

# VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## BOARD OF RETIREMENT

### DISABILITY & BUSINESS MEETING

APRIL 17, 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

**TRUSTEES  
ABSENT:**

Robert Ashby, Alternate Safety Employee Member

**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  
Leah Oliver, Chief Technology Officer  
Josiah Vencel, Retirement Benefits Manager  
Brian Owen, Sr. Information Technology Specialist  
Michael Sanchez, Sr. Information Technology Specialist  
Jess Angeles, Communications Officer  
Chris Ayala, Program Assistant

**PLACE:**

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 Disability & Business Meeting of April 17, 2023, to order at 9:00 a.m.

Roll Call:

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

Trustees Absent: Robert Ashby

II. APPROVAL OF AGENDA

Ms. Webb noted that minor suggested changes to the minutes were submitted before the meeting and unless any of the Trustees had additional suggested changes, the Board could keep the minutes on the Consent Agenda.

MOTION: Approve with Changes.

Moved by Grass, seconded by Joe

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

III. CONSENT AGENDA

*Notice: Any item appearing on the Consent Agenda may be moved to the Regular Agenda at the request of any Trustee who would like to propose changes to or have discussion on the item. Note that approval of meeting minutes are now part of the Consent Agenda.*

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of March 2023.

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

C. Approve Business Meeting Minutes of March 27, 2023.  
**To be Provided.**

D. Receive and File Fiscal Year 2022-23 Quarterly Financial Statements and Budget Summaries

1. Staff Letter by Chief Financial Officer

2. Financial Statements.

3. Budget Summaries.

E. Receive and File Mid-Year Budget Update for Fiscal Year 2022-23.

1. Staff Letter by Chief Financial Officer.

2. Budget Summary Projections (Attachment A).

MOTION: Approve.

Moved by Goulet, seconded by Grass

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

**IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT**

MOTION: Receive and File.

Moved by Roberts, seconded by Long

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

**V. APPLICATIONS FOR DISABILITY RETIREMENT**

A. Application for Service-connected Disability Retirement—Tapia, Emilia; Case No. 21-015.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 5, 2023.

2. County of Ventura-Risk Management's Response to VCERA's Preliminary Recommendation, dated March 27, 2023.

3. Supporting Documentation for Staff Recommendation.

4. Application for Service-connected Disability Retirement, filed by Applicant, dated June 1, 2021.

5. Hearing Notice, dated April 5, 2023.

Josiah Vencel was present on behalf of VCERA. The applicant, Emilia Tapia, was also present.

Mr. Vencel made a brief summary statement.

Ms. Tapia declined to make a statement.

MOTION: Approve Staff Recommendation to Grant Service-connected Disability Retirement, Effective 10/29/2022.

Moved by Grass, seconded by Roberts

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

B. Application for Service-connected Disability Retirement—Maurer, Jeffrey; Case No. 21-026.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 4, 2023.
2. Supporting Documentation for Staff Recommendation.
3. Application for Service-connected Disability Retirement, filed by Applicant's Attorney, Thomas Wicke, dated August 31, 2021.
4. Hearing Notice, dated April 6, 2023.

Josiah Vencel was present on behalf of VCERA. Thomas J. Wicke, Attorney at Law, was present on behalf applicant, Jeffrey Maurer, who was not present.

Mr. Vencel made a brief summary statement.

Ms. Wicke also made a brief summary statement.

MOTION: Approve Staff Recommendation to Grant Service-connected Disability Retirement, Effective 5/1/2020.

Moved by Roberts, seconded by Hernandez-Garcia

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

C. Application for Service-connected Disability Retirement—Miller, Mariaelena; Case No. 21-033.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 5, 2023.

2. Supporting Documentation for Staff Recommendation.
3. Application for Service-connected Disability Retirement, filed by Applicant's Attorney, Thomas Wicke, dated October 4, 2021.
4. Hearing Notice, dated April 5, 2023.

Josiah Vencel was present on behalf of VCERA. Thomas J. Wicke, Attorney at Law, was present on behalf applicant, Mariaelena Miller, who was not present.

Mr. Vencel made a brief summary statement.

Ms. Wicke also made a brief summary statement.

MOTION: Approve Staff Recommendation to Grant Service-connected Disability Retirement, Effective 1/21/2023.

Moved by Grass, seconded by Hernandez-Garcia

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

## **VI. INVESTMENT MANAGER PRESENTATIONS**

- A. Receive Annual Investment Presentation from Sprucegrove, Tasleem Jamal and Arjun Kumar.

Tasleem Jamal and Arjun Kumar reviewed Sprucegrove's organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

- B. Receive Annual Investment Presentation from State Street Bank, Julianna Frank, Joe Rooney, Jared Douglas, Shawn Currier, and Chris Dugas.

Julianna Frank, Joe Rooney, Jared Douglas, Shawn Currier, and Chris Dugas reviewed State Street Bank's organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and performance. The presenters also responded to questions from VCERA trustees.

## **VII. INVESTMENT INFORMATION**

VCERA – Dan Gallagher, Chief Investment Officer.  
NEPC – Allan Martin.

- A. \$35 Million Commitment to Alterra IOS Venture III, LP.  
**RECOMMENDED ACTION: Approve.**
  1. Staff Letter by Chief Investment Officer.

2. Joint Fund Recommendation Report from NEPC.
3. Alterra IOS Venture III Presentation: Leo Addimando, Matt Pfeiffer, and Amy Cummings.

Mr. Gallagher reminded the Board they had previously approved their first commitment to Industrial Outdoor Storage in February 2022, with a \$35 Million commitment to Alterra's IOS Fund II. The IOS Fund was a niche institutional real estate strategy, and it was in one of the hottest, but most difficult to scale asset areas in institutional real estate investing, which he and NEPC believed were positioned to deliver attractive returns, while also helping to diversify VCERA's real estate program.

MOTION: Approve Commitment of \$35 Million to Alterra IOS Venture III, L.P. and, Subject to Legal Review, 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 Grass, seconded by Goulet

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

B. \$25 Million Commitment to Monroe Capital Opportunistic Private Credit Fund II.

**RECOMMENDED ACTION: Approve.**

1. Staff Letter by Chief Investment Officer.
2. Joint Fund Recommendation Report from NEPC.
3. Monroe Opportunistic Private Credit Fund II Presentation: Mark Friedrich and Aaron Peck.

Mr. Gallagher noted that Monroe was a high-quality Private Credit manager, and the Board had committed \$25 Million to Monroe's Fund III at their Board meeting on July 16, 2018, and Monroe Fund IV at their meeting of October 18, 2021. Both of those funds were, "direct lending" type of funds, and had delivered strong performance to date, although Fund IV was still in its early days. Monroe's Opportunistic Private Credit Fund II was designed to capitalize on dislocation, driven by high corporate leverage and a lack of available flexible capital for customized financing, which both he and NEPC believed would continue to accelerate. They believed that the fund would deliver attractive returns and further diversify VCERA's private credit program. As a result, both he and NEPC were jointly recommending a \$25 million commitment.

MOTION: Approve a Commitment of \$25 Million to Monroe Capital Opportunistic Private Credit Fund II, and Direct Staff and Counsel to Negotiate the Necessary Legal Documents; and Subject to Successful Contract Negotiations, Authorize the Board Chair or the Retirement Administrator or if Both are Unavailable the Chief Investment Officer to Approve and Execute the Required Documentation.

Moved by Goulet, seconded by Long

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

The Board took a break at, 10:30 a.m.

The Board returned from a break at, 10:40 a.m.

**VIII. OLD BUSINESS**

A. None.

**IX. NEW BUSINESS**

A. 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's Veto of Assembly Bill 826.

**RECOMMENDED ACTION: Adopt.**

**Time Certain: 10:30 a.m.**

1. Staff Letter by Retirement Administrator.
2. Proposed Resolution (Redline).
3. Proposed Resolution (Clean).

Ms. Webb provided a summary of the Alameda Decision and the events leading VCERA to the proposed Resolution. On July 30, 2020, the California Supreme Court issued the Alameda Decision ("*Alameda*"), which impacted many county retirement systems in California, including VCERA. When the Supreme Court issued *Alameda*, there were items in that decision that were not anticipated, but all county retirement systems are required by law to implement. VCERA recently sent out a communication to all of their members explaining *Alameda*. There are two categories of exclusions: 1) PEPRA Exclusions and 2) Alameda Exclusions.

The Public Employees' Pension Reform Act (PEPRA), which was effective January 1, 2013, affected all public retirement systems in California. Several of the changes only affected new members who joined a retirement system after January 1, 2013. However, some parts of PEPRA affected "Legacy" members (those who joined before January 1, 2013). PEPRA affected what pay items could be included in Compensation Earnable, which is the retirement compensation used to calculate retirement benefits for Legacy members. Each of the county retirement systems governed under the California Employees Retirement Law (CERL) implemented PEPRA, but because the structures and pay items were administered differently, the implementation of PEPRA was different among the systems.

