

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

MARCH 27, 2023

MINUTES

**TRUSTEES
PRESENT:**

Mike Sedell, Chair, Public Member
Arthur E. Goulet, Vice-Chair, Retired Member
Sue Horgan, Treasurer-Tax Collector
Jordan Roberts, General Employee Member
Cecilia Hernandez-Garcia, General Employee Member
Aaron Grass, Safety Employee Member
Kelly Long, Public Member
Tommie E. Joe, Public Member
Will Hoag, Alternate Retired Member
Robert Ashby, Alternate Safety Employee Member

**TRUSTEES
ABSENT:**

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Amy Herron, Chief Operations Officer
Lori Nemiroff, General Counsel
Dan Gallagher, Chief Investment Officer
La Valda Marshall, Chief Financial Officer
Brian Owen, Sr. Information Technology Specialist
Michael Sanchez, Sr. Information Technology Specialist
Jess Angeles, Retirement Benefit Specialist
Chris Ayala, Program Assistant

PLACE:

This meeting will be conducted by the Board of Retirement both in person and by teleconference under California Government Code Section 54953(b). Any person may view the meeting in person at VCERA's office or online at, <https://www.vcera.org/meeting-agendas-minutes>.

Ventura County Employees' Retirement Association
Second Floor, Boardroom
1190 S. Victoria Avenue, Suite 200
Ventura, CA 93003

TIME: 9:00 a.m.

ITEM:

I. CALL TO ORDER

A. Roll Call.

Chair Sedell called the Business Meeting of March 27, 2023, to order at 9:00 a.m.

Roll Call:

Trustees Present: Robert Ashby, Aaron Grass, Art Goulet, Cecilia Hernandez-Garcia, Will Hoag, Sue Horgan, Tommie Joe, Kelly Long, Jordan Roberts, Will Hoag, Robert Ashby, Mike Sedell

Trustees Absent: Robert Ashby

II. APPROVAL OF AGENDA

Chair Sedell noted that there were several times certain items on the agenda. He proposed that after the Board heard the investment items, IV.A., IV.B., and IV.C., the Board would advance to agenda item, VII.A, which was time certain for 10:00 a.m., and item VII.B., to allow VCERA's Fiduciary Counsel to attend. Afterward, the Board would return to agenda item, IV.D., and break for lunch at 12:00 p.m. After returning from lunch, the Board would hear the agenda items under "Investment Information", followed by items under "Old Business". Lastly, he recommended that the Board also remove agenda item III.C., "Approve Disability Meeting Minutes of March 13, 2023", from the Consent Agenda because there were some suggested changes to the minutes.

Trustee Ashby arrived at the meeting at 9:07 a.m., before the vote on the item.

MOTION: Approve Agenda as Amended.

Moved by Long, seconded by Hernandez-Garcia.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

III. CONSENT AGENDA

A. Approve Regular and Deferred Retirements and Survivor's Continuances for the Month of February 2023.

B. Receive and File Report of Checks Disbursed in February 2023.

C. Approve Disability Meeting Minutes of March 13, 2023.

MOTION: Approve Consent Agenda, with the Exception of Item C.

Moved by Goulet, seconded by Joe.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

Trustee Goulet noted that on page one the titles of the offices that he and Trustee Hoag occupied were "Retired Member", not Retiree Alternate Member. On page 11, 8th line of first paragraph, the word "which" should be removed from the sentence reading, "This action which caused chaos in

private markets over the weekend”. Lastly, at the top of page 9, the Compensation Review Policy motion said, “with amendments”, but the order of the Government Codes were actually correct, so the “with amendments” should be removed.

MOTION: Approve the Minutes, as Amended.

Moved by Goulet seconded by Roberts

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

IV. INVESTMENT MANAGER PRESENTATIONS

A. Receive Annual Investment Presentation from Abbott Capital Management, Young Lee, Matthew Smith, and Arianna Merrill.

Time Certain at: 9:10 a.m.

Young Lee, Matthew Smith, and Arianna Merrill reviewed Abbott Capital Management’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and responded to trustee questions.

MOTION: Receive and File Items IV.A. and IV.B.

Moved by Long seconded by Roberts

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

After the vote on this agenda item, the Board advanced to item IV.C., "Receive Annual Investment Presentation from Harbourvest: Brett Gordon, Karen Simeone, Teri Noble, Seth Palmer, Michael Dean, and Michael Pugatch.

B. Board Approval of the Proposed 2023 Private Equity Annual Plan, Presented by Abbott Capital Management.

RECOMMENDED ACTION: Approve.

Time Certain at: 9:20 a.m.

1. Staff Letter from Chief Investment Officer.
2. Proposed 2023 VCERA Private Equity Annual Plan: Young Lee, Matthew Smith, and Arianna Merrill.

- C. Receive Annual Investment Presentation from Harbourvest: Brett Gordon, Karen Simeone, Teri Noble, Seth Palmer, Michael Dean, and Michael Pugatch.
Time Certain at: 9:35 a.m.

Brett Gordon, Karen Simeone, Teri Noble, Seth Palmer, Michael Dean, and Michael Pugatch reviewed Harbourvest's organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and responded to trustee questions.

Chair Sedell noted that the Board had previously passed a motion to receive and file agenda items, IV.A. and IV.B., however, the Board did not take action to approve item IV.B., which was staff's recommendation. He then said that the Board should formally motion to approve the item, which was their initial intention.

