

Metropolitan Transportation Commission and Association of Bay Area Governments Joint MTC Executive Committee and ABAG Administrative Committee

May 18, 2020

Agenda Item 4.a.

AB 1487 Housing Revenue Measure

Subject: Follow-up to Questions at the April Board meetings related to AB1487 Implementation and Mechanics

This item summarizes the legal and administrative framework for the Bay Area Housing Finance Authority (BAHFA), including the steps necessary to pursue a November 2020 revenue measure and a pathway to explore expanding the region's housing portfolio even absent a November 2020 ballot measure. This is an informational item to frame the discussion and provide context for the decisions that the Joint Committee will recommend to the ABAG Executive Board and the Metropolitan Transportation Commission as part of Agenda Items 4.b. and 4.c.

Background: **Statutory Framework for BAHFA as Distinct Legal Entity**

The Bay Area Housing Finance Authority (BAHFA) was established on January 1, 2020 when AB 1487 (2019, Chiu) went into effect. Ever since, BAHFA has existed as a distinct legal entity by virtue of state statutory law.¹ Only the State Legislature has the authority to amend, expand, or dissolve BAHFA. However, AB 1487 vests the power to decide when to activate BAHFA with the BAHFA Board, which is comprised of the same members as the MTC Commission. Once activated, one of the unique features of BAHFA is that many decisions about the authority's activities and expenditures must be made jointly by the BAHFA Board and the ABAG Executive Board.

State law sets forth the mechanics for activating BAHFA. The trigger to activate BAHFA is for the Chair of the BAHFA Board – who is the same as the Chair of the Commission – to call the first meeting of the BAHFA Board.² During its first meeting, the BAHFA Board is required to address several housekeeping matters as a public agency, such as adopting a conflict of interest code, electing officers, etc. Thereafter, the BAHFA Board may set its own meeting schedule – meeting as frequently or infrequently as its workload dictates.³ The BAHFA Board, in conjunction with the ABAG Executive Board, must appoint an Advisory Committee to provide consultation and recommendations to the BAHFA Board and ABAG Executive Board; the Advisory Committee is a consultative body and does not have any independent decision-making authority.⁴ AB 1487 does not

¹ Government Code § 64510(a)(2).

² Government Code § 64513(a).

³ Government Code § 64513(b).

⁴ Government Code § 64511(a)(2)(A)-(B).

require a minimum number of meetings of the BAHFA Board nor of the Advisory Committee.

AB 1487 requires activation of the BAHFA Board in certain circumstances. For example, BAHFA must be activated to advance a regional ballot measure to raise revenues for the “3 Ps.” Technically, it is the BAHFA Board, as opposed to the Commission, that must vote to place regional revenue measures on the ballot.⁵ As such, AB 1487 would require activation of BAHFA *prior to* placing a measure on the ballot. To meet practical and statutory requirements, it would be necessary to formally activate BAHFA at least a month prior to adoption of the final resolution placing an initiative on the county ballots. This statutory framework means that BAHFA could incur election-related costs without having certainty that it has secured a revenue source; AB 1487 does not include an independent funding source to reimburse election-related costs if a measure is put to the voters and fails.

In addition to the authority to propose regional ballot measures to raise affordable housing revenue, AB 1487 infuses BAHFA with other powers beyond those held by MTC and ABAG. For example, state law vests BAHFA with the power to accept “gifts, fees, grants, loans, and other allocations from public and private entities,”⁶ and to deploy funds to support affordable housing through a wide variety of housing financing tools including by directly underwriting projects.⁷ More generally, given the shared decision-making structure that includes both ABAG and the BAHFA Board (comprised of the same members of the Commission), AB 1487 creates an opportunity for BAHFA to serve as a vehicle for a coordinated regional housing portfolio and a home for the region’s “3 Ps” funding with the clear support of the Legislature. The statute does not require activation of BAHFA on any specific timeline to undertake such purposes. In contrast to a ballot measure, activation of BAHFA for these purposes could be timed to align with the specific activities proposed – and, importantly, with the resources needed to launch and administer them.