In Ventura County, several pay items were impacted by *Alameda*. PEPRA Exclusions are pay items that should have been excluded as of January 1, 2013 (effective date of PEPRA). Alameda Exclusions are pay items that retirement boards never had the discretion to include in the first place, even before PEPRA. One of the most impactful Alameda Exclusions in Ventura County is Flex Credit, which is a flexible benefit allowance provided to employees by the employer that is used to

pay for Health, Dental, and Vision insurance costs (in-kind benefit). *Alameda* provided that if a benefit could not be received in cash, then it could not be included in compensation earnable.

After *Alameda* was issued, VCERA staff immediately contacted those members with a pending retirement application by phone so that they had the opportunity to rescind their application if they chose to, until the full impact of *Alameda* was known. Every retiree since *Alameda* has been put on notice that at a later time when the Board took action, their benefit could be adjusted. Most other retirement systems under CERL had either eliminated or restructured their benefits to remove these types of in-kind benefits.

Ms. Webb explained that there were two resolutions on the agenda. The first was the Flex Credit Resolution. Staff originally brought similar resolutions to the Board of Retirement in September and October 2020. The original resolution covered both the PEPRA and Alameda Exclusions. PEPRA Exclusions include services rendered outside of normal working hours (such as standby pay, call-back pay, and shift differentials on overtime) and leave redemptions (i.e., vacation buydowns) in excess of what is earned and payable in a 12-month period. The Board took action to adopt the Resolution in October 2020 for the PEPRA Exclusions, but deferred action on paragraphs 3, 6, and 9 that pertained to the Alameda Exclusions (primarily flex credits).

Over the next two and a half years there were several actions, one of which was the filing of Declaratory Relief by VCERA and the County of Ventura; however, the County later demurred on that, and the Court thus had nothing to rule on because the Board had not taken action on the flex credit item. Then in 2021, Assembly Bill 826 (AB 826) was co-sponsored by SEIU and the County of Ventura and was designed to allow flex credit to be included in compensation earnable. During that year, the bill went into "inactive" status, possibly due to other counties objecting to it because they had already implemented *Alameda*, or because they believed it was in conflict with the concept of judicial review. The Board then deferred action again on the flex credit item, to give AB 826 another opportunity in the 2022 legislative session. The County and other stakeholders worked on amending AB 826, with VCERA assisting in wording suggestions. Then at the end of the Assembly's session in September, Governor Newsom vetoed AB 826, saying that the bill was an effort to subvert recent court decisions and would create a "window period" that would allow a certain group of individuals to be exempt from the application of *Alameda* and PEPRA. After the veto of AB 826, staff brought a resolution back to the Board to address the 3 paragraphs related to flex credit, and at that time there were a significant number of requests that the Board postpone any action on the proposed resolution until April 2023.

Ms. Webb said the second resolution on the agenda was regarding the PEPRA Exclusions, noting the item of most interest to the parties in attendance was the leave redemption "straddling" issue, affecting members who retired after 2013. (She also noted that those members who retired before *Alameda* would not be affected by the Flex Credit Resolution and would continue to receive the full flex credit in their compensation earnable retirement calculation.) The PEPRA Exclusions would apply to those who retired after PEPRA took effect on January 1, 2013. Consequently, the effective dates for the two *Alameda* resolutions were different because the law required VCERA and other retirement systems to apply the law in effect at the time. As for the Alameda Exclusions, they first took effect when the California Supreme Court rendered its decision on July 30, 2020. Staff was also recommending that the Board not recoup overpayments to retirees under either resolution (for neither Alameda nor PEPRA Exclusions). Members who retired after 2013, who had any PEPRA Exclusions in their final average compensation (FAC) had been overpaid because VCERA used a FAC amount that was overstated. Many of the other retirement systems had recouped from retirees as part of their *Alameda* implementations.



On March 27, 2023, VCERA received a letter from a group of concerned retirees and that letter was provided in the agenda materials, as was staff's response to the concerns raised. The Retired Employees Association of Ventura County (REAVC) had also submitted a letter to the Board for the meeting and had just delivered a response to VCERA staff's response; hard copies of that letter were distributed to the Board. Ms. Webb said that the most common request that VCERA received, mainly from retirees, was for prospective application; that is for the Board to not implement the PEPRA Exclusions as of January 1, 2013, and not implement the Alameda Exclusions as of July 30, 2020, but to apply them prospectively only thereby creating a "window period". Those that retired between 2013 and 2020 were particularly interested in the PEPRA Exclusions, primarily leave redemptions, and requested that their benefit amounts not be adjusted. Another issue raised by retirees was that of notice, and that those who retired after the Alameda Decision were given notice, while those who retired between 2013 and 2020 were not mailed a notice until recently. Ms. Webb noted that group was not impacted by the Flex Credit issue, which was the dominant issue at the time. In the early days of *Alameda*, staff was hoping that the flex credit resolution would be resolved quickly, so corrections for both the Alameda Exclusions and the PEPRA Exclusions could be made together; however, as time went on, staff should have reached out to those earlier retirees sooner that they had. She also pointed out that although those retirees were not impacted by the Flex Credit issue, the delay of nearly 3 years of action on the item by the Board actually benefited those retirees because while retroactive application of the retirement benefits was mandatory, which was what was being recommended to the Board, the proposed supplemental resolution item recommended no recoupment of overpayments. Thus, the delay of implementation meant that up to 10 years of overpayments would not be recouped if the Board approved the proposed resolution. Another issue raised was that of application of *Alameda* in other counties. Concerned retirees asserted that other retirement systems were applying certain exclusions prospectively and not retroactively, and this concern also was covered in VCERA's response. Ms. Webb stated that in one of the counties mentioned, there was a "stay" by the court so that they could not implement *Alameda* by law, and in one county in particular they actually negotiated all of the pay items and restricted them completely, so their situation was different. VCERA staff was in regular contact with its colleagues and familiar with their implementation methods, and staff knew that there were distinct challenges and issues in Ventura County.

Staff had also been thoroughly briefed by the VCERA's fiduciary and tax counsels on the issue of retroactivity and prospective application and had been advised that VCERA was required by law to correct the items as of the date the law changed, and prospective application was not within the Board's discretion; however, what was in the Board's discretion was the issue of recoupment. So, the Board was not required to recoup the overpayments to retirees, as it would ultimately be absorbed in the Unfunded Actuarial Accrued Liability (UAAL) of the Plan. As for the flex credit issue, the other counties that had in-kind benefits in the past excluded them regardless of whether an employee could receive it in cash or not. There were questions regarding the implementation of the resolutions. Essentially, staff would be recalculating the retired members' monthly benefits, as well as calculating any refundable member contributions; if the refundable amount exceeded the overpaid amount, the retirees would receive a refund of the difference. At the March 27<sup>th</sup> meeting, the Board adopted 7.9%, compounded annually, as the interest rate to be paid on Alameda-related refunds. So, when staff calculated refunds for active or retired members, they would calculate all of the contributions paid in excess of what should have been paid, then apply the 7.9% interest rate, to arrive at the refund amount. The current affected active members would be receiving a letter indicating they could receive the refund in cash or roll it over into a qualified account, or some kind of combination of the two.

Chair Sedell said that given some of the members wished to make comments on either item IX.A. or IX.B., or both, instead of asking them to make two comments, he asked that they please combine their comments, though the Board was hearing item IX.A. currently.

Trustee Long asked if there was any other information sent to the members before the April 10, 2023, communication letter to the members.

Ms. Webb said that there was communication that went out to members at various stages, but the group that did not receive any written notice until then was those members who retired between 2013 and 2020, though some would not be impacted at all. She noted the VCERA Board meetings were publicly noticed, and the Board's Retired Member Trustee had been providing quarterly newsletter updates on the issue through REAVC.

Trustee Long then said that she would have questions on the effective date of the Flex Credit Resolutions later.

Ms. Dunning provided a summary of the changes to the Flex Credit Resolution to the Board since she had walked the Board through it in great detail during the Board's previous business meeting in March.