MOTION: Approve Proposed 2023 Private Equity Annual Plan, Presented by Abbott Capital Management.

Moved by Joe, seconded by Roberts.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

After the vote on the item, the Board advanced to item, VII.B., " Review and Discussion of Proposed Resolution to Implement Changes to Compensation Earnable Resolution in Compliance with the California Supreme Court Decision, Alameda County Sheriff's Assoc. Et Al., v. Alameda County Employees' Retirement Assn., Et Al (2020) 9 Cal.5th 1032 ("Alameda") Following Governor Newsom Veto of Assembly Bill 826, in Advance of Anticipated Action on April 17, 2023".

- D. Receive Annual Investment Presentation from Pantheon: Iain Jones, Rudy Scarpa, and Rakesh (Rick) Jain.
Time Certain at: 11:30 a.m.

Iain Jones, Rudy Scarpa, and Rakesh (Rick) Jain reviewed Pantheon's organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

V. INVESTMENT INFORMATION

VCERA – Dan Gallagher, Chief Investment Officer.

NEPC – Allan Martin.

- A. \$75 Million Commitment to LaSalle Value Partners US IX.
RECOMMENDED ACTION: Approve.
Time Certain at: 12:45 p.m.

1. Staff Letter from Chief Investment Officer.
2. Memorandum from NEPC.

3. LaSalle Value Fund IX Presentation Deck: Matthew Walley, and Joe Muñoz.

Mr. Gallagher reminded the Board that in January 2018, the Board had approved a \$100 million commitment to LaSalle's Fund VIII, which was a Value Add Fund, which complimented VCERA's core real estate investments. Today's recommendation was a \$75 million commitment to the follow-on LaSalle Value Fund IX. It would also be consistent and in the same strategy as LaSalle Fund VIII, which was earning a very strong net internal rate of return, as of the most recent financial statement, as of September 30th. Also, a \$75 million investment commitment, drawn over 3 years, would bring the portfolio allocation closer to the target.

Trustee Hernandez-Garcia returned to the meeting at 1:34 p.m., before the vote on the item.

MOTION: Approve Commitment of \$75 Million to LaSalle Value Partners US IX, and Subject to Legal Review, and Negotiation, Authorize the Board Chair, or the Retirement Administrator or in the Absence of Both, the Chief Investment Officer, to Approve and Execute the Required Documentation.

Moved by Roberts, seconded by Grass.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Joe

Abstain: -

- B. Board Approval of the Proposed 2023 Private Credit Investments Pacing Plan.

RECOMMENDED ACTION: Approve.

Time Certain at: 12:50 p.m.

1. Staff Letter from Chief Investment Officer.
2. Proposed 2023 VCERA Private Credit Pacing Plan: Allan Martin.

Mr. Gallagher noted that each year the Board approves pacing plans for VCERA's private equity and private credit investments programs to grow those investments toward their asset allocation targets and then to maintain their allocations in a thoughtful and measured way. He emphasized that it was very important to remember that annual commitment targets were only estimates, and achievement of such are subject to variables such as availability, negotiations of terms, etc.

Mr. Martin presented the Proposed 2023 Private Credit Investments Pacing Plan.

Trustee Long left the meeting at, 1:58 p.m., before the vote on the item

MOTION: Approve the Proposed 2023 Private Credit Investments Pacing Plan.

Moved by Goulet, seconded by Roberts.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell

No: -

Absent: Joe, Long

Abstain: -

- C. Monthly Performance Report Month Ending February 28, 2023.
RECOMMENDED ACTION: Receive and File.

Mr. Martin presented the Monthly Performance Report Month Ending February 28, 2023.

MOTION: Receive and File.

Moved by Roberts, seconded by Horgan.

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Joe

Abstain: -

Trustee Grass left the meeting at 2:09, before the vote on the item.

VI. OLD BUSINESS

- A. Follow-Up on Pending Requests/Items from VCERA to County of Ventura.

1. Staff Letter from Retirement Administrator.

Ms. Webb explained that the item was a summary of 4 different pending issues staff had been directed to explore and discuss them with the County. The first was to add the Chief Technology Officer position to the District Status employees, as at the time of the original legislation, VCERA did not have a CTO position. The second legislative item was concerning cybersecurity issues; staff had asked the County to join with VCERA in supporting a legislative amendment to CERL that would mimic Bagley Keane, which allowed California state agencies to meet in a Closed Session to discuss cybersecurity issues.

Trustee Goulet said that the Bagley Keane Act provided the ability for State Agencies to meet in Closed Session to address electronic data issues, and in developing a piece of legislation he had reviewed what already existed and added another section, parroting what was in the Bagley Keane Act.

Staff had approached the County to ask if they would co-sponsor the legislation and were told by County staff that approval from the Board of Supervisors (BOS) would be necessary because such efforts were not on the current BOS legislative agenda. Later County staff followed up that VCERA would need to get the legislation introduced before the County would determine whether or not they would support it. Trustee Goulet said he found this disappointing. He had also taken the issue to SACRS, and their Legislative Committee's position was that it was an issue that should be pursued at the County level, through the California State Association of Counties (CSAC), but apparently, the Counties were not interested in pursuing presently. VCERA's CTO believed the Board should have that ability, and VCERA's Counsel said that the Board of Retirement could not currently meet in Closed Session on cybersecurity matters, so legislation was needed to allow it. They were also past the deadline to introduce new legislation for the year unless they could find a spot bill to latch onto, and he also believed that VCERA should approach Assemblywomen Irwin for assistance because she was the Chair of a Technology Committee in the Legislature.

