: Discussion and consideration of appeals filed under California Code of Regulations, title 4, section 10330 for reservations of 2024 second round federal nine percent (9%) low-income housing tax credits (LIHTC) and the impact of any granted appeals on the proposed recommended reservations in Item 5. See Exhibit A for project list, subject to change.***
– (Action Item)
Presented by: Anthony Zeto

Mr. Zeto said Pacific Street Apartments Nine (CA-24-169) was disqualified because it failed to meet basic threshold requirements for deferred-payment financing. A representative from the project is available to explain the appeal.

Jeanne Blake, Director of Project Finance at Community HousingWorks, apologized and said Kevin Leichner, Vice President of Development, intended to be at the meeting in person but was delayed in his travel. Tony Kouot, Senior Financial Consultant at California Housing Partnership (CHP), is at the meeting in person today. Ms. Blake said she and Mr. Kouot worked closely on the 4% and 9% applications for the Pacific Street Apartments hybrid project. She thanked Ms. Wiant and Mr. Zeto for the time and effort they put into reviewing this application and the subsequent appeals.

Ms. Blake said that as a San Diego-based public benefit nonprofit, Community HousingWorks is a developer and long-term owner of close to 5,000 deeply affordable apartments, including hundreds set aside for special needs, permanent supportive housing, and extremely low-income residents. Community HousingWorks has successfully applied for and closed on dozens of tax credit reservations during 36 years of service to the community. The project has a 4% allocation in hand, and if this appeal is granted, the developer can proceed with building the 110 apartments in Rocklin in Placer County, which is a high resource location. This was the only high resource application in the Capital Region this round, as well as the only hybrid application in the region. Hybrid projects are vitally important because they stretch scarce



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9% resources and make large projects possible in regions like this one with limited local subsidy. If the appeal is not granted and the project does not receive the 9% tax credit award today, the project will have to return its 4% award, the development agreement with the city will expire shortly, and these 110 affordable units may never be built.

Ms. Blake said the error made in the application was extremely minor and represented \$1.2 million out of a total financing stack of \$59 million, which is only 2% of the total. If the project did not obtain the Affordable Housing Program (AHP) award, the uncommitted \$1.2 million would be more than covered by some combination of the developer fee deferral and/or contingency. Lenders and investors treat the developer fee as one source of contingency to balance the sources and uses, and it is always at risk until a project is completed. Beyond that, if the project had made some minor changes to its interest rate assumptions in the 9% application, the \$1.2 million would have already been covered because there was enough cushion in that area alone. AHP could have been skipped as a source and the project would not have been here today. These are technically complex applications, and for hybrid projects, the technical complexities are compounded. A single project must be creatively split between 4% and 9% financing applications, and the regulations and hybrid guidance can sometimes be unclear and occasionally conflict. Some permanent financing sources, for instance, can be shown in a 4% application as uncommitted. That is not necessarily the same in a 9% application, but it is not entirely clear. There are regulations and policy memos that encourage the 4% and 9% components to be combined and considered together, and this combined approach affects various topics, such as project scoring, the tiebreaker calculation, the market study, the developer fee calculation, etc.

Ms. Blake said that thinking a small uncommitted source could be included in the 9% portion of the hybrid project was simply a minor mistake. With technical complexities, intelligent and experienced people still make mistakes, which is why there are provisions within the regulations to address technical errors and allow feasible projects, such as Pacific Street Apartments Nine, to move ahead. Section 10327(a) of the regulations has a provision for initial application errors to be considered covered by contingency. Contingency is built into the numbers in multiple places at the time of the application, including hard and soft contingencies, contingencies within larger budget line-items, interest rate cushion, and developer fee. Considering the 9% application independently, the combined cushion provided by hard and soft contingencies, along with the developer fee, is more than sufficient to meet the requirements of Section 10327(a) and cover AHP should it not be awarded. That does not account for contingency and developer fee within the 4% application. Again, this project is financially feasible. Additionally, as a hybrid project, the 4% and 9% financing components are inseparable, and thus, their contingencies, like their developer fees, should be considered jointly. While there are many areas in the regulations that do not address hybrid projects specifically, including Section 10327(a), those sections that do address hybrid projects point to considering the entire project, including both the 4% and 9% components, in the aggregate. By extrapolation, it would be reasonable to interpret that the authority in Section 10327(a) to cover an application error with contingency should also consider contingency in the aggregate.

