



Advancing California
Finance Authority

375 Beale Street
Suite 700
San Francisco, California
94105

Meeting Agenda - Final

ABAG ACFA Governing Board

Thursday, May 21, 2020

5:10 PM

Board Room - 1st Floor (Remote)

Advancing California Finance Authority Governing Board

The ACFA Governing Board will be meeting on May 21, 2020, 5:10 p.m., or immediately following the preceding ABAG committee meeting, in the Bay Area Metro Center (Remotely). In light of Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak and in accordance with Executive Order N-29-20 issued by Governor Newsom on March 17, 2020 and the Guidance for Gatherings issued by the California Department of Public Health, the meeting will be conducted via webcast, teleconference, and Zoom for committee, commission, or board members who will participate in the meeting from individual remote locations.

A Zoom panelist link for meeting participants will be sent separately to committee, commission, or board members.

The meeting webcast will be available at: <https://abag.ca.gov/meetings-events/live-webcasts>

Members of the public are encouraged to participate remotely via Zoom at the following link or phone number.

Attendee Link: <https://bayareametro.zoom.us/j/99611067033>

Join by Telephone: 888 788 0099 (Toll Free) or 877 853 5247 (Toll Free)

Webinar ID: 996 1106 7033

Detailed instructions on participating via Zoom are available at:
<https://abag.ca.gov/zoom-information>

Committee members and members of the public participating by Zoom wishing to speak should use the "raise hand" feature or dial "*9".

In order to get the full Zoom experience, please make sure your application is up to date.

Members of the public may participate by phone or Zoom or may submit comments by email at info@bayareametro.gov by 5:00 p.m. the day before the scheduled meeting date. Please include the committee or board meeting name in the subject line. Due to the current circumstances there may be limited opportunity to address comments during the meeting. All comments received will be submitted into the record.

The ACFA Governing Board may act on any item on the agenda.
The meeting is scheduled to begin at 5:10 p.m.,
or immediately following the preceding ABAG committee meeting.
Agenda, roster, and webcast available at <http://abag.ca.gov>
For information, contact Clerk of the Board at (415) 820-7913.

Roster

Karen Mitchoff, Supervisor, County of Contra Costa—Chair
Jesse Arreguin, Mayor, City of Berkeley—Vice Chair
Cindy Chavez, Supervisor, County of Santa Clara
Julie Pierce, Mayor, City of Clayton
Belia Ramos, Supervisor, County of Napa

1. Call to Order / Roll Call / Confirm Quorum

2. Public Comment

Information

3. Governing Board Announcements

Information

4. Governing Board Chair's Report

4.a. [20-0667](#) Governing Board Chair's Report

Action: Information

Presenter: Jesse Arreguin

5. Executive Director's Report

5.a. [20-0668](#) Executive Director's Report

Action: Information

Presenter: Therese McMillan

6. Consent Calendar

6.a. [20-0669](#) Approval of ACFA Governing Board minutes of September 20, 2018

Action: Approval

Presenter: Secretary

Attachments: [Item 6a Minutes 20180920 Draft.pdf](#)

7. ABAG Finance Authority for Nonprofit Corporations Successor Agency

- 7.a. [20-0671](#) Adoption of Resolution No. 2020-001 Acceptance of Transfer of Board Duties from the ABAG Finance Authority for Nonprofit Corporations to the Advancing California Finance Authority and Related Matters Thereto

Action: Approval

Presenter: Brian Mayhew

Attachments: [Item 07a 1 Summary Sheet Adoption Resolution No 2020 001 Transfer ABAG F](#)
[Item 07a 2 Resolution No 2020 001 Accept ABAG FAN Transfer Duties.pdf](#)
[Item 07a 3 Memo Phase I Update on Successor Agency Review 4835-3527-49](#)
[Item 07a 4 Memo Phase II Summary and Update Successor Agency 4836-8952](#)
[Item 07a 5 FORM OF NOTICES ABAG FAN.pdf](#)

8 ABAG FAN Operating Budget

- 8.a. [20-0816](#) Approval of ABAG Finance Authority for Nonprofit Corporations Fiscal Year 202021 Operating Budget

Action: Approval

Presenter: Brian Mayhew

Attachments: [Item 08a 1 Summary Sheet Report FAN Budget Draft.pdf](#)
[Item 08a 2 Attachment FAN FY 2020-21 Budget Draft.pdf](#)

9. ACFA Marketing Activities

- 9.a. [20-0670](#) Update on ACFA Marketing Efforts

Action: Information

Presenter: Brad Paul

Attachments: [Item 09a 1 Summary Sheet ACFA Marketing Efforts Update.pdf](#)
[Item 09a 2 Attachment Memo ACFA Marketing.pdf](#)

9. Adjournment / Next Meeting

The next regular meeting of the ACFA Governing Board is on July 16, 2020.

Public Comment: The public is encouraged to comment on agenda items at Committee meetings by completing a request-to-speak card (available from staff) and passing it to the Committee secretary. Public comment may be limited by any of the procedures set forth in Section 3.09 of MTC's Procedures Manual (Resolution No. 1058, Revised) if, in the chair's judgment, it is necessary to maintain the orderly flow of business.

Meeting Conduct: If this meeting is willfully interrupted or disrupted by one or more persons rendering orderly conduct of the meeting unfeasible, the Chair may order the removal of individuals who are willfully disrupting the meeting. Such individuals may be arrested. If order cannot be restored by such removal, the members of the Committee may direct that the meeting room be cleared (except for representatives of the press or other news media not participating in the disturbance), and the session may continue.

Record of Meeting: Committee meetings are recorded. Copies of recordings are available at a nominal charge, or recordings may be listened to at MTC offices by appointment. Audiocasts are maintained on MTC's Web site (mtc.ca.gov) for public review for at least one year.

Accessibility and Title VI: MTC provides services/accommodations upon request to persons with disabilities and individuals who are limited-English proficient who wish to address Commission matters. For accommodations or translations assistance, please call 415.778.6757 or 415.778.6769 for TDD/TTY. We require three working days' notice to accommodate your request.

可及性和法令第六章: MTC 根據要求向希望來委員會討論有關事宜的殘疾人士及英語有限者提供服務/方便。需要便利設施或翻譯協助者，請致電 415.778.6757 或 415.778.6769 TDD / TTY。我們要求您在三個工作日前告知，以滿足您的要求。

Acceso y el Titulo VI: La MTC puede proveer asistencia/facilitar la comunicación a las personas discapacitadas y los individuos con conocimiento limitado del inglés quienes quieran dirigirse a la Comisión. Para solicitar asistencia, por favor llame al número 415.778.6757 o al 415.778.6769 para TDD/TTY. Requerimos que solicite asistencia con tres días hábiles de anticipación para poderle proveer asistencia.

Attachments are sent to Committee members, key staff and others as appropriate. Copies will be available at the meeting.

All items on the agenda are subject to action and/or change by the Committee. Actions recommended by staff are subject to change by the Committee.