Trustee Long said she appreciated Chair Sedell for reaching out to her regarding the item, though, she and Trustee Goulet had not yet spoken about it. She confirmed that the BOS legislative priorities had already been approved. So, to get any other items on the County's list a Supervisor or staff member would have to bring it to the attention of the Board of Supervisors to add it on their legislation platform, which she would be happy to do. So, if Trustee Goulet or staff could provide the wording for a letter for her to present to the Board of Supervisors. Also, as a Board of Director for CSAC, she did bring up the issue at their last meeting, and they were following up on that. Lastly, she agreed that they should work with Assemblywomen Irwin. She was definitely someone they should advocate with to get things moving.

MOTION: Direct Staff to Work with Supervisor Long's Office on a Letter Advocating that the Board of Supervisors Add Item #2 to the Legislative Platform for Ventura County, and to Work with Assemblywoman Irwin or Other Legislator's Office as Appropriate on Advancing the Legislation.

Moved by Long, seconded by Goulet.

Vote: Motion carried

Yes: Ashby, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Grass, Joe

Abstain: -

Ms. Webb said that the third item was raised and explored by the Finance Committee, which was regarding the Retiree Healthcare Premium. The County has respectfully declined to make any changes on that item, and if the Finance Committee wanted to pursue it further, they would need to make a recommendation to the Board, but she believed they were still considering their options.

Chair Sedell then asked if they could go back to item #1 because he believed that they had skipped over it.

Ms. Webb said that item #1 was for the CTO to join the other five (5) Special District members, on which County support would be appreciated. The County's response to both the 1st and 2nd item was that VCERA needed to pursue a bill first; while she did not anticipate the County joining VCERA on legislation, she was pleased that they did not indicate that they would object to it.

MOTION: Direct Staff to Work with Supervisor Long's Office on the Chief Technology Officer Position and that the Board of Supervisors Add Item #2 to the Legislative Platform for Ventura County, and to Work with Assemblywoman Irwin or Other Legislator's Office as Appropriate on Advancing the Legislation.

Moved by Long seconded by Roberts

Vote: Motion carried

Yes: Ashby, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Grass, Joe

Abstain: -

Ms. Webb reiterated that she believed that the Finance Committee was considering whether or not to propose a recommendation to the Board on the Retiree Healthcare Premium.

Item number 4 would allow members who had extra help or time where they participated in the Safe Harbor Defined Benefit Plan, to purchase that time with VCERA. In 2008, a section was added to the CERL that allowed members to participate in both CERL and a Public Employer's Supplemental Retirement Plan (SRP), but only if the SRP had or obtained an IRS Qualification Letter. This meant that the County would have to pursue an IRS qualification letter on the Safe Harbor Plan to allow for such purchases under that section. Staff had inquired of the County if they would be willing to pursue the qualification letter, as it would be to the benefit of VCERA members. The County indicated the item would be discussed by the Supplemental Retirement Plan (SRP) Committee in April. So, VCERA staff would submit advance information to the committee to assist in their consideration.

Ms. Nemiroff added that the legislation that was passed in 2008 did allow an employee to participate in VCERA and the supplemental 457 Plan, however a tax qualification letter was needed because the Safe Harbor Plan was a Defined Benefit plan, and the code specified that there had to be an IRS qualification letter. She mentioned that she already issued an opinion to staff earlier said that once the County switched to a supplemental 457 plan for excluded VCERA service, employees placed in that supplemental plan who later become County employees could purchase service credit under this code section. However, VCERA could not easily apply this same rule to the Safe Harbor plan service because of the additional code requirement for the IRS Qualification Letter.

Trustee Ashby said that this was partially instigated by the Ventura County Professional Firefighters Association (VCPFA) because there were Fire Control Workers who were employed by the County, and then laid off for a day or two and then rehired into the system by being hired by the Fire Department. So, there was concern by these employees who believed that they should be able to purchase that time back.

MOTION: Direct Staff to Draft a Letter of Support from the Board of Retirement to the SRP Committee, Regarding Pursuing a Tax Qualification Letter, for the County Safe Harbor Plan.

Moved by Ashby, seconded by Long.

Vote: Motion carried

Yes: Ashby, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Grass, Joe

Abstain: -

After the vote on the agenda item, the Board advanced to item VII.C., "Report on Due Diligence Visit to Western Asset Management and PIMCO, Submitted by Trustee Ashby, General Counsel and CIO".

VII. NEW BUSINESS

A. Adoption of Rate of Interest to be Applied to Corrections and Refunds as a Result of the Alameda Decision, and in Advance of Anticipated Board Action on April 17, 2023.

RECOMMENDED ACTION: Determine Applicable Rate(s) of Interest for Corrective Distributions Related to Implementation of the Alameda Decision.

Time Certain at: 10:00 a.m.