Ms. Blake said it is well within the Committee's authority to exercise forgiveness for this application error, and one of two approaches in applying Section 10327(a) could be taken. They could look at contingency broadly within the 9% application alone, considering the numerous areas where contingency is provided for in the numbers. Alternatively, they could look at regulations that call for combining the applications for a hybrid project and consider the 4% and 9% contingencies in the aggregate. Regardless of the approach chosen, there is definitely ample cushion in the budget to cover the \$1.2 million AHP funding. Ms. Blake appreciates the Committee's consideration, and the decision to appeal was not made lightly. As 110 affordable units in a high resource location in Placer County are on the line and might never be built if this appeal is denied, the developer knew they needed to advocate for this project. They are sensitive to the



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impact on the rest of the awardees, but this project has the highest tiebreaker in its region and yields the most new affordable homes. But for this application snafu, this project in Rocklin would have been awarded. The developer also acknowledges that the Inland Empire scoring may also be affected if the outcome changes. CTCAC staff has indicated that a worthwhile project that will provide 88 permanent supportive housing apartments in Moreno Valley will be funded in addition to Pacific Street Apartments Nine. Ms. Blake thanked the Committee for considering the appeal.

Chairperson Ma asked Tony Kouot if he would like to make any comments.

Mr. Kouot said he would be available to answer questions.

Chairperson Ma said this is an unusual case because it is a hybrid. She had a long conversation with Ms. Wiant about this, and if a project does not receive either the 4% or 9% award, it will not receive the other.

Ms. Perrault said she wants to make sure she understands the process. She asked if the developer does not know yet whether the project will receive AHP funding.

Mr. Kouot said that is correct.

Ms. Perrault said it was indicated that if that funding did not come through, the developer would be seeking additional builder's fees. She asked if those had been secured.

Mr. Kouot said they have not been secured.

Ms. Blake said the developer would be looking to close the gap within the cushions in the application. The regulation she cited previously allows contingency to be used for application errors, so the developer would like to use contingency. They could either combine the contingency from the 4% and 9% applications or take a broader view of contingency to include the hard and soft contingency developer fee, which is already in the project and could be deferred, along with other contingencies that are built into the numbers and include a large cushion in interest reserve. Within the numbers alone, the developer could cover the \$1.2 million.

Ms. Perrault asked the staff, in terms of combining the 4% and 9% applications, if there would still be a gap that would need to be overcome.

Ms. Wiant said the regulations allow an application change under certain circumstances, and the appellant is citing the regulation that would allow the use of the contingency fee. The contingency fee, as articulated in the 9% application portion of the hybrid project, is insufficient to cover the \$1.2 million gap. The developer is requesting consideration of the contingency that was in the 4% application as well. Staff denied that request because they felt that since it was not included in the 4% application, it would essentially also be changing that application, and that allocation was already made. As Ms. Blake articulated, the question is whether contingency can be considered more broadly, and if the Committee would consider using the entirety of the deferred developer fee to cover the gap, in addition to the contingency amount.

Ms. Perrault said she understands the constraints in Placer County, and particularly in Rocklin, but her understanding is that if the Committee grants the appeal, two other projects on the recommendation list will be replaced. She asked if that is correct.



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Mr. Zeto responded affirmatively. The other project in the region that is currently on the list would be bumped. Additionally, two other projects in the Inland Empire region would switch places, meaning one project that is not on the list would be added to the list, and the project currently on the list in that region would be removed. Two projects would be removed from the list, while Pacific Street Apartments Nine and a different project would be added.

Chairperson Ma asked how many other applicants make minor mistakes or technical errors.

Ms. Wiant said staff regularly disqualifies projects for errors.

Ms. Johnson Hall said she is torn about this project, but she does not believe it is an underwriting issue. It is an error issue. She looked back at 2022 and 2023, and there were several projects that were submitted with errors and they were unilaterally turned down.

Chairperson Ma asked if that happened here at this Committee.