Dr. Sevet Johnson, Chief Executive Officer for the County of Ventura, provided public comment. She thanked the Board for taking the time to hear from the members, sponsors, and other stakeholders. She understood the decisions the Board needed to make were weighing on them because of the impact it would have on the lives of the people who have served the County. The Board had been advised that they must pass the proposed resolution and that they had no discretion in the legal matters before them. They had also been advised that the decision had been unduly delayed and that errors needed to be corrected as soon as administratively possible. They were also very familiar with the efforts of the County and their partnership with SEIU and other labor partners to pass legislation in Sacramento to clarify that the County's Flexible Benefit contribution was paid to all employees throughout their careers. It was paid in cash, and it did not constitute pension spiking, and the Alameda Decision did not in fact address this pay item as a form of pension spiking. Unfortunately, as the Board knew, the legislation was not adopted, and the court case with VCERA in which the County of Ventura contended there was no impermissible inclusion of leave payouts, a practice that VCERA's counsel had referred to as "straddling". It was the County's understanding, and contrary to what was just said, that the case was still on appeal and had not been finally resolved. The County believed that it was wholly regrettable that the resolution was before them today, but the Board should please consider whether they were comfortable with the legal advice they had received, as well as the retroactive application of the resolution. Dr. Johnson said if the Board did pass the resolution, it was requested that, as soon as possible, VCERA staff provide the Board with concrete timeframes, a project plan on how and when retiree benefit reductions would occur, as well as how and when returns of contributions with earnings would occur. Because the issue had been in the "pipeline" for some time, it seemed reasonable to address the request in a short amount of time. Thousands of members and their families needed to have more clarity, so they could make informed financial and retirement decisions. The County encouraged more frequent communication with all of VCERA's stakeholders.

Nick Odenath, President of VCDSA, provided public comment. He reminded the Board that he had spoken on the issue several times previously and so they were aware of his position on the issue; however, he did want to say two things. One, to thank the Board for delaying the decision on the resolution until now, because as a union leader the delay had provided them time to work with the County on a solution to the flex credit issue. Second, as it related to the Alameda and PEPRA Exclusions, their members understood the Alameda exclusions and had been given the ability to do their calculations to understand the financial impacts. However, he would ask that the Board give the members enough time to make adjustments to their lifestyles because of those financial impacts. Also, as Dr. Johnson had said, the members should be given enough time to receive any

communications to make these changes. As for the PEPRA exclusions, especially for those retirees who retired between 2013 and 2020, it was his understanding that they had just received notification regarding the exclusions impacts recently. So, he requested that the Board hold off on voting on this particular part of the resolution so that there could be further discussion and better understanding for the retirees who would be impacted specifically by the PEPRA exclusions. Several retirees had said they were confused and that the communication did not give enough information, specifically the impact on them individually. Therefore, he requested that the information help them understand exactly what the impact would be.

Tim Lowe, retired VCERA member, provided public comment. He had been in healthcare for 45 years, and 42 of those years were as a nurse in surgery ICU at Ventura County Medical Center (VCMC). In his contract with the hospital, he was required to sign up for an 80-hour pay period and take a certain amount of standby calls and emergency calls, which was non-negotiable. There was no padding of overtime for retirement, and he had reported it to VCERA when he came into the office to discuss his retirement, which was February 2022. He had been in communication with VCERA for 6 months leading up to his retirement and staff had not provided clear information regarding the Alameda Decision's impact. He was also told by his employer when he was hired that a portion of his call back pay, standby call pay, and certification pay would be included when he retired. However, VCERA staff said that his callback pay would not be included, but that his standby pay and certification pay would be. Afterwards, he received a call from VCERA staff telling him that his standby pay would not be calculated into his retirement and that they were not sure if the certification pay would be either, so there was not a clear message provided to members. He was also never told that he could rescind his retirement application. He had been told that his retirement was safe and that his retirement estimate he received in 2019 seemed great at that time, so he considered retiring that year, but he was asked to stick around for a while, so he delayed his retirement. Now he was being told that if you retired after July 2020, flex credit would be taken out of the retirement calculation, and he felt this was a slap in the face. He had taken a lower pay rate to work for the County of Ventura because of the pension and the benefits, so he stayed working for the County, and this was really hard to take, and he believed the Board could do something about the situation.

Roberta Griego, retired VCERA member, provided public comment. She said she had worked for the County of Ventura for 39 and a half years and was a Tier I employee. She was promoted to management and took over the Clerk of the Board's Office. During her time with the County, she was a Job Steward for SEIU, and she then retired on March 31, 2013. She then joined the Ventura County Retired Employees Association (REAVC), and she was their first Vice-President. So, today she was attending the meeting to look after many County employees who were less fortunate, and she wanted to remind the Board of one thing. Most of the County employees were covered under a labor agreement, but when a member got into management, they were not covered at all as there was no union for management. There were a lot of hard times throughout her 39 years with the County where they did not give their employees pay increases for several years, and instead, the County provided the Flex Credit instead of compensation and annual leave. She did not understand how anyone could say that it was an in-kind benefit because it was fair enough to be given it to all County employees, across the board. Also, the first notice regarding the Alameda Decision was last Saturday, and since then she had received calls from other members asking her to explain the meaning of VCERA's notification. Also, as the Board was considering their decisions on the items today, and considering the various dates involved, like the effective date of PEPRA and the Alameda Decision date, the only thing that mattered to people was how much was it going to affect their retirement benefit. Although she had heard it said that by law the Board could not do anything about the situation, and most County employees did not believe it was an in-kind benefit. She requested the Board provide clarification in the future letters sent to members that explained whether the

resolution would affect them or not. Lastly, she wanted to say that REAVC would fight for its members and all county employees.

Gerhardt Hubner, retired VCERA member, provided public comment. He was the former Deputy Director of the Public Works agency for the County of Ventura. He said he had also been in attendance at the Board's March 27<sup>th</sup> meeting and provided comments at that time and was joined by other former County executives, managers, and former staff at today's meeting. Regarding Item IX.A, they did support the resolution before the Board, but with a very simple request: that they amend the effective date to April 17, 2023. As for the resolution for Item IX.B., it should be amended by striking paragraph 2 and replacing it with paragraph 2 from the resolution the Board adopted at their October 12, 2020, meeting, also with an effective date of April 17, 2023. He noted that the Board would hear from several of his colleagues and retired members who had been affected or potentially affected by the decision the Board made today.

Tracey Pirie, retired VCERA member, provided public comment. She noted she had made comments at the March 27<sup>th</sup> meeting on the proposed resolution regarding flex credit, annual leave, and employee donations and that she was impacted by all 3 items. After 44 years of dedicated service to not only the County but other CalPERS agencies, what she was promised would not occur had indeed occurred. Most members believed that PEPRA only affected new employees and not Legacy members, which she believed was the message that was given to everyone, and no one anticipated that Annual Leave would become an issue. Now those that had been retired for 10 years or more would be impacted by a reduced pension benefit, and many of them did not receive a Cost of Living Adjustment (COLA). She was fortunate but considered other SEIU members who received very little in their monthly retirement benefits, and who also did a tremendous job for the County, the public, and the community. She agreed with the prior speaker's comments and understood why the Board felt that they had to make certain decisions, but they asked the Board amend the effective dates on both resolutions to today's date, so that those members who were still working could decide on what they could and could not afford in terms of retirement. Lastly, she knew that the flex credit was an issue because she was one of the employees who applied for retirement before the Alameda Decision, but with an effective retirement date after the court's decision was rendered. She was made aware of the flex credit issue, but was not told about there being a possible issue with employee donations. She had reached out to VCERA's office on two occasions to find out how her annual leave hours would be impacted, but no one had been able to give her a straight answer. A promise for 44 years of service was now being pulled out from under her, because she had stayed because her agency did not have a replacement for her at the time, and she felt that she was now paying for that.

Chris Stephens, retired VCERA member, provided public comment. He said that he would focus on what had been going on in Alameda County because he hoped it would be of interest to the Board. The Annual Leave Redemption program in Alameda County was significantly different from the program in Ventura County. The County of Alameda looked at the aggregate of the earned and payable related to the annual leave redemption program; so, their retirees could claim almost double the number of hours towards the leave that was included in their retirement calculations. Also, the hours themselves were based upon their highest compensation and accrual rates during their retirement calculation periods so the net result of the program was significant pension spiking, and quite different from Ventura's program. Therefore, it was virtually impossible to exceed someone's earnable hours in their final average compensation when an employee buys back those hours. Also, he was surprised the Court in Alameda did not specifically rule out their annual leave redemption program and ACERA's counsel sought an opinion on the issue from the Court, as to how the changes to PEPRA would affect straddling, but the Court demurred and did not provide any opinion. The Alameda Decision itself had some contradictory statements related to straddling, which was why he believed ACERA was asking for that clarification; ultimately, they did not receive any. Alameda

County then continued with the same annual leave redemption program until 2021, when they were approached by the Attorney General's Office who said they concluded that straddling was counter to PEPRA and the legislation. The Alameda Retirement Board, after considering the matter, made changes to eliminate straddling as an option on June 17, 2021. After that action, the State dropped their claims and all parties in the case agreed that judgment should be entered, after which there were no further proceedings expected on that matter. He noted that case to highlight the significant difference between their programs and even with those differences. Alameda did not reach back and make it retroactive. He asked the Board to do the same as there was ambiguity related to the vacation buydown issue in those actions. He asked to leave the Board with some language specifically from the Supreme Court, in the case of the Ventura Decision, quoting, "Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute." Mr. Stephens said he would submit that the Alameda Decision was not clear language, and as it was in the Ventura Decision, they considered it new law.