Advancing California
Finance Authority

Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0667 **Version:** 1 **Name:**

Type: Report **Status:** Informational

File created: 4/16/2020 **In control:** ABAG ACFA Governing Board

On agenda: 5/21/2020 **Final action:**

Title: Governing Board Chair's Report

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Governing Board Chair's Report

Jesse Arreguin

Information



Advancing California
Finance Authority

Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0668 **Version:** 1 **Name:**

Type: Report **Status:** Informational

File created: 4/16/2020 **In control:** ABAG ACFA Governing Board

On agenda: 5/21/2020 **Final action:**

Title: Executive Director's Report

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Executive Director's Report

Therese McMillan

Information



Advancing California
Finance Authority

Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0669 **Version:** 1 **Name:**

Type: Minutes **Status:** Consent

File created: 4/16/2020 **In control:** ABAG ACFA Governing Board

On agenda: 5/21/2020 **Final action:**

Title: Approval of ACFA Governing Board minutes of September 20, 2018

Sponsors:

Indexes:

Code sections:

Attachments: [Item 6a Minutes 20180920 Draft.pdf](#)

Date	Ver.	Action By	Action	Result
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Approval of ACFA Governing Board minutes of September 20, 2018

Secretary

Approval



375 Beale Street
Suite 700
San Francisco, California
94105

Meeting Minutes - Draft

ACFA Governing Board

Chair, David Rabbitt, Supervisor, County of Sonoma
Vice Chair, Karen Mitchoff, Supervisor, County of Contra Costa

Thursday, September 20, 2018

5:10 PM

Board Room - 1st Floor

Governing Board Roster

David Rabbitt, Supervisor, County of Sonoma—Chair
Karen Mitchoff, Supervisor, Count of Contra Costa—Vice Chair
Cindy Chavez, Supervisor, County of Santa Clara
Julie Pierce, Councilmember, City of Clayton
Greg Scharff, Councilmember, City of Palo Alto

1. Call to Order

Vice Chair Mitchoff called the meeting to order at about 5:42 p.m.

1.a. Roll Call

Present: 4 - Chavez, Mitchoff, Pierce, and Scharff

Absent: 1 - Rabbitt

1.b. Confirm Quorum

Quorum was present.

2. Public Comment

There was no public comment.

3. Governing Board Announcements

There were no Governing Board announcements.

4. Governing Board Consent Calendar

Upon the motion by Pierce and seconded by Chavez, the Consent Calendar was approved. The motion carried by the following vote:

Aye: 4 - Chavez, Mitchoff, Pierce, and Scharff

Absent: 1 - Rabbitt

- 4.a. [18-0743](#) Approval of ACFA Governing Board Summary Minutes of May 17, 2018

5. Update on ACFA and ABAG FAN Activities

The Governing Board received the staff report.

[18-0744](#) Update on ACFA and ABAG FAN Activities

6. Update on ACFA Marketing Efforts

Upon the motion by Pierce and seconded by Chavez, the staff reports on Update on ACFA and ABAG FAN Activities and Update on ACFA Marketing Efforts were approved. The motion carried by the following vote:

Aye: 4 - Chavez, Mitchoff, Pierce, and Scharff

Abstain: 1 - Rabbitt

[18-0788](#) Update on ACFA Marketing Efforts

7. Adjournment / Next Meeting

Vice Chair Mitchoff adjourned the meeting at about 5:59 p.m.

The next regular meeting of the ACFA Governing Board is on November 15, 2018.



Legislation Details (With Text)

File #:	20-0671	Version:	1	Name:	
Type:	Report	Status:		Committee Approval	
File created:	4/16/2020	In control:		ABAG ACFA Governing Board	
On agenda:	5/21/2020	Final action:			
Title:	Adoption of Resolution No. 2020-001 Acceptance of Transfer of Board Duties from the ABAG Finance Authority for Nonprofit Corporations to the Advancing California Finance Authority and Related Matters Thereto				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Item 07a 1 Summary Sheet Adoption Resolution No 2020 001 Transfer ABAG FAN to ACFA.pdf Item 07a 2 Resolution No 2020 001 Accept ABAG FAN Transfer Duties.pdf Item 07a 3 Memo Phase I Update on Successor Agency Review 4835-3527-4911.pdf Item 07a 4 Memo Phase II Summary and Update Successor Agency 4836-8952-9515.pdf Item 07a 5 FORM OF NOTICES ABAG FAN.pdf				

Date	Ver.	Action By	Action	Result
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Adoption of Resolution No. 2020-001 Acceptance of Transfer of Board Duties from the ABAG Finance Authority for Nonprofit Corporations to the Advancing California Finance Authority and Related Matters Thereto

Brian Mayhew

Approval

Advancing California Finance Authority

Governing Board

May 21, 2020

Agenda Item 7.a.

ABAG Finance Authority for Nonprofit Corporations

Subject: Adoption of Resolution No. 2020-001 Acceptance of Transfer of Board Duties from the ABAG Finance Authority for Nonprofit Corporations to the Advancing California Finance Authority and Related Matters Thereto

Background: Staff requests that the Advancing California Finance Authority (ACFA) Governing Board adopt Resolution 06-2020 and approve the transfer of administrative responsibilities from ABAG Finance Authority for Nonprofit Corporations (ABAG FAN) to ACFA. The proposed transfer and transition plan are documented in the Phase I memo dated August 12, 2019 and the Phase II memo dated November 1, 2019 by Nixon Peabody (both memoranda are attached).

For the Phase I review, Nixon Peabody placed the transactions into three main categories based on publicly traded or privately placed transactions and whether they were issued pursuant to a Loan Agreement or Trust Indenture. Based on Phase I preliminary document review, Nixon Peabody confirmed that the primary debt documents of the transactions reviewed had existing language authorizing assignment to a successor agency.

During the Phase II review, Nixon Peabody analyzed the ABAG FAN's revised and amended Joint Powers Agreement, reviewed a larger sample of transaction documents, and conducted legal analysis to see if ACFA could be appointed as successor agency. Based on this review, the administrative responsibilities can be transferred to ACFA pursuant to Article VI, Clause L, of the Joint Powers Agreement.

In Phase III, Nixon Peabody plans to draft the necessary amendments and notice requirements for the transactions that require consent. Notices will also be sent to other parties, including rating agencies, swap parties, credit enhancement providers, as well as privately placed transactions.

Phase III includes:

- Obtaining borrower consent. All parties must consent to the ACFA successorship.
- Draft amendments along with any prerequisite notices.
- Draft notices to rating agencies, swap counterparties, and credit enhancement providers.

Advancing California Finance Authority

Governing Board

May 21, 2020

Agenda Item 7.a.

ABAG Finance Authority for Nonprofit Corporations

On April 2, 2020 the ABAG FAN Executive committee adopted Resolution 2020-02 authorizing the transfer of board duties to ACFA. On April 23, 2020, the ABAG Executive Board adopted its Resolution No. 06-2020 which recognized the potential transfer of board duties from ABAG FAN to ACFA.

The estimated completion date for successorship transfer was originally June 30, 2020. Due to the situation with COVID-19, the anticipated completion date has been delayed to the end of calendar year 2020.

Issues:

None

Recommended Action:

The ACFA Governing Board is requested to adopt Resolution No. 06-2020.