Ms. Johnson Hall responded affirmatively. She looked back at projects that were reviewed since she has been part of this Committee since 2021. She is struggling because Rocklin is one of the toughest places to build affordable housing, and unfortunately, if this project does not go forward today, it is likely that it will not go forward, period. However, two more projects will be awarded in other areas, so the Committee will effectively be meeting the need, but not in Rocklin or Placer County. That is concerning to Ms. Johnson Hall, especially as someone who has lived experience in this area. She does not want to see any projects not come to fruition. The challenge she is having is that the regulations still are not clear, although the Committee has looked at this before. They need to make sure that they do not face this again, because effectively they are slowing down or impeding the progress of affordable housing in areas where it is needed most. Ms. Johnson Hall stands with the staff on this decision because she does not want the Committee to set precedent. That is hard for her to say, given her experience in this area, and also because she knows this developer has done a lot of great work. She wanted to share her experience as a practitioner. These are hard calls to make, and she commends staff for making the hard call, but she thinks the Committee needs to go back and look at the language in the regulations and make sure they are accountable.

Ms. Wiant asked Ms. Johnson Hall if she is referring to the language specifically cited as the reason for the appeal or language around hybrid projects more generally.

Ms. Johnson Hall said she is referring to the language around hybrid projects in general.

Ms. Wiant said one of the challenges is that now that the 4% program is competitive as well as the 9% program, hybrids are competing in two competitions now. When the hybrid model was originally conceived, hybrids were intended to be 9% projects augmented by 4% tax credit equity that came alongside the 9% tax credits at the same time, rather than sequential awards.

Ms. Johnson Hall said there are new problems now because of scarcity and more deals that are coming to the table simultaneously. This developer has tried to put together a package that works based on that scarcity and need, and the Committee probably needs to revisit the language in the regulations.

Ms. Blake said she agrees that some revisions to the regulations are warranted, in terms of how hybrid applications are addressed. However, there was a similar appeal approved in June 2019 for CA-2019-700. The makeup of the Committee was different at that time. Staff may not think it is applicable, but at that



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time, the sponsor appealed a disqualification as a result of including uncommitted AHP funds in both construction and permanent financing sources. Construction was a threshold issue, and the basis of that appeal was a misinterpretation of the regulations. That appeal was successful, so there is potentially some precedent for this.

Ms. Perrault said her understanding is that the appeal Ms. Blake referenced from 2019 resulted in staff going back and revisiting the regulations and addressing the ambiguity that was in that initial appeal. The regulations have changed since then.

Ms. Wiant said that appeal hinged on specific language in the regulations that has since been changed.

Ms. Whitman said she feels her fellow Committee members' heartache about being in this unenviable position, although she is new to the Committee and an advisory member only. She believes that to ensure fairness to all applicants, this process is objective by design. The appeal has been through several layers of objective reevaluation, all of which resulted in the same conclusion that the application did not meet the basic threshold criteria. That is the green light/red light question here, and all applicants need to know that the goal posts are not going to move throughout this process. There are waterfall effects when subjectivity is introduced to an objective process, and Ms. Whitman has not been able to align with the basis for the appeal, nor the consequences of granting it, although she tried. Her hat is off to any project sponsors looking to develop affordable housing, particularly in a high resource area, which tends to be more difficult. Like many of the people in the meeting today, she has firsthand experience and knows what it feels like when a project is ready to go but for funding. That is the unfortunate reality, and it puts the Committee and staff in the unenviable position of having to say no sometimes to an appeal. Ms. Whitman feels confident in staff's recommendation to deny the appeal in this instance.

Mr. Tabatabai said this is a competitive process, and all the projects are excellent. However, the developers also need to know that the process is going to be consistent and that the procedures in place will be followed. This will result in some very good projects being denied. As long as there is consistency, developers will know that the rules will be applied in the same manner, no matter where they are applying from, and these mistakes can be avoided going forward. There is value in all the projects that come before the Committee, and Mr. Tabatabai wishes they all could be approved because they are all needed. Staff has done a great job of looking at the appeal, and the decision has been made in a way that is consistent with procedures that everyone can feel comfortable with. It is not an enviable role to deny these projects because they are all needed, but the funds are scarce, and the Committee needs to maintain consistency.

Chairperson Ma called for public comments:

Jan Harnik from the City of Palm Desert said CTCAC has gone through great pains to develop policies and procedures using stringent and meaningful guidelines for these projects. She has heard comments using words such as "unenviable" and "heartache," and she knows these things are true. CTCAC staff is tasked with going through piles of applications, which is surely difficult and at times unenviable. At times, it is surely uplifting to look at these applications as well. Ms. Harnik asked the Committee to abide by the policy and procedure that was put in place so that everyone can count on a consistent process and get these important and worthy projects through.