Lyn Krieger, retired VCERA member, provided public comment. She noted that she was also one of the retired members concerned about the issue, and they were in attendance today to represent the retirees. For many of the retirees, their pensions were not very large, many of them had no COLA and for some, reducing pension benefits would be devastating. Although they were concerned about themselves, they were more concerned about those other retirees who could not make a different choice now regarding their retirement. They understood the Board had a duty to follow the law, but the Alameda Decision made it clear, "the PEPRA amendment did not require exclusion solely because an item of compensation fits within one of these examples" which were the examples they cited, "instead they illustrated the types of practices that created suspicion. Before it was excluded, an item of compensation must be found by the Retirement Board to have been paid to enhance a member's retirement benefit". Ms. Krieger said that PEPRA required each Board establish a procedure for determining whether an element of compensation was paid to enhance a retirement benefit. The Board did have a choice regarding the effective date, and they had already heard from Chris Stephens about the Alameda Decision, but she wanted to clarify that their understanding of the "straddling" issue seemed to be different from the Board's. The Alameda Decision seemed to constantly talk about the final 12 months of compensation, which concerned them because Alameda County reached way back before the final 12 months of county service. As Mr. Stephens said, Alameda chose an effective date of November 21, 2021, which was accepted by the State and the Court. San Diego County Employee's Retirement System, before they considered any income item, decided in the Fall of 2020 to approve an effective date of January 29, 2021. Their documents said that their decision did not affect members who retired prior to January 29, 2021, and their fiduciary counsel determined that it could be applied prospectively. They found little, once they adopted procedures to evaluate income items that qualified for exclusion. Similarly, Orange County Employee's Retirement System (OCERS) adopted an effective date of July 20, 2020, and in their Fall 2020 report to their Board, they said, "some systems have indicated they're making changes now to reduce benefits, but a number of the county systems were like OCERS and were trying to better understand the practices of their employers and labor groups before making any changes to current benefit payments. One system reported that they were making clarifying documentation that would suggest that certain pay items did meet the PEPRA test and continued to be included. No action was taken to change benefit allowances before October 1, 2020, and the report also said that about 400 retirees were affected. San Bernardino similarly chose July 30, 2020, without a look back, and one of their posted documents said to apply that directive to all retiree payrolls for individuals who were Legacy members who were retired after July 30, 2020, when the Supreme Court overturned *Guelfi*. San Bernardino County Employees' Retirement Association was thus on notice of that statement of the law and the Retirement Board determined that mandatory exclusion of medical premium medical payments from compensation earnable was a new interpretation of the law, therefore the exclusion would not affect any retirees before July 30, 2020.

Therefore, she was asking the Board make today's date or whatever date the Board decided on the effective date, without a "look back". VCERA had special circumstances with ongoing litigation and the resulting lack of notice to retirees. Also, in 2022, the County had already asked the Board for an effective date of April 1, 2023, without a look back, which was very close to what the retired members were requesting. This decision would do the least harm to retirees and would save VCERA from making thousands of complicated calculations and the Board would meet its obligations under the Alameda Decision. It also gave the opportunity to work with the County on labor agreements and the treatment of income items going forward, so that active members who were still working had information to make better retirement decisions. The level of trust in VCERA could be unharmed.

Ms. Krieger said their request today was for the Board to adjust the effective date of their decision regarding flex credit, with no other changes, to today's date or their final decision date; further, they asked that the Board do the same thing with the annual leave buydown item. The Board had already heard from her group of concerned retirees last month, when they said that they did not believe that the way Ventura County designed the annual leave buydown program rose to the exclusion test. However, setting that aside, a decision to just adjust the effective date would relieve a lot of pressure. Ms. Krieger asked the Board to consider their requests, which they would not be making if they did not believe they were extremely important to the retirees.

Jacqueline Richardson, retired VCERA member, provided public comment. She had worked for the Ventura County District Attorney's Office for 19 years, and prior to that she had worked for Supervisor Judy Mikels. While at the District Attorney's Office, she coordinated several types of investigations, and she sometimes started work very early, and contributed a lot, and the teams that she worked with did not get paid overtime for the work they regularly put in. Her point was that notice was given to the members a week ago. For example, REAVC had a luncheon for their members where they highlight the members by age, and there were several members in the 80s and 90s and one that was 101 years old, so she did not believe that many of them would comprehend the letter that was distributed last week. She would recommend VCERA send individual letters to the retirees based on what each was eligible for and how much would be removed from their pension benefit. Finally, she wanted to say how disappointed she was that VCERA elected to use non-pensionable funds to roll into the members' pensions. It was not a decision that the employees or retirees made, and the Supreme Court ruled that pension boards should not, could not, and never should have included non-pensionable funds in calculating members' pensions. So, the bottom line for her was that she believed that she would have a nice pension when she retired, and she was also thinking about the elderly and all of the people who did not understand the impact.

Marty Robinson, retired VCERA member, provided public comment. Ms. Robinson said she had worked for the County for 38 years, and retired before the Alameda Decision date, so she was not personally affected by the issue, except that her heart was affected as most likely were the Board members' hearts because of the decision they were considering today. She applauded Tim Lowe and Tracey Pirie because they went the extra mile from commitment to whom they serve and the County was fortunate to have those types of employees. She knew that decisions were in flux and there was not a lot of specificity, and as a former SEIU member, President, and negotiator, she understood the compromises that were made. These benefits that were being discussed, were in lieu of more costly direct cash to the employee, so to now penalize retirees by making this kind of decision was inappropriate and unappreciative. She also knew there were various legal decisions out there, and attorneys disagreed, courts disagreed and good people with the right intentions could disagree. So, her opinion was that the Board needed to make considerations that were to the benefit of the retirees.

Reddy Pakala, President of REAVC, provided public comment. He retired in 2014 as the Director of the Water and Sanitation Department for Ventura County. REAVC's main purpose is to promote

activities and coordinate, initiate, or oppose legislation affecting retirees with VCERA, the Board of Supervisors, or other legal entities. REAVC greatly appreciated staff's change to their recommendation on the effective date for the Flex Credit benefit to July 30, 2020, for agenda item IX.A. and changing the effective date of agenda item IX.B. to August 31, 2020; however, this would negatively impact those who retired between those dates and today, if the Board approved the resolutions as proposed. They were simply recommending that the Board adopt today's date for the flex credit and the vacation annual leave buydown items. He also wanted to thank Ms. Webb for virtually attending REAVC's Special Board meeting and providing the history of the Alameda Decision and PEPRRA. Also, if the Board believed that the resolutions could not be effective as of today, REAVC would ask that the decision be postponed to a future date.

Gary Lowery, retired VCERA member, provided public comment. He had worked for the County's medical center for 28 years and serviced all of the medical equipment, which required coverage of 24 hours a day. He was assured by his management that if he worked standby (which meant that he had to be within a ½ hour of the hospital, at any time), it would be included in his pension. He took that job because of that, and the alternative would be for the County to hire an external company to service the medical equipment at a greater expense. He did this every other week for 5 to 7 years. He retired in 2019 and did not know that standby pay might not be included in his pension, and he was very concerned given he had no choice in the matter. He believed it was a violation of trust and he felt for others, including his partner who helped service the County's medical equipment. There was also talk that when all was said and done, it would be to the County's financial advantage and the pensioner's disadvantage, and it just did not look right. He also heard that there was a law from 1937 that the County of Ventura may have interpreted incorrectly, but he believed that they had a responsibility to interpret the laws correctly and to properly inform him so that he could make decisions.

Jeffrey Seabrook, Fire Captain for the Ventura County Fire Department, provided public comment. Mr. Seabrook said from his understanding, according to the Alameda Decision, standby pay was excluded because it is not a part of someone's normal work schedule. He wanted to know what was being done to address those County employees who have standby pay as part of their normal work assignment. He was assigned to the Aviation Unit and worked a 10-hour shift and part of his normal work assignment was to be on standby the rest of the night. There were also other Fire employees outside of the air unit who also had standby as part of their normal work assignment. This also applied to the Sheriff's Department. He was also told by their union that there may be two different types of standby pay as a way to address the issue. So, he just wanted to make sure that that issue was being addressed.

Chair Sedell said the VCERA staff and attorneys would have all of the answers to the questions that come up, at the conclusion of the public comments.

Ms. Oliver read into record comments submitted by Ricardo Bravo, Employment Specialist for Ventura County Human Services Agency. "The actions by the California Supreme Court in July 2020 did not give active Legacy members notice that part of their expected retirement benefits would be changed and reduced. Are there any plans or lawsuits by the County, SEIU, or VCERA to make these Legacy members financially whole based on the expectations that active Legacy members were expecting?"