Attachments:

- A. Resolution No. 2020-001
- B. Successor Agency Phase I Memo
- C. Successor Agency Phase II Memo
- D. Draft Form of Notices

Reviewed:



Therese W. McMillan

ADVANCING CALIFORNIA FINANCE AUTHORITY

Acceptance of Transfer of Board Duties from the ABAG Finance
Authority for Nonprofit Corporations to the Advancing California
Finance Authority and Related Matters Thereto

Resolution No. 2020-001

WHEREAS, pursuant to the provisions of the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the “Joint Powers Act”), several California cities and counties entered into a joint exercise of powers agreement (the “ABAG FAN Agreement”) pursuant to which the ABAG Finance Authority for Nonprofit Corporations (“ABAG FAN”) was organized;

WHEREAS, the Association of Bay Area Governments (“ABAG”) and ABAG FAN, each a “public agency” within the meaning of Section 6500 of the Joint Powers Act, have, pursuant to the Joint Powers Act, entered into a Joint Exercise of Powers Agreement, which created the Advancing California Finance Authority (the “Financing Authority”); and

WHEREAS, pursuant to Article VI(L) of the ABAG FAN Agreement, ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as administrator for ABAG FAN;

WHEREAS, ABAG FAN requested its counsel, Nixon Peabody LLP, to review certain transactions for any requirements or limitations imposed on the transfer of the board duties;

ADVANCING CALIFORNIA FINANCE AUTHORITY

Resolution No. 2020-001

WHEREAS, Nixon Peabody LLP has provided a memorandum summarizing the review of the transactions;

WHEREAS, the existing ABAG FAN Board has determined that it is in the public interest of the area and persons served by them to, among other things, transfer to the Financing Authority all administrative duties of the ABAG FAN Board established for the purposes set forth in the ABAG FAN Agreement;

WHEREAS, on April 2, 2020, the executive committee of ABAG FAN approved the transfer of ABAG FAN Board duties and responsibilities as administrator to the Financing Authority pursuant to Resolution No. 20-0525 (the “ABAG FAN Resolution”); and

WHEREAS, all actions taken by the President or Chief Financial Officer of ABAG FAN (each an “ABAG FAN Authorized Officer”), board members of ABAG FAN, and other appropriate officers and agents of ABAG FAN with respect to the transfer of ABAG FAN Board duties and responsibilities as administrator to the Financing Authority were ratified, confirmed and approved by the passage of the ABAG FAN Resolution; now, therefore, be it

RESOLVED, the transfer of the ABAG FAN Board duties to the Finance Authority is hereby approved, accepted and recognized, and the Finance Authority will perform any and all duties of the ABAG FAN Board, including but not limited to, acting as administrator for ABAG FAN; and be it further

RESOLVED, the President or Chief Financial Officer of the Finance Authority, the board members of the Finance Authority, and other appropriate officers and agents of the Finance Authority are hereby authorized and directed, for and in the name on behalf of the Finance Authority, to execute and deliver any and all documents, including, without limitation, any all documents and certificates to be executed in connection with the transfer of ABAG FAN Board

ADVANCING CALIFORNIA FINANCE AUTHORITY

Resolution No. 2020-001

duties and responsibilities as administrator to the Financing Authority, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which ABAG FAN has approved in the ABAG FAN Resolution; and be it further

RESOLVED, the transfer of the ABAG FAN Board duties to the Finance Authority shall be effective sixty (60) days after the date hereof. Once the transfer of the ABAG FAN Board duties becomes effective, (i) the chair of ABAG FAN shall be chair of Financing Authority, (ii) the vice-chair of ABAG FAN shall be vice-chair of the Financing Authority, (iii) the president of ABAG FAN shall be executive director of the Financing Authority, (iv) the chief financial officer shall be treasurer of the Financing Authority and (v) the secretary of ABAG FAN shall be the secretary of the Financing Authority. The powers of the ACFA board acting on behalf of the ABAG FAN board shall be consistent with the powers provided in the ABAG FAN Agreement; and be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

ADVANCING CALIFORNIA FINANCE
AUTHORITY

Karen Mitchoff
Chair of the Governing Board

The above resolution was adopted by the Advancing California Finance Authority at a properly noticed regular meeting held on May 21, 2018 in San Francisco, California, and at other remote locations, at which a quorum was present and acting throughout.

Frederick Castro
Secretary
Advancing California Finance Authority



MEMORANDUM

TO: Brian Mayhew, Susan Woo, Catherine Cam and Nicholas Mar **FROM:** Rudy Salo and Angelica Valencia
RE: ABAG FAN – Successor Agency **DATE:** August 12, 2019

You asked us to prepare an update on the Phase I review of documentation as to the possibility of appointing a successor agency for ABAG Finance Authority for Nonprofit Corporations (the “Authority”). Additionally, you also asked us to provide a plan for Phase II of the review. Below please find an update on Phase I and a plan for Phase II.

Phase I

Phase I involved the review of 10 transactions, which included community facilities districts, private placements and public offerings. The transactions reviewed generally fell into 3 categories. The publicly traded bonds issued pursuant to an indenture, privately placed loans issued pursuant to a loan agreement and the privately placed loans evidenced by bonds issued pursuant to an indenture.

Publicly traded bonds issued pursuant to an indenture

The transactions with publicly traded bonds issued pursuant to an indenture generally included a provision in the indenture that addressed the issue of a successor to the Authority. The successor provision provides that references to the Authority in the Indenture (typically Section 9.4) are deemed to include the Authority’s successor. Therefore, we believe we can argue that such provision already put bondholders on notice that there may someday be a successor or assign to the Authority. The loan agreements relating to the publicly-traded transactions we reviewed included “successors or assigns” in the definition of Authority. An issue in these transactions, however, is that such language was not consistently used in every single bond document. We would argue that since most of the “primary” documents included “successor or assign” language such language was sufficient to provide notice to the bondholder.

Privately Placed Loans issued pursuant to a Loan Agreement

In private bank deal transactions with a master loan agreement rather than an indenture, the Authority is generally defined to include “successors or assigns”. Additionally, the loan agreements contain a “survivability” provision that provides that the limitations of liability, indemnities and waivers shall continue in full force and effect and shall be enforceable by the Authority or its successors or assigns. Several of the other documents in such transactions also included language that the Authority

included any successors and assigns. Therefore, we believe we can argue that such provisions already placed the parties on notice that there may someday be a successor or assign to the Authority. Similar to the issue in publicly traded deals, not all the documents include successor or assign language. However, we would argue once again that since most of the “primary” documents included “successor or assign” language such language was sufficient to provide notice to the bondholder.

Privately Placed Loans evidenced by Bonds issued under an Indenture

During the course of the review, we discovered that two transactions (with the same documentation) restricts assignment. The Loan Agreement in the Drew School transaction (2014 and 2015) prohibits the Authority from assigning its rights under the documents. However, there is a provision in the indenture that permits an amendment to provide for a successor authority without the consent of US Bank as the Bond Purchaser, but we will need to obtain the consent of the borrower. We believe we should be able to amend the documents to provide for a successor authority by working with the Borrower.

Recommendations

For the transactions that are publicly traded (and don't have insurance, credit enhancement or swaps) we recommend providing notice of the appointment of a successor for the Authority based upon Section 9.4 of the applicable indentures. The notice can be general as to the appointment and should be provided after we obtain any necessary consents as described in Phase II. The transactions that have insurance, credit enhancement or swaps would be part of the Phase II review. Those transactions would require additional review (see Phase II) since they might require consents from or notices to other parties. We are also recommending review of all loans with US Bank to confirm which US Bank transactions have similar restrictions as Drew School. Such transactions will likely require amendments to the Indenture similar to the Drew School. We believe that the implementation could be relatively straight forward, but will not know for sure until we begin Phase II.