1. Staff Letter from Retirement Administrator.

Ms. Webb explained that the topic of the interest rate to be ultimately applied to Alameda-related refunds and corrections had been previously discussed by the Board in October 2022 when it was considering adoption of a resolution. The Board had opted for the “since inception” rate from an investment report, contingent upon adoption of the Resolution. However, that Resolution was not adopted, and action on it was deferred to April 2023. Thus, the Board would need to reconsider the interest rate issue again. Staff was recommending the Board adopt an interest rate, though they were not recommending a specific rate; legal counsel previously advised the Board that the rate chosen could not be arbitrary or capricious. Staff’s letter had listed several approaches for consideration, such as the Interest Crediting Rate, Assumed Rate, Actual Earnings, Since Inception Rate, etc., that the Board could deem fair and equitable. Also, in the cases of the PEPRA and Alameda Exclusions, the fund had held these contributions for an extended period, which staff believed should be reflected in the approach that the Board would take. Staff has also provided some examples of the approaches of other Retirement Systems under CERL had taken on the interest rate issue.

Trustee Grass said that he would make the same argument that he made in October, which was that the 7.8% should be the effective rate. He said under the heading of opportunity cost, the money could have been invested by employees in a way that they saw fit. Further, the time value of money was an important factor because those dollars were worth more today than when they were collected. Therefore, he believed they should credit the members with a 7.8% interest rate, based on a 10-year time horizon. He was bothered that the memo listed the 1-year Actual Earnings Rate as - 11.7%, and although he appreciated that it said that the percentage “not recommended”, they should be considering long-term investments. His point was that if he had received that additional money in his paycheck, he would have invested it differently. He also felt that it was a low rate to ask for because there were fees that were paid by the members when the contributions had come out of their checks, and so he believed it would be wrong to pay anything less than what VCERA had received in the plan. Therefore, he was fully prepared to make a motion to adopt 7.8% as the interest rate to be applied.

Trustee Long asked if the Board had any flexibility regarding the interest rate, between the time it was adopted and the time the refunds were paid out since the rate could climb higher.

Chair Sedell said that he believed it would be better for the Board to choose one rate for everyone, instead of a variable rate that could be different from member to member based on the timing.

Ms. Dunning said that although she was not VCERA’s tax lawyer she believed that from a determinable benefit perspective, she believed the Board should adopt a rate, regardless of when a member retires or if the earnings go up or down.

Ms. Horgan noted that a lot of time had passed for VCERA as well and asked if anyone knew what the impact would be on the plan, on whatever rate they choose.

Ms. Webb said the simple answer was no because they were talking about thousands of members over multiple pay periods. Staff could calculate the contribution refund amounts, but a pay period-by-pay period application would have to be done. So, they did not have that answer, although it would be significant.

Trustee Grass pointed out that the contribution was received by VCERA and interest on it was earned, and other than actuarial expenses and the cost of administration, it should have almost a net neutral effect on the plan.

Ms. Webb agreed with Trustee Grass, however, the impact on the plan of not recouping overpayments from retired members, was also unknown, although she believed there was universal agreement that not recouping was the appropriate action.

Trustee Hernandez-Garcia left the meeting at, 1:24 p.m., before the vote on the item.

MOTION: Approve Interest Rate of 7.9% (Compounded Annually, as of the Most Recent Interest Crediting Date) for Both PEPRA Exclusions and Alameda Exclusions for Corrective Distributions and Related Calculations of Overpaid Benefits for the Implementation of the Alameda Decision.

Moved by Long, seconded by Joe.

Vote: Motion carried

Yes: Ashby, Grass, Goulet, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: Hernandez-Garcia

Abstain: -

Trustee Joe left the meeting at 1:30 p.m., after the vote on the item.

After the vote on the agenda item, the Board returned to item IV.D., "Receive Annual Investment Presentation from Pantheon: Iain Jones, Rudy Scarpa, and Rakesh (Rick) Jain".

B. Review and Discussion of Proposed Resolution to Implement Changes to Compensation Earnable Resolution in Compliance with the California Supreme Court Decision, *Alameda County Sheriff's Assoc. Et Al., v. Alameda County Employees' Retirement Assn., Et Al* (2020) 9 Cal.5th 1032 ("Alameda") Following Governor Newsom Veto of Assembly Bill 826, in Advance of Anticipated Action on April 17, 2023.

1. Staff Letter from Retirement Administrator.
2. Letter from Governor Newsom, Veto of AB 826.
3. Memorandum from General Counsel, dated January 31, 2023, Re: Pensionability Analysis of Flexible Benefits Program Allowances as to Legacy Members Under Current and Pending Structure.
4. Proposed Resolution for Alameda Exclusions.

Ms. Webb noted that the item before the Board was not an action item and that the resolution that was pending would be brought to the Board for possible action at the April 17, 2023, meeting. The resolution would be for the Alameda Exclusions only, predominantly the Flex Credit structure, and the Board had formally adopted a Resolution that addressed the PEPRA Exclusions, which pertained to pay items such as Standby Pay and excess leave redemptions. However, the current resolution was essentially the same resolution that staff had been recommending since the *Alameda Decision* was rendered in 2020, which was to exclude the non-cashable portion of the flex credit from compensation earnable. VCERA's Fiduciary Counsel, Ashley Dunning was in attendance to walk the Board members through the provisions of the proposed resolution.

Ms. Dunning then presented the proposed Resolution Regarding the Correction of Pensionability of Benefits Under the County of Ventura's Flexible Benefits Program.

Trustee Grass said that on numbers 3 & 4, on page 4 of the resolution, the words, "as soon as administratively feasible" should be changed to show a specific amount of time, when the resolution comes back to the Board in April for action. However, if that were not possible, the resolution should say that the agreed interest rate would continue to be credited until the day VCERA could begin issuing refunds on the flex credit to the employees, because the section of the proposed resolution was a little ambiguous, and per annum that money was still on deposit and VCERA was still earning interest on it.