Ms. Webb said that staff had received a message from Alma Gabaldon. She said Ms. Gabaldon stated in her message regarding agenda item IX.A., she "believed the treatment of flexible benefits to exclude was not required and it did not say it was mandatory". Regarding item IX.B, she said that "unlike past years, your 2021 Annual Benefit Statement did not include projected retirement benefits, and as an employee or retiree, we are confused as to the wording. Some think they were getting

credit or getting ruined financially.” Ms. Webb said that Ms. Gabaldon was also referring to a Ventura County article from October 2020, in which Ms. Gabaldon said that Former Supervisor Bennett was hoping to get a ruling so that the entire flex credit could be included. When hired she was given a total amount of income that included flex credits. She also spoke to a single mother of two who couldn’t get any other benefits because of her yearly total, and would now have her pension benefit reduced, how was that possible? Ms. Gabaldon noted a LA Times article about public employee unions saying that if the decision was upheld it would spark endless litigation. The thought of anyone having money taken away from their pension was unthinkable. Employees worked for years to retire comfortably and they all knew today was probably one of the worst financial times in America, regarding interest rates, which have been raised 20 times in 2 years. Everything from food to gas has gone up in cost, and no one retired on a whim, but the decision was based on the information provided. She would hope that Ventura County would take the lead and not remove funds from pensions.

Ms. Oliver read into record comments submitted by Genie Klement, retired member. “I retired after 7/30/2020, so I understand from what I have read that my current pension amount will be reduced (corrected) in the future and lowered by approximately \$700 a month. I am very scared. I planned very carefully for my retirement based on twice-yearly estimates from VCERA to make sure I was ready to retire. I trusted VCERA. I also sold another retirement from my time as a teacher and combined it with my VCERA retirement. Over the years I stayed with my county job out of dedication and a desire to help my community. I stayed during COVID because I knew my skillset was needed due to the increase of Medi-Cal and CalFresh applications. I finally retired when my mother, in her nineties, became sick. I could have retired before 7/30/2020, and I would not have been affected by this huge financial hit. Why were we not informed so we could have retired earlier? I would not have lost what I am hearing will be \$700 a month. I was not given this choice and that seems very unfair as now since I am retired, my income is set, and I have no recourse”.

Ms. Oliver read into record comments submitted by Kathy LaSalle, Sr. Deputy District Attorney for the County of Ventura. “While VCERA may be less clear about when the County will be able to implement the payroll system changes and arrange for the actual refunding to begin, it seems like VCERA should be able to provide a “ballpark” time frame for when the calculations of payments/refund amounts will begin. When will the actuarial be done and the calculations begin? Is there a uniform process that VCERA will follow, and which employees will get serviced first? (i.e., one union at a time, or retirees first, etc.) Will each employee be notified about when his/her turn will be? (It seems reasonable for VCERA to advise us individually so that each of us can plan accordingly.)” Ms. Oliver also noted that there were 5 additional questions submitted by Ms. LaSalle, which were, 1) Does the lump sum to be refunded include post-tax and pre-taxed money? If true, how will the refund of these two different types of money be handled? Would members be provided information to allow them to prove to the tax man that the money received was already taxed, etc.? 2) Similarly, would the refund be reflected on a 1099 or W-2? 3) Receipt of this large sum of money will have an impact to such an extent that the individual employee should be given the option of when and how to receive it. To that end: a) Will the employee be allowed to choose one of 4 refund options: 401k (pre-tax), 457 (pre-tax), Roth (post-tax), Cash? And, b) Will the employee be allowed to choose the time at which the employee receives the money? It seemed only right to allow an employee to have the right to choose to prevent a huge amount to be taken in the form of taxes. For example, an employee may wish to delay receipt until the year he/she retires since the employee’s tax base will most likely drop upon retirement and therefore the money will be taxed at a lower rate. 4) Is VCERA going to create a calculator that assists in not only calculating pension but also calculates the money that will be refunded? 5) How will calculations be done for pensions/lump sums of money to be reimbursed when there was a divorce during the relevant period? Also, what effect, if any, to the answers to the questions above?



Ms. Webb said that the implementation plan was still being developed, and would be provided to the Board and the public at a later time. Also, one of the issues that had been raised was that of notice. Those employees who retired before 2013 are not impacted at all. For those who retired after 2013, a general notice was all that staff could provide at this point because there would be corrections for thousands of members. Further, some of the retirees may not simply belong to one category; for example, they may have both standby pay as well as excess leave redemption in their FAC. For those who retired after 2020, they would have flex credit in their FAC. Staff received certified payroll data from the County Auditor-Controller's Office which is used for retirement benefits calculations. The County was making programming changes, and would generate correction files for both active and retired members. Each affected member will have to be reviewed. So, to send a notice to each retiree who retired between 2013 and 2020, that specifically listed how much their benefit would be adjusted, how much they were overpaid and when it would happen, had been literally impossible. VCERA staff did not have the data to supply to the members yet, and one of the things that staff had warned the Board about initially and repeatedly was that the longer the delay to implement the Alameda Decision, the more arduous and challenging the ultimate implementation would be.

Also, regarding those earlier retirees, every month they were being overpaid, and would continue to be until the corrections were made; and the recommendation today was to not recoup any of those overpayments. There were many public servants in the room and listening today. Ms. Webb said had been working in public pensions for nearly 30 years and the reason was that she found it to be a calling to serve those who served our communities. She was herself a member of the community, had been treated at the Ventura County Hospital and would certainly depend on the Safety members to defend her in a crisis. VCERA's staff and legal counsel would never recommend to the Board to exclude any type of pay if they did not 100% believe it was absolutely legally necessary. There was clearly a perception that the Board had some discretion on some items that the law did not allow, though she would let Ms. Dunning and Ms. Nemiroff address those. There were also some requests that were made today that, in her professional opinion the Board would be breaking the law to grant. When she spoke with REAVC recently, she told them that if she were in their situation she would feel the same way. It was very unusual for a pension to be reduced and it would have to take something of the magnitude of the Alameda Decision to warrant such changes. So, making the corrections as soon as possible, getting refunds in members' hands, getting pension benefits corrected, and getting information out to members who needed it to make financial decisions was of utmost importance and the highest priority. She did not blame any retiree for feeling like this issue came out of nowhere. It was difficult for retirees to receive a benefit and later be told their benefit would be reduced because of a court decision. However, staff had to advise the Board to follow the law; but, wherever there was discretion, to make it as member-friendly as possible. In regard to how things were handled in other counties, the legal situations, pay items, and circumstances were different in those counties. So, any action in those counties was unique to those counties and would not apply to Ventura County. Correction notices to retirees would provide the calculation on the amount of overpaid benefits, the amount of contributions that was over-collected, and the application of interest to those amounts, compounded annually, for the refunds. Individual letters could not be done until the payroll corrections are done.

Ms. Dunning said that as the governing body for VCERA, the key fiduciary point here was that the Board had a responsibility to prudently administer the Plan, which meant that job one was applying the law. The Board had been advised what the law was, and to whom it applied, and the recommendation was that they apply it as it was provided in the resolutions presented today.

Trustee Long said there was a statement made by someone regarding a lawsuit, so she was asking if anybody would be able to speak on that.

Ms. Webb said regarding the lawsuit on the leave straddling issue, VCERA's 2020 interpretation was challenged legally and VCERA's interpretation was upheld in Superior Court. She believed that Dr. Johnson had stated that two of the parties in the case were appealing the court's decision, but there was no stay; so, VCERA was required to proceed.

Trustee Long then asked about the status of the appeals.

Ms. Dunning said that typically appeals are taking a year and a half from the notice of appeal. The County and former County Counsel Leroy Smith did not appeal. Two of the unions did appeal. The appellant's brief was expected to be completed next month and she expected a decision in the case in a year.

Trustee Long also asked whether or not Ms. Dunning agreed with the comments that were made regarding the selected date or requested effective date for the proposed resolutions, and if so, why?

Ms. Dunning explained that there were two different ways of talking about retroactive versus prospective. The application that the Board was applying was prospective in the sense that it was only applied to future payments that people received and the recommendation was that they did not recoup retroactive amounts, so it was prospective only. However, it applied to people who had already retired because every payment that they received after retirement was erroneously inflated. That was what all of the retirement systems in California, as she understood it, had done. So it was applied to future benefit payments and that was what was being recommended to them as well as the resolutions.

Trustee Long said that Ms. Dunning agreed then with the effective date of April 17, 2023, for both resolutions.