Phase II

For Phase II, we are proposing reviewing the following additional transactions:

- 1) All community facilities district transactions and confirm composition of the community facilities district,
- 2) Insured transactions or transactions that have credit enhancement to confirm whether consent (or notice) is required,
- 3) All US Bank direct purchase deals to confirm whether other transactions contain a similar provision as Drew School,
- 4) All transactions containing swaps, along with swap documentation, and
- 5) Per Brian's suggestion, 15% of the remaining transactions.

The 15% of the remaining transactions will be randomly selected and will include publicly traded transactions and private placement transactions. The expectation is that enough of the transactions will

be reviewed even with the smaller sample that we would be able to address any potential issues from the sample reviewed. However, should new issues be discovered while reviewing the 15%, the number of transactions could be expanded.

Additionally, we will have to confer with tax counsel to ensure that there are no tax issues and discuss any potential continuing disclosure issues due to the appointment of a successor. If any issues arise, we will immediately confer with the Authority and will have a suggested approach. While we did some very preliminary and more global legal research into the successor issue, we would have to do further research into appointment of a successor under California law.

Once we complete Phase II, we will work with the Agency to prepare and provide the requisite amendments, notices and obtain consent as necessary based on the review. Once the necessary amendments are executed, notices are provided and consents obtained, the Authority should have a board meeting and formally appoint its successor. At this point, we will have to provide notice to the publicly traded transactions subject to continuing disclosure requirements. Some notices will be mandatory and some will be voluntary.

Cost

For Phase II, we will continue to use a blended rate of \$600 per hour. The amount of time spent on reviewing the documents depends on the complexity of each underlying transaction, so we expect that on average the document reviewing will be approximately 4.5 hours per transaction. Also, there are 5 outstanding community facilities district transactions, each of which will need to be reviewed and have more documents than other deals. It is still not known how many transactions include insurers, swaps or US Bank as a bond purchaser. However, we are proposing a cap of \$250,000 for Phase II since we will be reviewing a portion of the transactions instead of all the transactions.



MEMORANDUM

TO: Brian Mayhew, Susan Woo, Catherine Cam and Nicholas Mar **FROM:** Rudy Salo and Angelica Valencia

RE: ABAG FAN – Successor Agency Phase II Review **DATE:** November 1, 2019

Summary

Pursuant to your request to assist you with determining whether there are any legal or transaction-based impediments to ABAG Finance Authority for Nonprofit Corporations (the “Authority”) appointing Advancing California Finance Authority (the “ACFA”) as a successor agency, we have taken a multi-step approach to review outstanding Authority obligations and address potential issues.

In Phase I, we reviewed ten initial transactions to determine whether there were any provisions prohibiting the Authority from consummating any assignments. On August 12, 2019, we submitted a memorandum with respect to the review of the initial ten transactions (“August 12 Memo”). Within the August 12 Memo we summarized the general results of the initial review and outlined the next step of the review (“Phase II”).

During our Phase II review, we analyzed the Authority’s Joint Powers Agreement, dated as of the April 1, 1990, as revised and amended (the “JPA Agreement”), reviewed a larger sample of transaction documents, and conducted legal analysis to determine whether the ACFA can be appointed as a successor agency.

We are happy to report that so far through two phases of review, we have reviewed the primary documentation for 65 transactions and we have not found any transactions or issues that cannot be addressed either through an amendment, a consent or a discussion with necessary parties.

Below please find an update on the analysis with respect to the possibility of appointing ACFA and our recommendations for implementing the appointment of ACFA (i.e., Phase III).

Phase II Review

1. Analysis of the JPA Agreement

The Authority is a joint exercise of powers authority organized and operating under the provisions of Chapter 5 of Division 7 of Title (commencing with Section 6500) of the Government Code of the State of California (the “Act”) and created pursuant to the JPA Agreement.

While the Act codifies the rules of creation, administration and powers of joint powers authorities, it leaves a substantial portion of the powers and rules of joint powers authorities to be established within a joint powers authority agreement. Article VI, clause L of the JPA Agreement provides that the Board of Directors of the Authority (the “Board”) has the power to assign, delegate or contract with a Member Entity (as defined in the JPA Agreement) or *a third party* (emphasis added) to perform any of the duties of the Board, including but not limited to, acting as an administrator for the Authority. This provision will serve as our ultimate guide in the appointment of ACFA as the successor to the Board’s duties and to act as an administrator of the Authority.

In Phase III, we will prepare a resolution of the Board whereby it will appoint ACFA to take on the responsibilities, duties and obligations of the Authority’s Board and as administrator of the Authority pursuant to Article VI, clause L of the JPA Agreement.

We note, however, that the Authority itself will not be dissolved, but its responsibilities (including its Board responsibilities) will be transferred to the ACFA. This is because Article XXI of the JPA Agreement provides that the JPA Agreement cannot be terminated until all the principal of and interest on the Authority’s revenue bonds and other evidence of indebtedness have been paid in full, and two-thirds of the Member Entities have consented in writing to its termination. If the Authority is concerned with whether it will ever obtain the two-thirds consent of its Member Entities, perhaps it should explore getting an advance consent of such Member Entities now so that once all debt has been paid in full, the Authority can then terminate.

2. Phase II Document Review

During Phase II, we reviewed 54 transactions, of which 3¹ transactions were community facilities districts, 5 contained swap documentation (but three had terminations), 7² deals involved US Bank as a direct purchaser and 24³ of deals had credit enhancement. We also reviewed California case law for any cases addressing the appointment of a successor to joint powers authority. We can report that the California case law we researched did not result in any divergence of our current plan to appointment ACFA as a successor agency. We also conferred with our tax counsel, Travis Gibbs, and based on the authority that is provided in the JPA Agreement to appoint a successor administrator, he doesn’t expect any issues from a tax perspective. Below is a brief summary of our findings from the transactions we reviewed during Phase II.

¹ There are five community facilities districts (see footnote 4), however, two of the community facilities districts transactions were reviewed as part of Phase I.

² There are twelve transactions that had U.S. Bank as the original holder, however, three of those transactions are expected to get paid this year (Tara Village Apartments, Tracy Village Apartments and Unity Estates) and two were reviewed as part of Phase I. For purposes of the review, we did not include the three transactions that will be repaid this year. During the repayment of those transactions, we need to make sure that the Regulatory Agreement amendments, which will continue to be outstanding, reflect the language of successors and assigns.

³ There were 27 transactions with some form of credit enhancement or insurance. Two were reviewed as part of Phase I and we were unable to track documents on the Insured Nonprofit Program Financing #2 Big Valley Medical Services. The Windemere Ranch Infrastructure Financing Program that took place in 2017 isn’t included in the count of 27, since we were already including it as part of the community facilities districts.

a. Community Facilities Districts⁴

Generally, the Board is the legislative body of the community facilities districts which it has established and acts on behalf of the community facilities districts. Any obligations (including obligations of the Board) that the Authority has with respect to the community facilities districts it created must also be managed by ACFA as the appointed successor pursuant to Article VI, clause L.

Additionally, several of the establishing documents (such as the community facilities district agreements) include provisions providing that the agreements are binding on the Authority and its successors and assigns. Therefore, we believe such provision already put bondholders on notice that the Authority may appoint a successor in the future, which was always contemplated in Article VI, clause L of the JPA Agreement.