Ms. Webb said that staff could not estimate the timing of the refunds, as the delays had spanned more than 2 ½ years and there were thousands of members involved. Staff was currently formulating a plan with the County of Ventura, Auditor-Controller's Office, and others on ultimate implementation. She agreed that it was a priority, but the enormity of the undertaking should be acknowledged, and staff was working diligently with the goal of getting the members their refunds as quickly as possible.

Ms. Dunning pointed out what she had seen other Retirement Systems do in regard to the Interest Rate question, as they followed their normal interest crediting process so that if it was a semi-annual credit, you would credit the refunds on a semi-annual basis unless the Board decided to stop the accrual of interest, which was another approach.

Chair Sedell said that the Board would deal with the issue when they discussed agenda item VII.A., which pertained to the interest rate.

Lyn Krieger, Retired VCERA member, provided public comment. Ms. Krieger said she came to the County as a reciprocal employee and was the former Director of the County of Ventura, Harbor Department for 21 ½ years. She was a part of a group of unrepresented management employees who were representing themselves and their other former colleagues, who might not even know about the issue. Retirement benefits are very important to employees, and it was one of the reasons why people come to work at the County; they were aware that once a member retired there was no option to fix or increase your pension through labor agreements or policies. So, they appreciated that the new resolution regarding flex credit and were in support of its the adoption with one caveat. If the Board were to adopt the resolution effective 2020 to 2023, they should explore solutions for those caught unaware that they would be facing reduced benefits. They were also concerned that the resolution affirmed the Board's prior position on annual leave buy-downs requiring pension benefit reductions and refunds back from retirees from 2013 forward. Having researched the issue, they believed this was unnecessary and it was not what the Alameda Decision required. They were providing a letter that showed that it was not what VCERA's peers were doing in other counties.

Also, it was significant that Ms. Dunning pointed out that the law was determined at the end of July 2020, but there was a long history of court cases in California and nationally that required prospective application of new law and interpretation of new law, which was how this would be characterized. Therefore, they believed that the annual leave issue should be treated in the same way as the flex credit policy. The Alameda Decision court case was primarily focused on pension spiking, which they understood, and the court defined that as policies that were designed to allow employees at the end of their careers to artificially increase their pension benefits. The case was brought by the Alameda Sheriff's Department and the court commented that vacation pay down on other pay items were doubled or more in the final year of an employee's County service, but that was never the case in Ventura County, and the Alameda Decision did not say that specific benefits must be altered or eliminated, and it did not anticipate retroactive consideration.

She said her final point was that the resolution was silent regarding the contributions that the county made for all those years that people were employed and what kind of interest earned on that would

be applied and returned to the county. Alameda also said that the legislature did have a constitutional authority to change retirement law for certain and narrow purposes, but the Alameda decision gave responsibility to County Retirement Systems to evaluate their pay items against the PEPRA rules and make your own interpretations going forward. She would like to leave them with one quote from the Alameda decision: "... *the PEPRA amendment did not require exclusions solely because an item of compensation was within one of these examples...*" [which were the examples they made out in the case], "... *instead, they illustrate the type of practices that raise suspicion under section 31461 subdivision (b)*", which stated, "an item of compensation must be found by the County Retirement Board to have been paid for the purpose of enhancing a members retirement benefit", but she did not know if that analysis had taken place. Consequently, they asked that when this item came back to the Board in April, they adopt it and also find some help for those employees from 2022 to 2023, as they may not have known the situation at the time they retired. They also asked that the Board amend their October 12, 2020, resolution regarding annual leave, to begin application of this item in the same manner as the flex credit benefit, with no payback requirement.

Gerhardt Hubner, Retired VCERA member, provided public comment. Mr. Hubner said he was a VCERA reciprocal member and retiree since August 2017, and he was the former Deputy Director of Public Works overseeing the water and environmental resource division from November 2005 to March 2016. He also previously worked for the state of California in management, as a water quality regulator for over 15 years. Since his retirement, he and some of his colleagues have become pretty well versed in retirement law, retirement benefits, and reciprocity through their appeal of the CalPERS decision to not honor reciprocity. In short what was proposed and the draft resolution regarding flex credit was consistent with the Alameda decision, but he would like to highlight some of the discretion the VCERA Board may have by providing them with 3 examples from other nearby county retirement systems that have also acted in regard to the Alameda decision in determining which items of compensation and final compensation determinations, and especially implementation timing.