Ms. Dunning said no, not as to the question of to whom it applied. It was applied to checks that go out on a prospective basis and what the courts had said was that PEPRA applied to people who retired when that law was in effect which was from January 1, 2013, to the present. There were 7 years of litigation on that topic that led to the California Supreme Court's unanimous decision upholding PEPRA and requiring it to be applied by county retirement plans such as VCERA. Therefore, it had to be applied to people who retired on or after January 1, 2013. The Alameda Exclusions had a different effective date because the decision itself is a result of the Supreme Court overturning prior case law. Therefore, the effective date for Alameda exclusions was July 30, 2020.

Some members talked about "window periods". Boards of Retirement were not allowed to make up the law, and they were not allowed to apply the law to one group of people but not another without a basis in statute or court case. The resolutions were applying the PEPRA exclusions to people who retired under PEPRA and applying the Alameda exclusions to people who retired after the Alameda Decision.

Trustee Long then said that she was very confused then because the issue had been going on for 7 years and VCERA's first letter to all of the members regarding it was a week ago. The proposed effective dates did not make sense, and if she was going to vote in favor of the recommendation, she would need clarification on why the members were not communicated with about the issue during that time. She believed the effective date should be the date that everyone agreed the item was moving forward, which was today's date, and not the other proposed dates.

Ms. Dunning explained that when Judge Stern in the Santa Barbara Superior Court upheld the Board's prior decision on "straddling", that court said that the Board must exclude pay items that constituted cash outs that reflected straddling of calendar years, so it was a, "must" and not a "may".

Also, back in October 2020, when she presented to the Board on *Alameda*, the history of the lawsuit went back to 2012, which was when the legislature adopted PEPRA, and there were county retirement systems that applied PEPRA to both their Legacy and PEPRA members, but VCERA only applied PEPRA to the PEPRA members and made it clear that it was waiting for the dust to settle in the lawsuits that were filed in other counties, with respect to the application of PEPRA to the Legacy members. There were 4 such lawsuits, filed against 4 other county retirement systems, and 3 of the cases were consolidated and went up through the courts until it reached the Supreme Court in 2019 and then was resolved in 2020. All 4 of those cases determined that all 4 of the county retirement systems needed to apply the PEPRA exclusions for all members who retired after January 1, 2013, and this was not a debate in any of the systems. The problem in some systems, such as Ventura County, was a lot of time had passed and people were now surprised that their pension allowances were going to be reduced. The Board was dealing with the issue late, because they had a lot of complications centered around the Alameda Exclusions. It was time to resolve it and allow staff to implement it for the currently retired members, as it had already been implemented for people who retired after July 30, 2020. The Board applied the PEPRA exclusions and authorized staff to calculate benefits in accordance with PEPRA, which had been done. So, the only issue on the PEPRA Exclusions was whether they chose to recoup the overpayments from members or not, and the recommendation was to not recoup from the members.

Trustee Long asked if the resolutions would then be effective as of today's date if they were approved by the Board.

Ms. Webb added that if a member who retired after January 1, 2013, he or she could be receiving an overpaid benefit currently; that member would continue to be overpaid until the adjustment to their benefit was made, and the overpayments would not be recouped. The time that has passed has allowed the overpayments to continue. Benefits will be changed prospectively, but overpayments will not be "clawed back". Also, for anyone that had retired since the Alameda Decision, staff had been eliminating "straddling" and not calculating their Final Average Compensation using any of the PEPRA Exclusions, such as Standby Pay and On-Call Pay. So, all of these retirees have gone into retirement without overpayments.

Trustee Long remarked that the October 2020 Resolution impacted the employees, but where was the communication on that, as to how that would be affecting the members? Where was the communication during that time until now that explained what they might be losing? She also did not want to ask for all of the communications from VCERA to the members during this period, because she did not want to micromanage staff. However, she was very frustrated about the situation. In December, she had asked to delay a decision on the flex credit item so that they could communicate with the unions and members, but she has received only one letter on April 10<sup>th</sup> as an employee. She believed they should promise the employees the contract they signed when they hired them. She was also concerned about the members who were required to be on Standby or On-call after their 8-hour shift was over.

Ms. Webb then said that she was unsure of what exactly Trustee Long was asking to be done.

Trustee Long said that she was asking that the effective date for both resolutions be today's date so that the employees could trust that if approved, there would be no change to it again. The other thing she was requesting was for more communication with the members. She and Ms. Dunning did not agree that the items in question were non-pensionable, but she was the Board's legal counsel and that was what she had stated. Trustee Long said she just wanted everyone to be clear on the decision the Board was making today.

Ms. Webb said that she believed there was some confusion on some of the points that Trustee Long made and she hoped to be able to clarify them further. VCERA would not be clawing back benefits on any retirees. The law required VCERA to adjust the benefits prospectively, which was as soon as administratively possible. The Board had delayed the approval of the Alameda and PEPRA exclusions for 3 years. Staff had brought a resolution for these exclusions 6 or 7 times, so that staff could begin the implementation, and staff had warned the Board that from a fiduciary standpoint, the delay was making things worse. Also, the last examples she saw regarding the overpayments to retirees showed between \$20,000 to \$50,000 in overpayments that would not be recouped from them because of the delay. VCERA was legally required to update the benefits for members who retired between 2013 and 2020, and so the delay had benefited them financially. In terms of the Alameda Exclusions, the members, the unions, and the County had asked that the Board delay adopting the resolution until today. VCERA was still collecting contributions on non-cashable flex credit and the retirees were still being paid according to the full flex credit amount included in their pension calculation, which needed to be adjusted as well, without recoupment for those overpayments. The proposed resolutions before the Board currently were the most advantageous to the retirees and membership that were allowed under the law.

Ms. Dunning said additionally, the Resolution the Board previously adopted in October 2020 called for recoupment, and if the Board did not act today then the letters that the members would receive would show the items that were excluded and the amount that was owed to VCERA.

Trustee Long said that made her wonder why the resolution was a supplement one instead of an amendment. A supplement can be removed at any time, unlike an amendment.

Ms. Dunning said that it was a modification concerning the recoupment aspect of the prior Resolution, and it was not a change of any of its substance. It addressed the one discretionary point that the Board was afforded, which pertained to the recoupment. Also, if notices had gone out earlier, they would have said something much more alarming than the letters that were contemplated by today's proposed resolution. There is an opportunity to individually appeal to the Retirement Administrator if members believed their calculations are incorrect.

Trustee Long asked if the Board were to approve the supplemental resolution today if it could not be taken back.

Ms. Webb remarked that the original resolution would have recouped overpaid benefits relating to PEPRA Exclusions back to 2020, but the supplemental resolution stated that VCERA would not be recouping overpayments at all, therefore it was advantageous to the retirees.

Trustee Roberts asked if the Board chose not to adopt the resolutions today, and there were a lawsuit, could the courts decide that VCERA needed to recoupment overpayments from retirees?

Ms. Dunning said yes, there could be a lawsuit from a taxpayer that said VCERA must recoup overpaid benefits, and that had happened in other jurisdictions. She was advising the Board on what she believed the law authorized the Board to be able to do, but there were those who may not agree and could say VCERA must recoup the overpaid benefits.

Trustee Roberts then said that the Board then had some discretion currently, but if the Board chose to delay or not implement the resolution, then they may lose that discretion.

Ms. Dunning said she believed the Board did not have the discretion whether to apply it, but the Board had the discretion not to recoup, in her judgment. Therefore, she believed the Board had some level of discretion, to waive the obligation they would have to otherwise recoup overpayments

and to instead, collect those amounts through the unfunded liability, but that discretion was not unlimited. There was a point where it became a “gift of public funds”, which was important to note. Because the more money that was being paid out of the trust that was not paying a benefit that is authorized by law, the more the Board was creating a vulnerability for the system that could be challenged in the future.

Trustee Grass said that he believed there were multiple issues involved and one was highlighted recently when they were discussing larger pensions, because those were not the people the retirees or REAVC were attending the meeting today for. They were concerned about those with pensions that were possibly \$5,000 that were going to be reduced to \$4,000. He also believed the response letter to REAVC was telling because it said other boards in other counties did have discretion, but it did not meet the criteria in Ventura County. Of course it did, they were all different and each county had different pay codes for the items in question. The thing that bothered him the most was the PEPRA item because the Board had exercised discretion long before he was on the Board, and the lack of communication and having the items on the agenda without explanations to the members of what would be reduced bothered him. He agree with Supervisor Long when she asked how could they go back in reference to making the effective dates retroactive. They also kept talking about overpayments, but it was money that was contributed for the employee and by the employee and was invested in the Plan. Also, item B said that 2013 should be the effective date; however, he knew firsthand that part of the compensation plan for the employees went back to the date of hire and included on-call pay. So, for him, item B was a non-starter based on a lot of factors, and he did not know if that would change in 120 days if there were time to weed some of it out. It had taken 3 years on the Alameda item alone; the Board was just supposed to cram down the PEPRA item as well, just to get it done. It also sounded a little arrogant to talk about it being anything other than the employee's money. They did not see the Taxpayers Association beating down the doors and complaining about the issue, because it was money that was contributed by the employees and the employer. So, he strongly believed they should wait on item B because they were not giving the employees enough time or specific details to the employees, which had been his complaint for the last 2 years. Also, Ms. Webb had said that VCERA was not requesting any money back, but she was talking about reducing the pensions for anyone who retired between 2013 to 2020. He also understood that they kept hearing that there was no discretion, but VCERA's memo from REAVC highlighted multiple counties that did exercise discretion. So, he did not have a problem with the Alameda Exclusions, he just had a problem with the PEPRA Exclusions.