While BAHFA represents a new package of tools for the regional agencies’ housing efforts, including the statutory ability to accept private funding, it is important to note that both ABAG and MTC operate housing programs within their existing portfolios. For ABAG, this includes the Regional Housing Needs Allocation (RHNA) process, the capacity to issue conduit financing through the Advancing California Finance Authority (ACFA), as well as an emerging technical assistance program funded by the Regional Early Action Planning Grants (REAP) program. MTC’s housing work includes policy development and growth forecasting for Plan Bay Area along with various funding programs such as the Transit Oriented Affordable Housing (TOAH) fund and the One Bay Area

⁵ See, e.g., Government Code § 64520(a); § 64600.

⁶ Government Code § 64520(c).

⁷ Government Code § 64520(k).

Grants (OBAG) program. The agencies' combined existing housing portfolio is described in more detail in Agenda Item 4c. Regardless of the decisions made with respect to BAHFA, the agencies will remain engaged on housing issues to some extent through their existing portfolios.

Budgetary Considerations

Although AB 1487 established BAHFA, it did not include a dedicated funding source for start-up costs nor ongoing operating costs of the new authority. Instead, the statute vested BAHFA with the power to develop and receive new funding streams that could pay for administrative costs as well as new programming.

The primary large-scale funding mechanisms authorized in AB 1487 include special taxes and bonds that would require approval by Bay Area voters,⁸ and for which BAHFA would be entitled to up to 5% of funds for general administration and overhead.⁹ If the voters were to approve a revenue measure, the election-related costs to place the initiative on the ballot could be reimbursed from the proceeds of the measure. As noted above, the statute does not establish a financial backstop to reimburse election-related costs if a revenue measure is unsuccessful at the ballot.

In addition to voter-approved revenue measures, AB 1487 provides BAHFA with the authority to solicit and receive gifts, fees, grants, loans, and other allocations from both public and private entities.¹⁰

In the absence of any new revenue stream, AB 1487 establishes that BAHFA will be staffed by the existing staff of MTC.¹¹

The regional government's ability to absorb any new housing activities, whether BAHFA is activated swiftly or held in hibernation for some period, is now severely constrained by budget limits caused by COVID-19's impacts on the economy. This is particularly true for additional staffing needs – which are not feasible in the current budget environment without new dedicated revenue sources. Existing MTC/ABAG staff have some capacity to explore revenue streams and strategize about potential future activities, but do not have capacity to launch and operate entirely new BAHFA programs absent new dedicated resources.

⁸ AB 1487 also authorizes the ABAG Executive Board and the BAHFA Board to impose a regional commercial linkage fee, but they can only do so after the voters have first passed a parcel tax or a general obligation bond. Government Code § 64621(a)(4). Consequently, a commercial linkage fee is not an option currently available to the boards and is not discussed further in this memo.

⁹ Government Code § 64650(e).

¹⁰ Government Code § 64520(b)-(c).

¹¹ Government Code § 64510(d).

For Discussion: As ABAG and MTC consider near- and long-term opportunities to address the Bay Area's housing challenges, there are several paths for consideration. Staff has provided three options below. Joint Committee members will weigh these options as part of two sequential decision points. Agenda Item 4b involves a "go/no go" recommendation for a November 2020 ballot initiative, and Option 1 operationalizes a decision to proceed in November. If there is no ballot initiative in November, Agenda Item 4c presents a choice whether the agencies will explore non-ballot pathways to expand the region's housing portfolio, subject to additional funding (Option 2), or remain focused on executing the region's existing housing portfolio without expansion (Option 3).

Staff provides this summary of the decision points as an informational item prior to the two action items to ensure that Committee Members have full information about the range of options and outcomes before making the pivotal "go/no go" decision.

Option 1: Pursue a November 2020 Revenue Measure

If the ABAG Executive Board and the Commission decide to pursue a revenue measure for the November 2020 ballot, BAHFA must be activated swiftly to meet statutory and administrative deadlines. The BAHFA Board must convene its first meeting no later than June, with a vote on the final resolution to place the measure on the ballot in July.

Advantage(s):

- Opportunity to raise \$10 billion in the near-term that would ensure that BAHFA is well-resourced to develop sustainable administrative capacity and deploy high-impact programs.