Sean Spear, President and CEO of Community HousingWorks, thanked the Committee for their patience earlier when members of the development team who were anticipating being at the meeting in person were delayed in their travel. Ms. Blake had to jump in quickly to present the developer's case. Mr. Spear appreciates the comments and consideration of the Committee members as they weigh this issue. As Ms.

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Blake articulated, the developer does not make this appeal lightly; they think it is most important to make sure there is a program that developers and project sponsors can rely upon, and to have trust in the judgment of the staff when it comes to the recommendations presented to the Committee. The challenge here is that although there were changes made in 2023 to provide some clarity around how hybrid deals were to be treated, at a time when both programs were competitive, some challenges still remain there. The issue for this particular deal, which was reflected in the 2019 appeal that was granted, is a question of timing and the ability to access the AHP dollars and those commitments, which do not line up with the 9% application timeframes. Mr. Spear knows there are discussions around trying to fix that issue, but in the meantime, this kind of situation can crop up with a deal that may be trying to rely on AHP. The developer looked at it as a relatively small portion of the overall project financing that they felt could be accommodated through an alternative in terms of making changes that are permitted under the program.

Mr. Spear said that while there were changes made to the regulations in 2023, some areas with a lack of clarity still remain. When it comes to a situation such as this, where there is lack of clarity between the 9% and 4% programs, staff's discretion can come in, in terms of their recommendations. This is not exactly a black and white situation, and he feels that the staff has discretion here. This would align with what has been professed by the state in terms of making sure that affordable housing is provided throughout the state, and particularly in areas that have historically have not welcomed affordable housing, which is a worthy policy goal in addition to the merits of this project. Mr. Spear recognizes that other projects are being affected; two projects would potentially be funded in one scenario, and two other projects would be funded in a different scenario if this appeal were denied. That is the nature of a competitive program. Mr. Spear asked the Committee to consider some of the broader statewide policy issues, as well as the fact that there is some ambiguity in the regulations in terms of hybrid projects. Community HousingWorks would welcome the opportunity to participate in some working groups that could fix some of these issues, but in the meantime, they do not feel that this project should be penalized for that lack of clarity.

William Leach from Kingdom Development said he serves as a financial advisor in the industry. He has assisted in financing three successful hybrid deals in the past, and they are very complicated. The appellant's logic in using Section 10327 for a hybrid project in the aggregate is a consistent use of the regulations. The hybrid incentives provided in the regulations for stretching the resources and using both the 9% and 4% structures provide half a dozen measures where the 9% application is supposed to open up the 4% application, get numbers from the other phase, and measure them in the aggregate. The provisions require things in the aggregate and ask for additional affordability in the aggregate. The 4% applications have to give up things so that the 9% project can enjoy the competitive advantage and be considered. As the Committee has heard before, these 110 units can only be built together in the aggregate. Looking at the market study guidelines, the 9% regulations state that it is done in the aggregate. The tiebreaker and housing type are also considered in the aggregate. In Section 10327(a), where it states that errors are allowed to be covered by contingency, the regulations are silent. The regulations are not silent because it is not appropriate for hybrids to be considered in the aggregate; every other aspect of the regulations referring to hybrids considers the aggregate. Mr. Leach does not fault staff for saying that the regulations are silent on the matter, and they cannot help, but the Committee can step in and say that every other regulation about hybrids is considered in the aggregate. The regulations state that the 9% application will look at the 4% application at the time of submission and take data out of it. It is not reaching to ask for this error to be reviewed in the aggregate.

Ms. Johnson Hall asked if the General Counsel could speak on this regulation. Ms. Johnson Hall had been reviewing Section 10325, but Mr. Leach referenced Section 10327.



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Joe Boniwell, Attorney for CTCAC, said he is happy to be here at his first meeting. The regulation in play for the Committee today is Section 10327(a), which is what Mr. Leach cited. There are three instances in the regulations where the Committee can change an application, one of which is Section 10327(a). This is the section that allows the Committee to fix minor application errors. When Mr. Boniwell went back and looked at the regulation history, he found that it was focused on calculation errors or minor mathematical errors. Where there is a gap in funds, the contingency line item in the budget can be used up to \$100,000 or 50%, whichever is higher, to close that gap. Staff denied the appellant's argument to interpret that regulation as allowing them to reach back to the line item in the 4% application to combine it with the line item in 9% application, which would get them to about 46%. This would be just under 50% of the combined line items and would allow them to meet the missing AHP funds.