Ms. Webb noted that the Board had adopted the resolution on PEPRA Exclusions in 2020, but the only thing the new supplemental resolution did was to make the original resolution more advantageous to members than it had been this entire time.

Trustee Grass disagreed and said there was some information that was presented earlier that said the Board would only recoup their excess contributions based on excluded things like on-call pay, and he would argue that those funds would be due back to employees from the date of hire to 2013. Therefore, he believed they should take additional time before deciding on the PEPRA item, and there should be some additional information provided to the retirees regarding it.

Ms. Webb said that she believed there was some misunderstanding by the Board on what exactly was being proposed today. The PEPRA Exclusions had already been implemented, and for everyone who had retired since the Alameda Decision, VCERA had restricted standby pay to within the law.

Trustee Grass said that he understood that, but he was referring to the employees who retired between 2013 to 2020.

Ms. Webb also said that Trustee Grass had mentioned an example of a pension that was \$5,000 that could be reduced to \$4,000; however, she had not seen an example that was remotely close to that. Also, the members who retired between 2013 and 2020 would not be affected by the Flex Credit issue, which was the factor that caused the biggest impact on the reductions. As to the examples she presented earlier, it was just to highlight the straddling issue for a Tier I employee.

Trustee Grass then said that VCERA staff had spent the last 6 months meeting with the associations and unions, but the PowerPoint presentations were remiss in pushing the PEPRA item forward currently without providing some estimate to the members on what they should expect. So, he believed it was inappropriate to move forward with the item without providing them with some idea of that reduction. It was also a good basis for negotiations.

Ms. Webb then asked Ms. Dunning, if the Board adopted the resolutions, which stated they would not recoup overpayments, could it be considered a gift of public funds if the Board knew they were not going to recoup, and yet kept delaying further. Also, yes, she was referring to them as overpayments because she was reading the law. She understood it did not feel like an overpayment to retirees receiving a retirement check, it would just feel like their retirement check. The employees paid contributions on those pay types that now the Court was saying they had to exclude. The Board said at the previous meeting that when the employees received refunds of those contributions they were going to be getting 7.9% compounded, and with interest being credited twice a year, they would receive more than a straight compounding of 7.9%, and for many, the interest in the earnings would well exceed the actual contributions. Therefore, the Board was giving the members the most generous refund that she had heard of among all of the CERL retirement systems, and the Board was also not recouping, which a lot of the CERL retirement systems were doing. So, further delay in her view would be irresponsible from a fiduciary perspective. The membership deserved clarity and staff could not provide clarity until the Board took action.

Chair Sedell said staff could not provide members with estimated reductions for individuals until the Board acted to tell staff how that was to be calculated, given the Board had not taken action on the items yet.

Trustee Grass noted that there was a whole PowerPoint presentation with examples of a member's estimated reduction.

Ms. Webb said that staff had selected examples from each union group and calculated the estimated reductions for those individuals for illustration; however, they were talking about thousands of members that would need to have their accounts recalculated. They were talking about 3 years of overpayments, and there was another biweekly payroll coming, where VCERA would receive more contributions that they should not be receiving. So, what she believed she was hearing from trustees was, to wait on the item, but get the contribution refunds out fast, and staff could not do it both ways because the longer they wait, the messier and harder the implementation would be. From staff's perspective, VCERA had to follow the law. This did not mean that they did not have any sympathy for the retirees. Her father was a CalSTRS retiree who had lived on a fixed income. What was troubling to her was the hostility on display, because there was an implication that there was something the Board or staff could do for the members that they were not doing. Not recouping, granting the most generous interest rate for refunds, and the delay was all advantageous to the members. So, they have recommended as much as they could to the benefit of the member, under the law, but the discretion to not follow the law was just not there.

Trustee Grass said that they were not implying that. He was just saying that they should wait a little while on item B to provide more information to the members. He never said that he had any problem with item A. However, he believed there was a miscategorization regarding the pension plan

because there was an actuary that made calculations based on what was contributed and other factors to estimate what a member should be paid. Members were currently contributing 12½ percent and the County was contributing an equal amount, which was money that was part of his compensation package that he had entrusted to VCERA because he did not have a choice, otherwise, he might choose to do something else. So, that money belonged to the employees, and he was not saying that they shouldn't follow the law, he was just saying that they should provide a little more information to the members about item B and resolve some of the issues, such as the effective date based on the pay items, but they should ensure that they are getting it done correctly.

Ms. Webb said she disagreed because she felt they needed to give everyone a great deal of further information, but they could not do that until action was taken by the Board.

Ms. Dunning then asked Chair Sedell if she should walk the Board through the resolution for item B to help everyone understand what the disagreement was about.

Chair Sedell said that it sounded like they should do that because it could help to answer some of the questions that were recently mentioned.

Ms. Dunning then presented the proposed resolution regarding PEPRA Exclusions.

Kevin Aguayo, President of the Ventura County Professional Firefighters Association, provided public comment. He heard the "claw back" issue come up, but legislation was presented last year and there was a lot of resistance. So, if there was any question about the claw back process would be, he would urge VCERA and SACRS to support any anti-claw back legislation, which was similarly done with PERS. Along with that, as a union leader who was in negotiations with the County because of this, he could not negotiate without the Board taking action on the resolution. So, the sooner the issues could be resolved, the faster he could get to where he needed to be with his members and their families during the negotiations. So, he would urge the Board members to vote on the items so that he knew what he needed to do on behalf of his members, just like the other union leaders. To not do that would be unhelpful to every labor union leader and their members, and from what he saw, there would be the opportunity to appeal the processes. As the Board knew, he had multiple issues that he was appealing. Therefore, please vote on the issues today, because not dealing with it was not an option any longer.

Trustee Horgan asked if there was any benefit to changing the effective dates to the resolution to today's date because there would be no recoupment of overpaid funds.

Ms. Webb said that she did not see any benefit in changing the effective date. She then asked Ms. Dunning if she had heard any new arguments at today's meeting that had not been presented or argued to the Court previously.

Ms. Dunning said no, every single issue had already come up before the courts, and the CA Supreme Court had uniformly upheld what was being recommended to the Board today, and she had seen administrative appeals on these issues across the state, and every single one had upheld these types of determinations.

Trustee Long said that she wanted to clarify that the issue had been a big one for her and the County. The County also spoke to County Counsel about these issues, so she just wanted the members to know that the Board had a legal obligation to follow the law, whether she agreed with it or not. So, she just wanted to make sure the members knew that the County had been working hard to fight against the issue.

Chair Sedell remarked that he believed the Board, the County, and the Unions had done everything possible to find the best path forward for the members, which he believed was what Trustee Long was trying to say, and he would agree.

Trustee Long said she was initially speaking as to the County's efforts, then she was intending to remark on the Board's efforts as well. She also believed that there was a big obligation to provide the members with a letter that stated what happened today, what the Board approved, and what they would receive from VCERA. As well as a timeline of when they will receive an itemized letter that explained the amount of their pension benefit reduction. So, the motion on the item should be to approve the item as of today and to direct staff back to the Board with a timeline for when VCERA would be able to communicate to the members.

Chair Sedell said if that was going to be her motion he would like to have added to the motion that at the next meeting we have staff come back to explain what that timeframe would be, to the best of their ability because they were talking about thousands of calculations. But they needed to know that, and so did the retirees and employees.

Trustee Goulet said that he recalled that Ms. Webb already stated that staff would be coming back with an implementation plan, which would provide the Board with some idea of how long the process will take, and he assumed the plan would state the priority of which group of members should be dealt with first.

Ms. Webb said that it would be done in groups, with retirees being the first group in the process. She also wanted to remind them that for the last 3 years, staff had been telling the Board how difficult the implementation would be for staff, and the longer the delay the harder it would be. Staff would also need new outside resources as well as employing data services and partnering with the Auditor-Controller's Office because it would affect payroll.

Chair Sedell then said that the Board was simply asking that if the resolution was passed, staff keep the Board and the public informed on the status as things progressed, week by week if they had to.

Ms. Webb replied yes, and that she wholeheartedly agreed.

MOTION: Adopt the Proposed Resolution Regarding the Correction of Pensionability of Benefits Under County of Ventura's Flexible Benefits Program, and Direct Staff to Return with a Timeline on the Implementation, which Includes Updates to the Members.