San Diego County made it clear from the beginning that no employees who retired before January 29, 2021, would be affected by the Alameda Decision. The statement on their website said, the information below only applies to Active Tier I, Tier A, and Tier B members, and did not apply to members who retired prior to January 29, 2021. They identified 3 main Earn Codes that were excluded under the Alameda Decision and were considering possible actions required for those who retire after January 29, 2021. A January 2021 recommendation to the San Diego County Employees' Retirement Association included this statement, "fiduciary counsel has confirmed that the Board's determination may be applied prospectively, this means the Board's action will not affect current retirees or members who received such compensation before January 29, 2021". Orange County identified Standby Pay, Call back Pay, and Overtime as potentially problematic under the Alameda Decision, however, Orange County worked to find a way to include income that was always intended to be income for work performed by dividing each employee tier by Legacy and PEPRA. They were also very particular about their interpretation of "Vacation Buydown", which they determined was earnable in a year and payable in the final years, under the Memorandum of Agreement (MOA) at the time. They were left with stand-by pay, on-call pay, or similar pay. Again, they considered whether the purpose of the income item was to boost a pension benefit. In the end, their County Board of Supervisors, in January 2022, adopted a new labor agreement and suspended the prior ones back to January 1, 2013, recognizing the bulk of these pay items, and they made it clear that they intended to affect as few employees as possible. Santa Barbara County identified Standby Pay, and Callback Pay as excluded pay items. Their Summer 2022 Update said, "this fact sheet provides an update regarding the status of refunds of contributions on standby pay to non-retired members. They also adopted new labor agreements, across the board in December 2021, which became effective March 22, 2022, after being endorsed and accepted by their Retirement System Board. Again, Santa Barbara handled their Alameda Decision problem. In summary, his comments today were to support

the draft resolution, but they were also provided with the intent to hopefully show examples of other County Retirement Systems, that demonstrate the Board's flexibility in determining the date of resolution enactment and items of exclusion.

Ms. Dunning said that it was important to differentiate between Alameda Exclusions and PEPRA Exclusions. What the Board was discussing today was Alameda Exclusions and those were items that were proposed to be excluded from retirement allowance calculations because the Alameda Decision said that the Board did not have authority under Guelfi footnote 6, to pay more than what was permitted by the California Employee Retirement Law (CERL). So, it was a judicially driven determination, which led to an application of that determination, based on the date of the decision, July 30, 2020. However, PEPRA Exclusions were what was originally at the heart of the litigation that led to Alameda, and that was when the legislature changed the definition of compensation earnable, as of January 1, 2013. It said certain payments were not permitted to be included in compensation earnable, with one of them being payments for services rendered outside normal working hours. This has been applied to Standby Pay, On-Call Pay, and those types of payments. There was also an exclusion of pay for leave beyond that which was earned and cashable in each 12-month period of the final compensation period. That was the language that the Supreme Court referred to when determining that it was not permissible to include in retirement allowances under PEPRA, more than amounts that people could receive in the 12-month period and be paid under their applicable Memorandum of Understanding (MOU), in each 12-month period, which was the no straddling of fiscal years rule. That was the rule the Board applied to everyone subject to PEPRA, which was the same thing the Supreme Court said in the Alameda Decision, that Retirement Boards did not have discretion to not apply the PEPRA Exclusions to people who were subject to them. The Board had applied that provision, they were sued and the Board won, yet was being described today as something that was not the law or something that should be changed. This was something that had already been litigated in Santa Barbara Superior Court. It was being appealed by 2 Unions, so it was still active litigation, but the Judge in the court case Santa Barbara Superior Court wrote a comprehensive decision concluding that the VCERA Board had correctly applied the law. On the point related to County contributions, those contributions were dealt with in the sense that County contributions remain in the plan, as required by law, for VCERA to remain a tax qualified retirement plan because the Board was not allowed to send money back; however, if there were any overpayments by the County that would impact future amounts due from the County, it would reduce them, so the proposed resolution did deal with County contributions. In regard to taking care of the retirees who retired between August 2020 and the present, this was the reason the proposed resolution stated that VCERA would not seek to recoup overpayments from the retirees. Therefore, all she could say was that the law was the law and that PEPRA had been in place since January 2013, and as far as she was aware, all of the litigation that had involved Exclusions, Standby Pay, or On-Call Pay, whether at the administrative level or by the courts, had upheld the exclusions after the Alameda Decision. As to the "Straddling" issue, every CERL system that she was aware of did not permit cash outs in excess of what could be earned and paid in cash, in each 12 month period in the applicable MOU. So, there were no systems that now permitted something in excess of that.

Ms. Webb said that when the Alameda Decision first came out, VCERA's executive team's first priority was the members that were in the process of retiring from the County. Staff prioritized alerting them that a recent CA Supreme Court ruling could affect the pension benefit for those members whose retirement date was after July 2020. Because it was only days after the decision was rendered by the court, staff was not able at that time to comprehensively explain what the full ramifications would be. However, ever since that time, VCERA sends a letter to each new Legacy retiree, explaining both the Alameda and PEPRA Exclusions, as well as information regarding what VCERA and the Board were doing in regard to the Alameda Decision. Until the Board took action on the resolution, staff could only let the members know what the situation was and put them on notice that a decision on a proposed resolution pertaining to the Alameda Decision was coming. Once the Board

took action, staff would be sending the retired members a personalized calculation of their retirement benefit, as soon as administratively possible.

Tracey Pirie, Retired VCERA member, provided public comment. Ms. Pirie said that she had been employed with the County for 17 years and her last assignment was with the Sheriff's Department, as the Sheriff's Human Resources Bureau Manager. She was one of those members who had filed for retirement in July 2020, prior to the Alameda Decision; however, her retirement date was supposed to be September 2020. So, she was caught in the little "bubble", but she chose to move forward with retirement, and she had also established reciprocity with CalPERS, so she had retired concurrently from both. She had originally planned to retire in April 2020, but as a dedicated public servant, she had remained and continued working because no replacement for her had yet been found. Now, she felt that her dedication may not be repaid as previously promised. Like her fellow retirees who had spoken today, she would be impacted, not only by the Board's decision related to Annual Leave but also Flex credit and Donated Annual Leave. They collectively believed that the actions being taken relative to Annual Leave Buydowns were not required by the Alameda Decision. As for the Flex Credit benefit, they appreciated the Board's moderate approach on the issue, however, they did believe the Board could apply it prospectively, as San Diego County choose to do, and both the County and Ventura County Deputy Sheriff's Association (VCDSA) had requested. The employees still working have an opportunity to be protected by new terms within labor agreements and work to accrue additional service credit to offset any reductions to their pension benefits, but retirees did not have that option. In addition, those who had established reciprocity suffered a significant loss in retirement benefits because of CalPERS action of not including items reported in their Final Average Compensation by the County. They had all done a great deal of research, and had all appealed the CalPERS decisions.

