

**Metropolitan Transportation Commission
Programming and Allocations Committee**

June 12, 2024

Agenda Item 3a-24-0703

Housing Element Compliance and Related One Bay Area Grant (OBAG 2 and 3) Policies

Subject:

Update on regional Housing Element certifications and implementation of MTC's related policies for One Bay Area Grant (OBAG 2 and 3) recipients.

Background:

The One Bay Area Grant (OBAG) and other regional discretionary programs support implementation of MTC's long-range Regional Transportation Plan (RTP) and Sustainable Communities Strategy (SCS), collectively known as *Plan Bay Area 2050*.

As such, MTC requires that jurisdictions achieve and maintain certification of their Regional Housing Needs Allocation (RHNA) 6th cycle (2023-31) Housing Elements from the California Department of Housing and Community Development (HCD) by December 31, 2024 in order to be eligible for the following grant programs:

- OBAG 3 County & Local Program (per MTC Resolution No. 4505),
- OBAG 3 Priority Development Area (PDA) Planning Grants (per PDA Planning Grant Administrative Requirements), and
- OBAG 2 Housing Incentive Pool (HIP) (per MTC Resolution No. 4348).

MTC originally established certification deadlines of December 31, 2023 for the OBAG 3 program. For reference, Bay Area jurisdiction Housing Elements were due to HCD by January 31, 2023. However, in December 2023 only 53 of 109 Bay Area jurisdictions had achieved certification. Accordingly, the Commission approved a one-year grace period (until December 31, 2024) for Housing Element compliance, during which funds from the grant programs listed above would be withheld from jurisdictions that did not meet the original deadline, with limited exceptions as described below. In addition, Commissioners requested this 6-month update.

Bay Area Housing Element Certification Status

As of May 2, 2024, 77 of the 109 regional jurisdictions have received HCD certification of their Housing Elements and two more have been found by HCD to be in substantial compliance with state law. (**Attachment A**).

In order to achieve or maintain HCD certification of their Housing Elements, many jurisdictions must rezone sufficient land to satisfy their RHNA. At least 58 jurisdictions have already

completed any required rezoning, but others will still need to complete rezoning. Rezoning deadlines depend on when a jurisdiction's Housing Element is certified. There are 13 jurisdictions that achieved certification early enough to qualify for a rezoning deadline of January 31, 2026. There are 38 additional jurisdictions that had a deadline of January 31, 2024 to complete any rezoning that was required to meet their RHNA. HCD does not publish the status of required rezonings. In coordination with jurisdictions and HCD, MTC staff tracks rezonings manually to the extent possible as the situation is always evolving. (**Attachment B**).

HCD's Discipline of ABAG Jurisdictions

HCD has discretion as to how it chooses to discipline jurisdictions that fail to adopt a compliant Housing Element, or fail to implement certified policies and programs, including rezonings. The process is not necessarily linear and may include simple monitoring, as well as multiple conversations and letters. Local governments have the opportunity to respond to HCD each time a letter is issued. Typical steps in the disciplinary process can include monitoring, Letters of Inquiry or of Corrective Action, Notices of Potential Violations and de-certification of a Housing Element.

As of May 2, 2024, HCD's newly established Housing Accountability Unit has undertaken a robust array of disciplinary actions against ABAG jurisdictions, including issuing 23 Letters of Inquiry, eight Letters of Corrective Action, and decertifying two Housing Elements for failure to timely complete rezoning. Four of the eight ABAG jurisdictions that received Letters of Corrective Action have successfully completed the required corrective actions. HCD does not publish the status of its less formal disciplinary actions. As with rezonings, MTC staff tracks disciplinary actions manually to the extent possible.

Funding Implications & Exceptions

Of the over \$290 million in OBAG 2 and 3 funds awarded to jurisdictions subject to MTC's Housing Element policies, over half (\$169.4 million) is directed to jurisdictions that met the original 2023 Housing Element certification deadline. Of the remaining sponsors, eight have received Housing Element certification during the grace period as of writing, and these sponsors have had their OBAG funds (totaling \$42.9 million) reinstated in the Transportation Improvement Program (TIP).

In addition, four initially noncompliant sponsors were granted exceptions in accordance with MTC policies (retaining a total of \$15.7 million in OBAG funds). The Commission requested

that this update include the following list of sponsors and projects that received exceptions, including a justification in each case (to ensure other competitive state and federal funds are not lost to the region):

- Alameda County’s Mission Boulevard Phase III Corridor Improvements: \$4.9 million OBAG 3 County & Local Program funds retained in the TIP due to \$28.3 million in Regional Active Transportation Program (ATP) and federal Earmark funds. As of writing, the County has yet to receive HCD Housing Element certification.
- Lafayette’s School Street Class I Multiuse Facility: \$750,000 OBAG 3 County & Local Program funds retained in the TIP due to \$3.1 million in federal Earmark funds. As of writing, the City has yet to receive HCD Housing Element certification.
- Menlo Park’s Middle Ave Caltrain Pedestrian and Bicycle Undercrossing: \$5 million OBAG 3 County & Local Program funds retained in the TIP due to \$4 million in federal Earmark funds. The City received HCD Housing Element certification in March 2024 and currently remains compliant.
- San Jose’s Story-Keys Complete Streets: \$32.7 million OBAG 3 County & Local Program funds were initially retained in the TIP due to \$3.7 million in Regional ATP funds. OBAG 3 funding for this project was reduced to \$5 million in May 2024. The City received HCD Housing Element certification in January 2024 and currently remains compliant.

The remaining OBAG 2 and 3 funding subject to MTC’s Housing Element policies (\$34.8 million) is currently being withheld from sponsor jurisdictions, to be reinstated if sponsors receive HCD Housing Element certification within the grace period (by December 31, 2024) (**Attachment C**).

Sponsor compliance with the Housing Element requirement is enforced at the time OBAG funds are programmed in the TIP. Sponsors that were compliant by the original 2023 Housing Element certification deadline but subsequently lose certification will not have existing OBAG funds rescinded from the TIP. Any sponsors with uncertified Housing Elements at the end of the grace period (December 31, 2024) will be ineligible for any additional OBAG 3 County & Local Program, OBAG 3 PDA Planning, or OBAG 2 HIP programming in the TIP.

Issues:

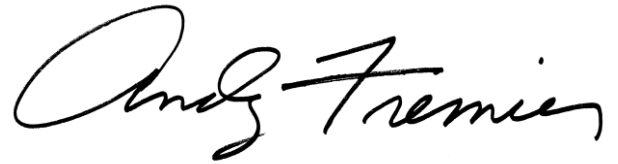
None.

Recommendations:

Information.

Attachments:

- Attachment A – Housing Element Compliance Summary
- Attachment B – OBAG Funding and Housing Element Compliance by Jurisdiction
- Attachment C – Status of OBAG Funds Subject to Housing Element Requirement
- Presentation

A handwritten signature in black ink, reading "Andrew B. Fremier". The signature is written in a cursive, flowing style.

Andrew B. Fremier