Also, the indentures of the community facilities districts generally included a provision that addressed the issue of a successor to the Authority. The successor provision provides that references to the Authority in the respective indenture are deemed to include the Authority's successor. Certain documents also included references to successors and assigns when defining the Authority. While such use was not consistent in all the documents, we would argue that the language in the primary documents provided sufficient notice to the bondholders.

As a part of the Phase III implementation, we recommend providing notice to each of the parties to the respective community facilities district agreements⁵, borrowers and other relevant parties with respect to the appointment of ACFA as a successor to the Board pursuant to Article VI, clause L of the JPA Agreement and that ACFA will be acting as an administrator on behalf of the Board.

⁴ The community facilities districts include: (i) the ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill), (ii) ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-1 (Seismic Safety Improvements – 690 and 942 Market Street Project), (iii) ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-2 (San Francisco Mint Plaza Area), (iv) and 2 transaction that were Windemere Ranch Infrastructure Financing Program (one in 2014 and another in 2017). On May 24, 2014, the Board of Directors adopted a resolution creating the ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch). Association of Bay Area Governments also established a Windemere Ranch Reassessment District on May 20, 1999. In the Windemere Ranch transaction that closed in August 2014 (the “2014 Windemere Transaction”), the Authority issued bonds to refund a portion of Windemere bonds issued in 2007. The 2007 Windemere Ranch bonds were issued to finance the acquisition of certain Association of Bay Area Governments Windemere Ranch Reassessment District bonds and ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch) bonds. Revenues used for the payment of the 2014 Windemere Ranch Transaction bonds is primarily the amounts received as payments of debt service on the certain Association of Bay Area Governments Windemere Ranch Reassessment District bonds and ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch) bonds. The 2017 Windemere Ranch bonds were issued to refund certain 2007 Windemere Ranch bonds. The security for the 2017 Windemere Ranch bonds was the debt service payment on certain Windemere Ranch Reassessment District bonds and Community Facilities District No. 2004-2 (Windemere Ranch) bonds.

⁵ The Windemere Ranch and Communities Facilities District No. 2004-1 (Seismic Safety Improvements – 690 and 942 Market Street Project) transactions contain some of the formation documents. We would like to request a copy of the all the formation documents if they are available.

b. Swaps

In connection with certain bonds that the Authority issued on behalf of various borrowers, interest rate swap agreements and related documentation were executed for the purpose of hedging interest rate risk (the “Swap Documents”). The Authority is not a party to any Swap Documents; however, there are provisions in the Swap Documents that could affect whether we need to obtain consent from the swap parties.

For example, the California Alumni Association Swap Documents contain a provision that if there is any amendment, supplement or modification or waiver of any of the “Incorporated Provisions” without the prior consent of the other swap party, then such amendment, supplement, modification or waiver will have no force or effect with respect to the Swap Documents. As defined in the Swap Documents, “Incorporated Provisions” includes each provision in the letter of credit reimbursement agreement and the security agreement. The Authority is not a party to the letter of credit reimbursement agreement or the security agreement. We believe that the appointment of ACFA as the administrator of the Authority’s Board has no effect on the underlying documents or any “Incorporated Provisions,” though we will want to confirm this by conferring with the swap parties, and if any amendments are necessary in Phase III for any transactions that have Swap Documents to obtain any consents from the swap parties, if necessary. As an aside, Rudy Salo represents Bank of America, N.A. in connection with the California Alumni Association, and he will be able to confer with them quickly during Phase III.

The California Alumni Association Swap Documents also contain a termination event for a modification to the letter of credit and reimbursement agreement and the security agreement in such a way as to adversely affect any of Bank of America’s rights or obligations or impact the ability of the California Alumni Association to perform its obligation without the consent of Bank of America. We believe that the appointment of a successor to the Authority’s Board of Directors should not materially adversely affect Bank of America’s rights or the California Alumni Association’s ability to perform its obligations.

During Phase III, we recommend (as a courtesy and for administrative purposes going forward) that the Authority provide notice to the parties of all Swap Documents with regards to the appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement.

c. U.S. Bank Direct Purchases

As mentioned in the August 12 Memo, the Drew School transactions contained language that restricted the Authority’s ability to assign its rights and obligations under the Indenture and Loan Agreement. Specifically, the Loan Agreement in the Drew School transactions (both 2014 and 2015) prohibits the Authority from assigning its rights under the documents. Santa Cruz Montessori also contains similar restrictions on the assignment by the Authority of its rights.⁶ However, as discussed in the August 12 Memo, we recommend amending the affected loan agreements pursuant to the amendment

⁶ The language reflected in Drew School and Santa Cruz Montessori provides that the Authority cannot assign the Loan Agreement except to the Trustee pursuant to the indenture or as may be necessary to enforce or secure the payment of bond service charges.

provisions set forth in the applicable Indenture and Loan Agreement for those transactions. Such amendments will require the consent of the respective borrower. We believe we should be able to amend the documents to provide for ACFA to become a successor by working with the respective borrowers. From our review thus far, only the Drew School transactions and Santa Cruz Montessori are the only two US Bank transactions that contain these prohibitions on assignment. We further note that we have already had preliminary discussions with the Borrower and Bond Counsel on the Santa Cruz Montessori transaction.

For the U.S. Bank transactions that do not contain the restrictive provision or that otherwise does not address an assignment by the Authority,⁷ we recommend providing a simple notice regarding appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement.

*d. Additional Transactions*⁸

Generally, the primary issuing documents of transactions include successor or assigns or is silent on the issue. The primary issuing documents may define Authority to include successor or assigns or contain a provision that addresses the issue of successors by clarifying that the agreements bind and inure to the benefit of the successors and assigns. As previously discussed in the August 12 Memo, inconsistencies exist with respect to some transactions including language that directly addressed successors while other transaction documents are silent. For example, some transactions specifically included “successor and assigns” language within the definition of the Authority or language that clarified that any references to the Authority will inure to a successor or assign. While the documents within each transaction were not consistent with the treatment of successor language or provisions, we believe most of the “primary” documents included “assignment/successor” language to have provided sufficient notice to the bondholders in the extremely unlikely scenario that any bondholders complain about the assignment.

With respect to the transactions that have letter of credits, we need the current termination dates. For example, the Pathways Home Health and Hospice transactions has a letter of credit that was set to expire in October 2009, with the possibility for extensions. However, it isn’t clear what the current expiration date of the letter of credit is.

The Authority generally is not a party to the reimbursement agreements, so there are no restrictions as to the role of the Authority. However, credit providers generally request to receive notices that are provided to other parties, we would recommend that we provide notices to the credit enhancement providers of the appointment of ACFA.

⁷ The transactions include: Hayward Senior Apartments, Kings Garden, Lincoln Court, Terracina at Springlake, Vintage at Laguna and Vintage Square at Westpark.

⁸ Includes the review of 24 transactions that have credit enhancement. We were unable to track documents on the Insured Nonprofit Program Financing #2 Big Valley Medical Services.

And should there be any pushback from any party, we will argue that Article VI, clause L of the JPA Agreement provided notice to holders of the Authority's obligations that a successor or administrator can be appointed to take over the Board duties.