Mr. Boniwell said that in order to get to the analysis he described, the Committee would have to determine that the representation in the application that the AHP funds had not been applied for yet, which was a missing basic threshold requirement, was an application error such that it could be corrected by this line-item contingency. Then the Committee would have to interpret the line-item contingency correction more broadly than the plain language, which would allow the Committee to reach back to the line-item contingency from the 4% application and pull it to the 9% application to combine them. Mr. Leach discussed the other sections in the regulations and contemplated pulling aspects from both applications. The regulations seem very intentional about where aspects of the 4% and 9% applications can be pulled together. Mr. Boniwell would advise that it had not been contemplated by the Committee that the contingency could be pulled from the 4% application to the 9% application since the regulations do not provide for that.

Chairperson Ma said she is hearing that this would not necessarily set precedent because this is new and is not used very often, but it is also not stated specifically in the regulations.

Mr. Boniwell said it would not set precedent in that the Committee can make an application change under this provision, but it would set precedent in the interpretation of what an application error is. It would basically make it clear that an error is more than a mathematical error – it is missing documentation. It would also set precedent that this reference to line-item contingency in hybrid projects means the contingency in both the 4% and 9% applications.

Chairperson Ma asked if this could be addressed in further regulations if the Committee granted the appeal for this project.

Mr. Boniwell said it is a policy consideration as to whether it is appropriate for a line-item in the budget, such as the contingency, that has already been approved in one project, to be used in a second project.

Chairperson Ma said there are two projects basically dependent on each other.

Ms. Wiant said the challenge staff had is that the 4% project is complete and included a particular contingency line-item, and the 9% application included a particular contingency line-item. They could have been merged and distributed at the time of application differently between the 4% and 9% applications. Because the regulation is specific to the contingency budget line-item of the application, staff did not feel that they could pull the contingency from another project. There are two different applications.

Ms. Johnson Hall ask for clarification that there were two applications for one project.



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Ms. Wiant responded affirmatively. There are certain things that can be split, and there is guidance on that. For example, the developer fee can be considered in the aggregate and distributed however the applicant would like between the two applications. The application is then solid based on those numbers.

Chris Dart from Danco Communities said he represents Central Sacramento Studios II (CA-24-116), the project that will be removed from the recommendation list if Pacific Street Apartments Nine is awarded. Central Sacramento Studios II is the second phase of the project; the first phase was a Homekey project consisting of 92 units at 12th and H Street in Sacramento. The second phase will provide an additional 52 units. The project is ready to go with all financing committed and just needs the building permit. This project is also deserving. In response to comments made earlier in the meeting, Mr. Dart clarified that Danco Communities is in full compliance with all prevailing wage requirements on all projects.

La Shelle Dozier, Executive Director of the Sacramento Housing and Redevelopment Agency (SHRA), said SHRA is the gap financier for Central Sacramento Studios II. All the projects are deserving, and it is always hard, but Central Sacramento Studios II is a complement to a Homekey project that is doing very well. This project would increase permanent supportive housing in the downtown core, which is struggling with homeless individuals and blight. Ms. Dozier asked the Committee to support staff's recommendation. It was a hard decision made by the staff. SHRA has been in this same spot with other projects, and because of the regulations, they have had to go back to the drawing board as well. While Ms. Dozier empathizes with the other applicant, she thinks there is consistency that everyone needs to understand, and everyone needs to play by the same rules.

Tony Kouot from CHP said he is the financial consultant for Community HousingWorks on Pacific Street Apartments Nine. He expressed appreciation for the staff and Committee's consideration of this project and reiterated that the CTCAC regulations are unclear on hybrid projects and the specific requirements for various areas. That is the issue that caused confusion here. The hybrid guidance provided by CTCAC is outdated in various areas on the website, and in particular, there are areas in which Mr. Kouot feels like there is not enough direct guidance on how hybrid projects are treated. There are differences for 4% and 9% projects, but hybrid projects are often treated in the aggregate, and they are inseparable from each other. In reality, when the projects are in development, they support each other across line items and contingencies, and that is apparent in certain sections of the regulations. It is not clear in Section 10327(a) that they should be treated separately.