Resource Considerations:

- Election-related expenses are estimated at roughly \$3 million for the cost of reimbursing each county for the incremental cost to place the measure on the ballot, as well as translation of ballot materials and engaging election legal counsel.
- Significant staff time would be required in the next 3-6 months to meet statutory and administrative requirements. This would involve close coordination with staff and elected officials in all nine counties, preparing all necessary ballot materials, and developing agenda materials for numerous ABAG/MTC/BAHFA Committee, Commission, and Board meetings. Staff would have little to no capacity to explore potential alternative BAHFA activities as described in Option 2 while preparing for the election.
- Additional details of the resource considerations for this option are included in the materials for Agenda Item 4b but are on the order of \$3 million for reimbursement to counties, an additional

\$100,000 in other direct election-related costs, as well as expenses of 2-3 full time equivalent (FTEs) for 3-6 months.

Risk(s):

- If a measure is unsuccessful at the ballot there would be no revenue for reimbursement of the roughly \$3 million in election-related costs.

Option 2: Develop a Proposal for Alternative (Non-Ballot) Strategies to Enhance Regional Housing Portfolio

If the agencies decide not to pursue a November 2020 revenue measure, staff could develop a detailed proposal for how to position the region to take advantage of funding opportunities from non-ballot sources to make an impact on the Bay Area's housing crisis. Staff could redirect resources that would otherwise be spent on the ballot measure to evaluate alternative approaches, including when to activate the BAHFA Board and for what purposes. This would include exploring revenue opportunities and developing a proposed work plan that is sized to fit the various revenue scenarios. Staff could return with a proposed framework in June.

Advantage(s):

- Position BAHFA to be considered as a receptacle for potential short-term funding opportunities at the federal and state levels, especially to assist low-resource jurisdictions. Staff would approach this in close collaboration with local jurisdictions to ensure that BAHFA only intervenes if there is a value-add regional approach.
- Capitalize on the momentum for BAHFA in corporate and philanthropic sectors to position BAHFA to receive private funding, particularly resources that may have otherwise been earmarked for a November 2020 ballot measure campaign.
- Signal opportunity for "bold and unflinching" regional leadership on housing during COVID-19 relief and recovery efforts.

Resource Considerations:

- Moderate staff time required in the short term to explore alternative revenue options and develop proposed strategies.
- Ongoing demands on staff time could vary depending on direction from ABAG/MTC.
 - On one end of the spectrum is a "streamlined approach," wherein ABAG/MTC provide direction on the proposed work plan and then meet on this topic only as needed to evaluate quantifiable, guaranteed funding sources. If policymakers chose to activate BAHFA as part of this approach, the BAHFA Board and Advisory Committee could meet once then remain in hibernation until new

resources are secured. This low-resource approach would enable staff to explore revenue opportunities and return to policymakers once there is a realistic assessment of potential revenue.

- On the other end of the spectrum is a “robust approach,” which would involve a series of meetings of joint ABAG/MTC committees, the ABAG Executive Board, and the Commission to provide staff with ongoing feedback and direction. If policymakers chose to activate BAHFA as part of this approach, the BAHFA Board and Advisory Committee would meet regularly to contribute feedback and guidance. This would require significant staff resources.
- There are various middle-path options between these two extremes that would require moderate staff resources.
- Additional detail about the range of potential revenue sources and corresponding activities for this option are included in the materials for Agenda Item 4c.

Risk(s):

- The potential funding opportunities may never convert into concrete revenue streams. If pursuing the “robust approach,” this could expend significant staff resources without a corresponding return.
- Continuing conversations about the role of BAHFA could raise expectations among the public and other stakeholders that the region does not have the resources to meet.

Option 3: Focus on ABAG and MTC’s Existing Regional Housing Portfolio

In light of COVID-19 related budget concerns and limited staff capacity, the agencies could choose to focus on executing existing regional housing work plans that already exist in the ABAG and MTC portfolios. BAHFA would be held in hibernation unless and until ABAG and MTC wish to reopen consideration of potential expanded housing activities.

Advantage(s):

- Avoid raising expectations of BAHFA without a dedicated source of funding.
- Maximize conservation of resources during a very challenging budget environment.

Resource Considerations:

- No additional resources required. Staff would dedicate existing resources to ongoing programs.

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- More detail about ABAG and MTC's existing housing portfolio is provided in the materials for Agenda Item 4c.

Risk(s):

- By stepping away from conversations about activating BAHFA and the various housing-related responses to COVID-19, the region may forego potential new revenue sources for expanded housing activities.

Recommendation: Informational item only.

Attachments: A. Summary Fact Sheet for AB 1487



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