Recommendations for Phase III Implementation

The first step with respect to the implementation of the appointment of ACFA will be working the borrowers of the transactions that require consent. Before the Board can act to appoint ACFA, we must ensure we have consent of the required parties, including U.S. Bank. Since Rudy Salo works with U.S. Bank, he will take the lead in conferring with them.

At the same time, we will work on amendments for those transactions that require amendments. Once we have received the consent and the amendments, we will draft a resolution for the Board to make the official appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement. The Board must hold a meeting in order to adopt the appointment resolution. After the appointment, we will draft notices, including those required pursuant to the continuing disclosure requirements for all publicly-issued transactions to post on EMMA. We will also draft a notice to the rating agencies, swap parties and credit enhancement providers. For the transactions that were privately-placed and don't require consent/amendments, we will prepare notices to deliver to those parties. We also note that the transactions that include regulatory agreements require written notice to the borrowers regarding the appointment of a new administrator.

Cost

For Phase III, we will continue to use a blended rate of \$600 per hour. We will draft a resolution appointing ACFA, prepare notices with respect to the appointment of ACFA to the rating agencies, swap parties, insurance and credit enhancement providers, trustees and other parties, correspond with and address any issues of the respective borrowers/direct purchasers (as necessary), draft amendments for those transactions that require amendments and draft and navigate the necessary consents. We are proposing a cap of \$200,000 for Phase III.

[ABAG FAN LETTERHEAD]

[RATING AGENCY ADDRESS]

Dated: ____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. ABAG FAN has issued multiple series of bonds, as set forth in Exhibit A, which were rated by [NAME OF RATING AGENCY].

2. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as an administrator for the ABAG FAN Board.

3. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

4. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

5. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative

EXHIBIT A

Bond Issue

Dated Date

CUSIP[†]

[†] CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services (CGS), which is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. This information is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP numbers have been assigned by an independent company not affiliated with ABAG FAN and are included solely for the convenience of the registered owners of the applicable Bonds. ABAG FAN is not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the applicable Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the applicable Bonds.

[ABAG FAN LETTERHEAD]

[BORROWER ADDRESS]

Dated: ____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. On _____, ABAG FAN issued \$[NAME OF BONDS], which proceeds were loaned to [NAME OF BORROWER].

2. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as an administrator for the ABAG FAN Board.

3. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

4. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

5. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

6. [Add when applicable] [ABAG FAN and [Borrower Name] entered into a [Regulatory Agreement, dated as of _____] (the “Regulatory Agreement”). Pursuant to Section _____ of the Regulatory Agreement, ABAG FAN is hereby providing notice that the Financing Authority shall be the administrator under the Regulatory Agreement.]

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative

[ABAG FAN LETTERHEAD]

[CREDIT ENHANCEMENT ADDRESS]

Dated: ____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. On _____, ABAG FAN issued \$[NAME OF BONDS], which proceeds were loaned to [NAME OF BORROWER], which bonds were insured by []. [ADD ADDITIONAL BONDS IF NECESSARY]

2. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as administrator for the ABAG FAN Board.

3. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

4. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

5. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative

[ABAG FAN LETTERHEAD]

[SWAP PARTIES]

Dated: ____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. On _____, ABAG FAN issued \$[NAME OF BONDS], which proceeds were loaned to [NAME OF BORROWER].

2. [SWAP COUNTERPARTY A] and [SWAP COUNTERPARTY B] entered into an [ISDA Master Agreement, dated as of []], along with a Schedule to the ISDA Master Agreement, dated as of [], and a Confirmation, dated as of [], collectively, the “Swap Documents”/[NAME OF SWAP DOCUMENTS].

3. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as administrator for the ABAG FAN Board.

4. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

5. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

6. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative

ASSOCIATION OF BAY AREA GOVERNMENTS
FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS
(In Connection with Certain Issuances of Bonds with base CUSIP numbers
_____)

VOLUNTARY EVENT NOTICE
(NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD)

Dated: _____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as administrator for the ABAG FAN Board.

2. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

3. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

4. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

5. The transfer of such duties from ABAG FAN to the Financing Authority is applicable to the issuance of all currently outstanding ABAG FAN bonds with base CUSIP number of [] (the “Bonds”).

ABAG FAN delivers this Voluntary Event Notice (Notice to Municipal Securities Rulemaking Board) to the Electronic Municipal Market Access site of the Municipal Securities Rulemaking Board pursuant to its obligations under certain continuing disclosure agreements and certificates in connection with the Bonds.

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative

[ABAG FAN LETTERHEAD]

[TRUSTEE/PAYING AGENT ADDRESS]

Dated: ____, 2020

The Association of Bay Area Governments Finance Authority for Nonprofit Corporations (“ABAG FAN”) hereby gives notice as follows:

1. On _____, ABAG FAN issued \$[NAME OF BONDS], pursuant to [TRUST AGREEMENT/ISSUING AGREEMENT], by and between ABAG FAN and [NAME OF TRUSTEE]. [ADD INFORMATION REGARDING PAYING AGENT, IF ANY]

2. Pursuant to Article VI(L) of the Joint Powers Agreement creating the ABAG Finance Authority for Nonprofit Corporations, dated as of April 1, 1990, revised as of September 18, 1990 and June 9, 1992, as amended (the “ABAG FAN Joint Powers Agreement”), ABAG FAN has the power to assign, delegate or contract with a third party to perform any of the duties of the ABAG FAN Board of Directors (the “ABAG FAN Board”), including but not limited to, acting as an administrator for the ABAG FAN Board.

3. On _____, 2020, the ABAG FAN Board adopted Resolution No. [], approving the transfer of any and all of its duties and administrator responsibilities to Advancing California Finance Authority (the “Financing Authority”).

4. On _____, 2020, the Financing Authority’s board of directors adopted Resolution No. [], accepting the transfer of any and all duties and administrator responsibilities from the ABAG FAN Board.

5. Effective as of [INSERT DATE 60 DAYS AFTER ADOPTION OF ACFA RESOLUTION], the Financing Authority’s board of directors will assume all of ABAG FAN Board’s responsibilities and will serve as the new administrator for ABAG FAN.

Dated as of the date and year written above.

ABAG FINANCE AUTHORITY FOR NONPROFIT
CORPORATIONS

By: _____
Authorized Representative



Advancing California
Finance Authority

Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0816 **Version:** 1 **Name:**

Type: Report **Status:** Committee Approval

File created: 5/11/2020 **In control:** ABAG ACFA Governing Board

On agenda: 5/21/2020 **Final action:**

Title: Approval of ABAG Finance Authority for Nonprofit Corporations Fiscal Year 202021 Operating Budget

Sponsors:

Indexes:

Code sections:

Attachments: [Item 08a 1 Summary Sheet Report FAN Budget Draft.pdf](#)
[Item 08a 2 Attachment FAN FY 2020-21 Budget Draft.pdf](#)

Date	Ver.	Action By	Action	Result
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Approval of ABAG Finance Authority for Nonprofit Corporations Fiscal Year 202021 Operating Budget

Brian Mayhew

Approval

Advancing California Finance Authority

Governing Board

May 21, 2020

Agenda Item 8.a.