Chris Stephens, Retired Legacy member, provided public comment. Mr. Stephens said he was the former Director of the Resources Management Agency for a number of years, and retired prior to the Alameda Decision, therefore he was not impacted by the flex credit issue. However, he was there to comment on one specific issue, which was the lack of notice to the members. In his conversations with fellow retirees over the last several months about the Alameda Decision, their almost universal response was that they had no idea about it. He then researched the issue on VCERA's webpage, but saw no constructive notice to the retired members about the Alameda Decision. He noted that VCERA's webpage listed one of the primary goals as, "... to provide timely and accurate information to you—the member", but apparently that had not been going on, because he certainly had not received any notices regarding the Alameda Decision and its impacts. If there were any other important decisions that the Board would be considering, some sort of constructive notice should be given to the membership, because they were important decisions that had material impacts on the members' retirement benefits.

Ms. Webb noted that staff had been in direct contact with those who retired after the Alameda Decision, and as Mr. Stephens had retired before the Alameda Decision, VCERA had not contacted him directly about the issue; although, VCERA had been publicly posting important information on the subject on VCERA's website. Further, as the Board had repeatedly delayed action, then communicating too early could cause a great deal of confusion as staff could not tell members what the impact of the action would be. Therefore, staff put the individual members on notice at retirement that it was coming, and that whenever the Board had rendered a decision VCERA would reach out directly to the members to let them know what the impact would be. Also, the Retired Employees' Association of Ventura County (REAVC) had been receiving information through their quarterly newsletters, which Trustee Goulet wrote regularly. She appreciated Mr. Stephen's concern because communication with the members was very important.

Scott Barash, Retired VCERA member, provided public comment. Mr. Barash explained that he retired in 2018, after 31 years of service with the County. He was a Social Worker, and not a baseball player, but he wanted to use the following baseball analogy. You play the game according to the rules, and then 2 years later you find out that the rules changed. So, now you have to go by different rules, even though you've already won the game. So, the Board should be careful about its image, and be careful about whether people may choose not to play the game. It was a matter of what would the reputation be for the current and future employees of the County. The more communication, and the more clearly shown that it was a fair decision, the better.

Chair Sedell added that while the Board had a fiduciary responsibility to comply with the law, the Board could take an active role in trying to resolve the issue in court by working with the County, but because the County backed out of the litigation, we could not go any further in that way. SEIU was then working with the state legislature to try to resolve the issue in that way, and the Governor finally vetoed AB 826, after it had passed the legislature. Therefore, the Board tried to do everything they could on the issue.

Trustee Long remarked that for the record the County was the one that was pushing that bill through the legislature as strongly as possible.

Ms. Webb informed that Board that they had received a chat during the meeting from a Retired member, Barbara Stoliker, and Ms. Webb would read it to the Board.

Ms. Webb said that Ms. Stoliker was not an active union member back in 2020, however, she was in contact with VCERA many times before her retirement, and at no time did VCERA ever mention that the hearing would be taking place. Therefore, as she was not provided the opportunity to decide whether or not she should retire prior to July 2020, was negligence on VCERA's part ever discussed because of this? Many people were losing large amounts of money because VCERA neglected to inform employees of upcoming legislation that could possibly affect their benefits.

Ms. Stoliker requested to make the following verbal public comments. She retired in November 2020, but in the months before she decided to retire, she had been in contact with VCERA so that she could figure out the best time for her to retire. While speaking with SEIU recently, she was told that SEIU members were notified of the litigation taking place in July 2020, but since she was not a union member, she was not notified that the hearing would be taking place. So, she did not have the opportunity to decide on whether to retire before July, and her concern was that some people received the benefit of knowing about the hearing, and she was wondering if there was some liability on VCERA's part for not letting the members know in advance. She had also called VCERA after the Alameda hearing took place and asked why anyone did not say anything to her about it previously, but they were silent.

Ms. Webb offered to follow up with Ms. Stoliker after the meeting to discuss her situation, because during that time VCERA had been notifying all new retirees of the Alameda Decision and its potential impact on members.

Chair Sedell wanted to clarify a previous comment he made regarding the Board's first attempt to resolve the issue with the Board of Supervisors. VCERA and the County had a friendly court case with the intention to have the Court interpret Alameda's Decision. The County did back out of that court case, and there was also a different Supervisor on the Board of Retirement at that time, and so Supervisor Long was not on the Board at that time. VCERA and the County, along with SEIU later worked together on legislation regarding the Alameda Decision, which was previously mentioned. So, no one on the Board was looking forward to doing what they would have to do, and the Board would have to decide on the details at the next meeting.