Moved by Long seconded by Joe

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

B. Recommendation to Adopt Resolution to Supplement the October 12, 2020, Alameda Implementation Resolution by: (1) Modifying paragraph 4 thereof such that overpayments made on and after August 31, 2020, would not be recouped directly from Post-PEPRA Legacy Retirees; and (2) Specifying alternative means for Administrative Appeals.

**RECOMMENDED ACTION: Adopt.**



1. Staff Letter by Retirement Administrator.
2. Resolution of the Board of Retirement of Ventura County Employees' Retirement Association Regarding Alameda Implementation to Compensation Earnable and Pensionable Compensation (Previously Adopted October 12, 2020).
3. Proposed Supplemental Resolution of the Board of Retirement of Ventura County Employees' Retirement Association Regarding *Alameda* Corrections of PEPRA Exclusions as to Retired Members.
4. Letter of Concern from Retirees Lyn Krieger, Gerhardt Hubner, Chris Stephens, Tracey Pirie, Scott Barash, and Roberta Rodriguez-Griego, Submitted March 27, 2023.
5. Response to Letter of Concern from VCERA Retirees Re: Alameda Implementation.
6. Letter to Board from President of the Retired Employees Association of Ventura County (REAVC).

MOTION: Approve and Adopt the Proposed Resolution.

Moved by Joe, seconded by Hernandez-Garcia

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

Trustee Goulet said that he wanted to make a supplemental motion to direct staff to return with an implementation plan and communicate with the Board and the public during the process.

MOTION: Direct Staff to Return with a Timeline on the Implementation, which Includes Updates to the Members.

Moved by Goulet, seconded by Roberts

Vote: Motion carried

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

No: -

Absent: Ashby

Abstain: -

Trustee Joe left the meeting at 2:01 p.m., after the vote on the items.

The Board took a 20-minute break at 2:10 p.m.

The Board returned from a break at 2:30 p.m.

- C. Request for Addition of One New Full-Time Equivalent (FTE) Staff Position for Retirement Investment Officer Under HR Classification of Administrative Services Director IV.

**RECOMMENDED ACTION: Approve.**

1. Staff Letter by Retirement Administrator.

Ms. Webb noted that there had been interest for some time to acquire an additional position to be added to the Investment Department. This was the official request to the Board because VCERA would need an additional position or Full-Time Equivalent position (FTE) added to the staff roster. The requested classification was approved by County Human Resources. Staff also had a draft of the job description and while they would be starting the recruitment efforts soon, she they did not anticipate filling the position until after the beginning of the new fiscal year. The CFO had also listed in the agenda materials the full cost of the position, reflecting the top of the salary range so that the Board could see the full financial impact to the budget.

Trustee Horgan said that she wanted to let Chair Sedell know that she did not feel that she could support the recommendation from staff because she did not have the background or history of the item and did not know what the full financial impact would be to the budget.

Chair Sedell said that he could appreciate that, but the Board had previously discussed the item when they approved the current budget and after considering that the Board had one person handling VCERA's investment portfolio, there was a request from the Board to have the item brought back for more consideration. Especially when the Board considered the growing number of investments, such as Private Equity that was still rather new to their portfolio, the Board felt that there was a need for additional oversight for that department.

MOTION: Approve the Addition of One Allocation with the Following Payroll Title and Salary Range: (01787) Administrative Services Director IV, with a Salary Range of \$145,359.97 to \$203,503.96.

Moved by Roberts, seconded by Long

Vote: Motion carried

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

No: -

Absent: Ashby, Joe

Abstain: Horgan

- D. Review of Board Member Education Compliance Report for 2022.

**RECOMMENDED ACTION: Approve.**

1. Staff Letter by Retirement Administrator.
2. Board Member Education Compliance Report for 2022.

Ms. Webb noted that the item was an annual requirement for a 2-year training period for Trustee Education, and VCERA was required by law to post a report publicly.

MOTION: Approve.

Moved by Roberts, seconded by Long

Vote: Motion carried

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

No: -

Absent: Ashby, Joe

Abstain: -

E. Finance Committee Activities.

**RECOMMENDED ACTION: Receive and file.**

1. Letter from Finance Committee Chair.

Trustee Goulet explained that it was time for VCERA to have an Actuarial Audit and the last time they had one, the Chair had appointed an Ad-hoc Committee to develop an RFP and evaluate the responses to it, and there was no Finance Committee at that time. The Finance Committee felt that it was something that they could undertake, and it fell under the committee charter's "other duties as assigned".

Chair Sedell then said that they could receive and file the report and then have the Actuarial Audit item brought back at the next meeting for consideration.

Trustee Goulet agreed.

MOTION: Receive and File.

Moved by Goulet, seconded by Roberts

Vote: Motion carried

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

No: -

Absent: Ashby, Joe

Abstain: -

F. SACRS Board of Director Elections 2022-2023.

1. SACRS Board of Director Elections 2022-2023 – Final Ballot Information and Nomination Supplemental Submission Form.

G. Chief Investment Officer's 1<sup>st</sup> Quarter 2023 Investment Activity Report.

**RECOMMENDED ACTION: Receive and File.**

MOTION: Receive and File.

Moved by Roberts, seconded by Long

Vote: Motion carried

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

No: -

Absent: Ashby, Joe

Abstain: -

After the vote on the agenda item the Board advanced to item, XI.A., " SACRS Legislative Update – April 2023".

**X. CLOSED SESSION**

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: Retirement Administrator  
(Government Code section 54957(b)(1))

**XI. INFORMATIONAL**

- A. SACRS Legislative Update – April 2023.

**XII. PUBLIC COMMENT**

None.

**XIII. STAFF COMMENT**

Ms. Webb noted that there was still time for Trustees to get registered for the upcoming SACRS Spring 2023 Conference. So, if any of the Trustees would like to attend, please let staff know at their earliest convenience.

**XIV. BOARD MEMBER COMMENT**

Trustee Hoag said that he wanted to say that Ms. Webb had done a great job in presenting the Alameda-related items to the Board and the public.

Trustee Roberts also wanted to thank staff for the work they had done to get VCERA to this point and for their future efforts since the implementation was just beginning.

Ms. Webb noted that Board and the public could be assured that the implementation of Alameda was of crucial importance to staff as well. They took the process seriously and they intended to do it efficiently.

Trustee Long thanked Ms. Webb for her work in dealing with all of the different needs that were required of her, and she also wanted to ask that the letters related to today's Public Comments could be put on the agenda so that the public would have access to those that made comments.

Ms. Webb said that the technical deadline was Friday at 9 a.m. before the meeting, but staff tried to get the Board access to the disability cases before that so that they have more time to review them. Staff had also received 3 different versions of the REAVC letter and so staff kept forwarding them to the Board, as for the comments they either read them into the record or submitted them to the Board prior. Also, the public comments would be captured in the minutes, which would list who made the comments and a summary of what was said, and as for the emails staff received on behalf of the Board, she would defer to counsel on whether those should be posted publicly.

Chair Sedell said if anything were received before the Wednesday night before the agenda was posted, it should be included in the agenda.

Ms. Webb then said that if it was received before posting it would be included.

Trustee Long clarified that she was asking what was the process or policy for the agenda-related items that staff received from the members or the public, and how were they tracked.

Ms. Webb explained that for this meeting she was working with the Board Clerk and the CTO to create a central repository where Board members could access and review the emails and comments that were sent to them. As for the speaker cards and requests they received during the meeting to address the Board were dealt with during the meeting, as they came in, which would be reflected in the Public Comment, but staff did not go back to the agenda posting and list the 12 to 15 public comments or emails, but they would be reflected in the minutes later.

Trustee Goulet said that as the Board was aware, he wrote a column for REAVC's News Letter, so he would be reciting in his letter what happened today so that at least members of REAVC would have notice of what happened today.

Ms. Webb also noted that staff would be updating the VCERA website within the next 24 hours regarding exactly what happened today and what was coming next. Staff would continue to include additional information, similarly, when the implementation details were released they would be posted as well.

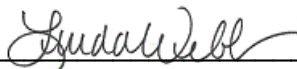
Chair Sedell announced that the Board would recess the public meeting and enter into Closed Session and that there would be no announcement expected after the Closed Session and the Board would adjourn from closed session.

The Board then entered Closed Session at, 2:48 p.m.

**XV. ADJOURNMENT**

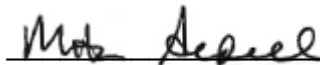
The Chair said the Board would adjourn the meeting at the conclusion of the Closed Session meeting.

Respectfully submitted,



\_\_\_\_\_  
LINDA WEBB, Retirement Administrator

Approved,



\_\_\_\_\_  
MIKE SEDELL, Chair