ABAG FAN Budget

Subject: Approval of ABAG Finance Authority for Nonprofit Corporations Fiscal Year 2020-21 Operating Budget

Background: Attached is the proposed operating budget for ABAG Finance Authority for Nonprofit Corporations (ABAG FAN) for Fiscal Year 2020-21. The proposed operating budget is balanced as proposed with a projected operating surplus of \$19,436. The total estimated revenue is \$935,867 against \$916,430 in direct expenses. Other highlights include:

Revenue

Financial Service Revenue—Estimated \$905,867 from the existing portfolio, 16% less than prior year. Fee revenue is based on service provided during the year and will decline in future years as more of the portfolio reaches maturity.

Expense

Overall, operating expenses are down by 35% from the FY 2019-20 budget. The savings are the result of reduction staffing from 2.5 full time position in FY 2019-20 to 1.0 in the coming fiscal year.

- Staffing—Included in the budget is 1 full time position in Treasury. Total staff related expense is budgeted at \$267,259, down \$520,000 from the previous year
- Consultants—Continued funding for both Sperry Capital and Public Finance Management (PFM) for financial advisory work to assist in the administration of the current ABAG FAN portfolio and to process any new ACFA transactions.
- Legal—Continued funding for Nixon Peabody to provide general legal support to the ABAG FAN portfolio.

ABAG FAN also made a contribution to the Association of Bay Area Governments (ABAG) to help retire the outstanding OPEB obligation. The FY 2019-20 contribution was a transfer of \$1.0 million. ABAG has successfully retired the entire OPEB obligation so no further transfer is being requested. In the future as a matter of policy and if revenue increases, we do believe it is appropriate

Advancing California Finance Authority

Governing Board

May 21, 2020

Agenda Item 8.a.

ABAG FAN Budget

to contribute 10% of earned revenue to the administration of ABAG.

If you have any questions about this report, please contact Brian Mayhew at (415) 778-6730.

Issues:

None

Recommended Action:

The ACFA Governing Board is requested to approve the proposed Fiscal Year 2020-21 Operating Budget for ABAG Finance Authority for Nonprofit Corporations and to authorize staff to move expenses between categories during the fiscal year provided that the overall budget is not exceeded at any time without the prior approval of the ACFA Governing Board.

Attachments:

Proposed ABAG FAN Operating Budget

Reviewed:



Therese W. McMillan

FAN

	YTD Actuals to 12/31/2019	Approved Budget FY 2019-20	Proposed Budget FY 2020-21	Change % Inc.//(Dec.)	Change \$ Inc.//(Dec.)
Revenue					
Financial Services Revenue	\$ 546,069	\$ 1,084,000	\$ 905,867	-16%	\$ (178,133)
Interest Revenue	16,547	40,000	30,000	-25%	(10,000)
Total Revenue	<u>562,616</u>	<u>1,124,000</u>	<u>935,867</u>	-17%	<u>(188,133)</u>
Expense					
Salary	119,942	340,847	114,709	-66%	(226,138)
Benefit	139,284	172,376	55,889	-68%	(116,487)
Overhead	146,877	274,512	96,661	-65%	(177,851)
Travel	65	6,800	5,000	-26%	(1,800)
Conference/Training Exp	2,000	4,200	10,000	138%	5,800
Advertising/Public awareness	-	10,520	600	-94%	(9,920)
Consultants	147,743	450,000	422,671	-6%	(27,329)
Legal Fees	25,668	50,000	50,000	0%	-
Commission Expense	1,350	-	4,500	N/A	4,500
Audit	44,448	73,000	125,000	71%	52,000
Bank Service Charges	3,371	18,720	18,750	0%	-
Miscellaneous	-	12,630	12,650	0%	20
Total Expense	<u>630,749</u>	<u>1,413,605</u>	<u>916,430</u>	-35%	<u>(497,205)</u>
Transfers					
Transfers (In)	-	-	-	N/A	-
Transfers Out	987,853	1,000,000	-	-100%	(1,000,000)
Surplus/(Deficit)	<u>\$ (1,055,986)</u>	<u>\$ (1,289,605)</u>	<u>\$ 19,436</u>	-102%	<u>\$ 1,309,071</u>
Beginning Net Position	4,262,605	\$ 4,262,605	\$ 2,973,000		
Ending Balance	<u>\$ 3,206,619</u>	<u>\$ 2,973,000</u>	<u>\$ 2,992,436</u>		



Advancing California
Finance Authority

Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0670 **Version:** 1 **Name:**

Type: Report **Status:** Informational

File created: 4/16/2020 **In control:** ABAG ACFA Governing Board

On agenda: 5/21/2020 **Final action:**

Title: Update on ACFA Marketing Efforts

Sponsors:

Indexes:

Code sections:

Attachments: [Item 09a 1 Summary Sheet ACFA Marketing Efforts Update.pdf](#)
[Item 09a 2 Attachment Memo ACFA Marketing.pdf](#)

Date	Ver.	Action By	Action	Result
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Update on ACFA Marketing Efforts

Brad Paul

Information

Advancing California Finance Authority

Governing Board

May 21, 2020

Agenda Item 9.a.

ACFA Marketing


Subject: Update on ACFA Marketing Efforts

Background: This memo serves as an update on ACFA's outreach efforts since onboarding a marketing lead in September 2018. Since then, staff have been building relationships with potential borrowers to develop a pipeline of new projects through a series of meetings (see attachment) that have also provided valuable insights on the challenges and opportunities ACFA faces.

Issues: None

Recommended Action: Information

Attachments: Memo ACFA Marketing Efforts

Reviewed: 
Therese W. McMillan

Date: February 10, 2020

To: ACFA Governing Board
ACFA Credit Committee

From: Brad Paul
Deputy Executive Director, Local Government Services

Subject: **Update on ACFA Marketing Efforts**

This memo serves as an update on ACFA's outreach efforts since onboarding a marketing lead, Max Lelu, in September 2018. Since then staff have been building relationships with potential borrowers to develop a pipeline of new projects through a series of meetings (see attachment) that have also provided valuable insights on the challenges and opportunities ACFA faces.

Key Findings

After presenting ACFA to over 90 organizations, staff significantly improved name recognition for ABAG's conduit issuer, which was virtually unknown after four years of inactivity (2015-2018). ACFA still has considerable ground to make up though, as the "marketplace" for conduit issuers is quite competitive.

Three main types of conduit issuers operate in the Bay Area. Several cities and counties now operate as conduit issuers themselves for affordable housing projects. They require borrowers who use their traditional financing and subsidy programs to select them as their conduit issuer. The state Treasurer's office also requires borrowers who leverage their affordable housing loans to select the state as conduit issuer.

The other main conduit issuers are statewide JPA's, entities typically sponsored by municipal associations (e.g. League of Cities) and some counties (e.g. Kings County) but operated by for profit companies. These JPA's have highly efficient processes and established relationships with borrowers and their advisors. Some JPA's split fee revenue with host jurisdictions. Borrowers frequently cited ease of issuing via these JPA's as a key to their success.

In fact, when selecting a conduit issuer, borrowers almost always cited cost and procedural efficiency as their main criteria. Based on our assessment of the marketplace for issuers, staff think it will be important for ACFA to consider some procedural and pricing changes as well as cross marketing ACFA with other ABAG local government services in order to succeed and grow.