Trustee Goulet remarked that he was glad that the resolution made it clear that someone who was affected by it would not necessarily be getting a refund of contributions because he did not believe it was made clear previously. He also did not believe that it had been made clear previously that there would be interest on the overpayments and the contributions because there was a lost opportunity regarding both. He was also concerned about the interchange of the term, "cashable" and "paid in cash". Finally, it was his understanding that no contributions were made, either by the County or the employee on Annual Leave Redemptions.

Ms. Nemiroff noted that VCERA was including in compensation earnable all Annual Leave Buydowns. The Board had included in compensation earnable annual leave redemptions, so the County reports as compensation earnable, each annual leave redemption, and contributions were paid on each redemption. Both the employee and employer contributions.

Trustee Long said that she was concerned about those employees who had a constitutional contract with the County. It was also mentioned by the speakers that the boards in San Diego, Orange, and Santa Barbara Counties had done something different. So, since they had time before April's meeting they should look into what was done in those Counties, to see what they did and why they did it. She did not take the vote on the issue lightly at all.

Ms. Webb then presented to the Board charts that showed examples of the Opt-Out Fee Structure and the Opt-Out Allowance Structure.

Ms. Oliver said that there was Public Comment from VCERA member, Teresa Smith, that she would read for the Board. Ms. Smith was asking how was this issue going to affect those Legacy Tier II members, who came back in 2013/2014 and were reinstated, and had plans to retire in the next 2 years. Ms. Smith currently had 10 years of service and had been considering looking at retiring in 2025. How would it be calculated going forward, and would the members all be considered PEPRA members after next month, or will the Legacy members somehow be adjusted to comply?

Ms. Webb explained that neither the resolution nor the Alameda Decision would convert anyone to be a PEPRA member. Also, the flexible benefit credit was never pensionable for PEPRA members, under pensionable compensation. Ms. Webb said that regarding the previous comments on how other counties were handling the issue differently. In Orange and Santa Barbara counties they had different pay items that were the issue, and the counties and the unions had negotiated on those codes, which did not happen in Ventura County. So, every County had its own Alameda implementation (except for a handful who were not impacted because they were already excluding the pay types.) They all followed a different path, and they were able to act sooner because they did not have the same pay items that Ventura County had. The exclusion of Standby Pay and other pay items under the PEPRA exclusions had already been done, and so VCERA had stopped collecting retirement contributions on those pay items, as of October 2020.

After this discussion, the Board took a break at 12:30 p.m.

The Board returned from a break at 12:40 p.m.

Trustee Ashby remarked that when the Alameda Decision was announced, the Board worked hard to understand what the implications would be. They also knew that there were going to be some who would be tremendously affected by it, which they took very seriously. In the 2 years that the Board had been discussing it, the message from the Retirement Administrator, Fiduciary Counsel, and General Counsel had not changed, which was that the Board needed to comply with the law. It was also very apparent to him that the longer the Board kept kicking the can down the road, it would just

keep making things more complicated, and people were getting more frustrated. As a Trustee, he thought that they might need to be more vigilant in getting the message out to the unions or other parties they represented. Also, in light of the resolution, they need to take action next month and stop kicking the can down the road, as they had received proper counsel and everything else they needed to make a well informed decision. He did feel for those members that were caught in the middle of it; unfortunately, they could still exercise their right to litigate the issue further, if that was what the Board decided to do, although he did not believe it was the right decision because of the expense. However, the Board should do everything in its discretionary power to limit the impact on the members. So, the Board should make the decision to adopt the resolution and move on. He also appreciated the time VCERA's staff and counsel had spent to help educate the Board on the issue so that they could make a decision.

Chair Sedell said that the Board had a multi-billion fund that they were responsible for, and they had to comply with what the law said, and it was the dilemma that they were in right now, and none of them were comfortable with what they were being pushed to do by what the law said they had to.

After the discussion and comments on the agenda item, the Board returned to agenda item VII.A., "Adoption of Rate of Interest to be Applied to Corrections and Refunds as a Result of the Alameda Decision, and in Advance of Anticipated Board Action on April 17, 2023".

C. Report on Due Diligence Visit to Western Asset Management and PIMCO, Submitted by Trustee Ashby, General Counsel and CIO.

RECOMMENDED ACTION: Receive and File.

1. Staff Letter from Chief Investment Officer.

MOTION: Receive and File.

Moved by Long, seconded by Ashby.

Vote: Motion carried

Yes: Ashby, Goulet, Hernandez-Garcia, Horgan, Long, Roberts, Sedell

No: -

Absent: Grass, Joe

Abstain: -

Trustee Long left the meeting at, 2:35 p.m., after the vote on the item.

Chair Sedell said that since some of the trustees had left the meeting already, the Board could hold the Closed Session meeting at the next meeting in April.

VIII. CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Retirement Administrator

(Government Code section 54957(b)(1))

IX. INFORMATIONAL

None.

X. **PUBLIC COMMENT**

None.

XI. **STAFF COMMENT**

Mr. Gallagher noted that on the recent due diligence visit, staff had received materials from Western Asset Management Company (WAMCO) and PIMCO and he had hard copies that he was happy to share.

Ms. Webb said that there were a couple of financial related items that were moved from this agenda to the following one in April. So, the Mid-Year Budget and the position addition would be on the next agenda, as well as the Board Member Education Compliance Report.

XII. **BOARD MEMBER COMMENT**

None.

XIII. **ADJOURNMENT**


The Chairman adjourned the meeting at, 2:46 p.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



MIKE SEDELL, Chair