Alejandro Martinez from Coalition for Responsible Community Development said the Committee is in a tough spot and he does not envy their position. He recalls that in 2001, he had a project that did not receive an allocation. Right before the Committee hearing, he was notified by CTCAC that there was a technical mistake in another application, and his project would receive an allocation. He immediately flew out here and ended up sharing a cab with the other developer that got bumped, and it was an awkward ride. Although he does not have a dog in this fight, he has been in a similar position, and it is scary, especially after having spent a lot of staff time and resources on a project, ultimately to have it not be considered due to a technicality or mistake. He asked if the Committee or staff has considered potentially giving a forward commitment to fund a project next year. He is wondering how the Committee could fund the other two projects while also funding this project that could potentially die and may not be viable if the appeal is not granted. He asked if the Committee has thought about what the precedent would be for this situation and what the ramifications would be. He would hate for what sounds like a great project to not be awarded, but at the same time, he would feel horrible if the other two projects got bumped.

Chairperson Ma closed public comments.



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Chairperson Ma said the Committee has been flexible when there have been unexpected circumstances like COVID-19, fires, floods, and even unexpected issues with government agencies, such as when the USDA moved offices and was not working on applications. Those were circumstances beyond applicants' control. This situation is different because there was a technical error with the inclusion of the AHP funding. However, it is not completely clear, which is why the Committee is here. Chairperson Ma asked if this would be a trend moving forward or if it is an anomaly.

Mr. Velasquez said the hybrid nature of the project is not an anomaly, but the consideration of the appeal is an anomaly. That is what is hard about this.

Ms. Wiant said that as counsel articulated previously, the intent behind the section of the regulations that allows for the correction of mistakes was that it would apply to calculation errors. That is why the threshold at one point was \$50,000 and then was bumped to the greater of \$100,000 or 50% of the contingency line-item. It was not considered to fill funding gaps.

Mr. Zeto said he could provide some history on this issue. There is a line-item that requires building in a three-month capital operating reserve. He recalls that there was a project that did not have a sufficient amount, so it was raised up, which created a gap. This regulation was meant to fix issues like that.

Mr. Johnson said he has not spoken up yet because he shares everyone's sentiments that this is a terrible decision to have to make. All the projects are deserving, but he feels compelled by the significance of predictable regulations and their implementation. Unfortunately, it seems like there is a lack of clarity here. He reiterated Ms. Johnson Hall's comment that if there is a lack of clarity, the Committee needs to provide guidance on regulations that are predictable so that everyone knows how to run their processes to be competitive in the CTCAC process. That is important, but the regulations are what they are right now, and he is compelled to view them as they are written and as staff interpreted them, rather than creating a new interpretation in this case and setting precedent.

MOTION: Ms. Perrault motioned to deny the appeal.

Ms. Perrault said it is a difficult situation. She agreed with Mr. Johnson that if there is a lack of clarity in the regulations, the Committee can ask staff to work toward what they have heard today and come back to the Committee in the future with recommendations to create more specificity in the regulations. She does not think this is the time to do it with this one case today.

Ms. Wiant said the Committee could choose not to take action on this item. One option would be an affirmative denial versus not making a motion to grant the appeal.

Mr. Velasquez said the Committee has chosen to take no action on items before. The next item would basically override the consideration of the appeal since it would be approving the projects as shown on the recommendation list.

Chairperson Ma asked for clarification that this project is not on the list right now.

Ms. Wiant said that is correct.

Ms. Perrault withdrew her motion.

The Committee took no action on this item.



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5. **Agenda Item: Recommendation for reservation of 2024 second round federal 9% and state LIHTCs, subject to change if appeals are granted under Item 4. (Health & Saf. Code, §§ 50199.10, 50199.14; Cal. Code Regs., tit. 4, § 10310.) – (Action Item)**

Presented by: Carmen Doonan

Ms. Doonan reported that staff is recommending 25 projects for reservation of 9% federal and state tax credits. The projects will provide approximately 1,562 total units.

Chairperson Ma called for public comments:

None.

MOTION: Ms. Johson Hall motion to approve staff's recommendation, and Mr. Johnson seconded the motion.

The motion passed unanimously via roll call vote.

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

Chairperson Ma reopened general public comment:

None.

8. **Agenda Item: Adjournment**

The meeting was adjourned at 10:52 a.m.