Streamlining the Process

For most projects, conduit debt is just one of several funding sources, so speed and efficiency are critical factors in selecting an issuer. Per ACFA's policies and procedures, new issuances require approval from two bodies (the Credit Committee and Governing Board) which meet monthly and every two months, respectively. By comparison, all other conduit issuers have only one approving body and meet as frequently as twice a month. As FAN completes handing off the management of its portfolio to a successor agency (ACFA), this creates an opportunity for ACFA to streamline its approvals process to better serve prospective clients. More specifically, the dissolution and

Attachment-ACFA Presentations

February 10, 2020

Page 2

retirement of FAN's Executive Committee could eliminate ACFA's Credit Committee. As the sole approving body, the ACFA Governing Board can maintain a thorough vetting of all new issuances, in partnership with staff and our consultants (Nixon Peabody, PFM, Sperry). The Governing Board could also decide to schedule meetings during those months that ABAG's Executive Board and Finance Committee don't meet, meetings that can easily be canceled in advance if not needed.

Pricing

Staff recently brainstormed partnership opportunities with a County that directly subsidizes affordable housing. Upon further discussion, however, the County noted that ACFA's affordable housing fees are higher than those of their historic conduit issuer partner, the California Municipal Finance Authority (CMFA). They observed:

- Application fee: CMFA is lower by \$2.5K,
- Issuance fees: CMFA is lower by 1.25 bps for deals under \$20M, by \$2.5k for deals over \$20M,
- Annual Administration + Technology Fee: CMFA minimum is lower by \$2K,

Based on our conversations with potential borrowers, even small price differences can play a significant role in the selection of one conduit over another. Over the coming months, staff recommend the ACFA Governing Board evaluate a slightly lower fee schedule and consider conducting a one year trial at lower rates to open doors for new business and referrals.

Strategic Partnerships

ABAG's Bay Area Regional Energy Network (BayREN) programs have lowered energy costs in housing across the region by 15-20% and lowered water use by 20-25% in pilot cities. Combining these popular BayREN programs with ACFA refinancings could help cities reduce the need for operating subsidies for older housing or new rehab projects. For instance, San Francisco's Local Operating Cost Subsidy Program spends millions each year to cover escalating operating deficits at affordable housing developments, deficits driven in large part by rising energy and water costs.

Staff have found a great deal of interest in this more comprehensive approach that would combine ACFA financing with lowering monthly energy and water costs through BayREN's programs. Cross promoting ACFA and BayREN would help increase the region's affordable housing stock while lowering GHG as well as reducing energy and water use, thus leveraging ABAG's local government services programs to give ACFA a competitive advantage among conduit issuers.

Looking Forward

With over a year of outreach and market research complete - and as FAN completes the final steps to installing a successor agency - now is a strategic time for ACFA to consider opportunities to differentiate itself. Staff have identified some challenges to building out a pipeline of projects. Nevertheless, ACFA has the potential to add value to borrowers as a program of the Council of Governments with access to complementary ABAG local government services programs such as BayREN. Staff looks forward to discussing this update with the ACFA Governing Board.

Attachment

Attachment-ACFA Presentations

To date, staff have presented ACFA to:

- County Housing Agencies / Local Conduits:
 - San Francisco Mayor's Office of Housing and Community Development
 - San Jose Department of Housing
 - Santa Clara County Office of Supportive Housing
 - Alameda County Housing & Community Development Department
 - San Mateo County Department of Housing
 - Marin County Community Development Agency
 - Sonoma County Community Development Commission
 - Napa County Housing & Intergovernmental Affairs
 - Santa Clara County Housing Authority

- Municipalities
 - Redwood City- City Manager
 - South San Francisco- CFO
 - Portola Valley- Mayor & Town Manager
 - Vacaville- Housing Department
 - Concord- Community & Economic Development Director / Naval Base Reuse
 - Suisun City- City Manger
 - San Bruno- City Manager
 - San Carlos- Housing & Economic Development Director
 - Walnut Creek- Housing Department Director
 - Santa Rosa- Department of Housing / Housing Authority Director
 - Petaluma- City Manager & CFO
 - Vallejo- Department of Housing and Community Development Director
 - Brentwood Economic Development Manager
 - Union City- City Manager
 - Tiburon- City Manager
 - Belvedere- City Manager
 - Monte Sereno- City Manager
 - Town of Woodside- City Manager
 - Cloverdale- City Manager
 - City/County Association of Governments of San Mateo County (C/CAG)
 - Alameda County Mayors Conference- 30 officials present

- Municipal Finance Officers Professional Gatherings
 - California Society of Municipal Finance Officers chapter meetings (East Bay, Peninsula, North Bay. Cumulative 50 municipal finance staff present.)
 - San Mateo Municipal Finance Officers Group (SAMFOG)

Attachment-ACFA Presentations

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- Affordable Housing Developers
 - BRIDGE Housing
 - Eden Housing
 - EAH
 - MidPen Housing
 - Tenderloin Neighborhood Development Corporation
 - Mission Housing
 - Chinatown Community Development Corporation
 - East Bay Asian Local Development Corporation
 - Mission Economic Development Association
 - Satellite Affordable Housing Associates
 - Abode Housing
 - Community Housing Partnership
 - Community Development Partners
 - The Unity Council
 - Tabernacle community Development Corporation
 - PEP Housing
 - Christian Friendship Center
 - CORE Communities
 - Charities Housing
 - Sonoma CAP
 - Habitat for Humanity- SF/Marin/Peninsula
 - Brilliant Corners
 - Affordable Housing Access
 - San Francisco Community Land Trust
 - Two mixed-income developers and previous FAN borrowers, Panoramic Interests and Equity Community Builders

- Funders
 - Local Initiatives Support Coalition (LISC)
 - Low Income Initiatives Fund (LIIF)
 - Enterprise Community Partners
 - Community Vision (previously NCCLF)
 - Corporation for Supportive Housing (CSH)
 - Opportunity Fund
 - Community Housing Capital (CHC)
 - Housing Trust Silicon Valley
 - Silicon Valley Bank Community Lending
 - Episcopal Impact Fund
 - Marin Community Foundation
 - Sonoma County Housing Trust
 - HEART San Mateo County
 - Rebuild Northbay Foundation

Attachment-ACFA Presentations

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- Affordable Housing Developer Trade Associations / Advocates
 - East Bay Housing Organizations
 - Council of Community Housing Organizations
 - San Mateo County Economic Development Association (SAMCEDA)
 - Bay Area Council
 - Silicon Valley Leadership Group

- Financial / Municipal Advisors specializing in Tax Exempt Bonds
 - Western Solutions (advisor to many FAN education facilities deals)
 - California Housing Partnership Corporation
 - Community Economics
 - Stifel
 - Pacific West Bank
 - DCG Strategic Consulting
 - American Campus Communities

- ULI Housing the Bay Conference (exhibitor May 2019- 500 attendees)
- Community Arts Stabilization Trust
- Alameda County Water District Financing Authority
- Bay Area Clean Water Agencies
- Bay Area Water Supply & Conservation Agency
- Peggy Caruso- previously FAN staff
- Oakland Museum of California
- John Muir Health- Treasury Department
- NPH Housing Conference- (exhibitor September 2019- 500 attendees)
- Bond Buyer California Municipal Finance Conference
- San Jose State

Staff will continue a robust schedule of meetings to market ACFA in 2020 including:

- EPA CAN DO
- Burbank Housing
- Mercy Housing