

**Metropolitan Transportation Commission
Programming and Allocations Committee**

December 13, 2023

Agenda Item 5a.i. - 23-1417

MTC Resolution No. 4505, Revised

Subject:

Revisions to MTC's One Bay Area Grant (OBAG 3) Program to update Housing Element compliance requirements.

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*. Pursuant to SB 375 (Steinberg 2008), the SCS aligns regional transportation planning with land use and housing to help achieve state greenhouse gas emissions targets. To encourage and incentivize regional jurisdictions to advance the RTP/SCS and associated state and regional land use goals, the Commission has conditioned certain federal transportation funds on compliance with various state housing laws.

MTC currently requires that jurisdictions achieve and maintain certification of their Housing Elements by the California Department of Housing and Community Development (HCD) in order to be eligible for several MTC grant programs, including:

- OBAG 3 County & Local Program: OBAG 3 Project Selection and Programming Policies, adopted by the Commission in January 2023 (MTC Resolution No. 4505), require that jurisdictions awarded County & Local Program funds achieve HCD certification of their 6th Regional Housing Needs Allocation (RHNA) cycle (2023-31) Housing Element by December 31, 2023 and maintain certification throughout the duration of the OBAG 3 Program.
- OBAG 3 Priority Development Area (PDA) Planning Grants: Administrative requirements for the OBAG 3 PDA Planning Grants similarly require that recipient jurisdictions achieve HCD Housing Element certification by December 31, 2023.

The Housing Incentive Pool (HIP) program, adopted by the Commission in October 2018 (MTC Resolution No. 4348), also requires that jurisdictions to comply with state housing law requirements, including Housing Element certification. Proposed revisions to the HIP program, including requirements associated with the Housing Element certification, are included in Agenda Item 5a.ii.

Bay Area Housing Element Certification Status

MTC established compliance deadlines of December 31, 2023, for the OBAG 3 program, nearly one year after Bay Area jurisdiction Housing Elements for the 6th RHNA cycle were due to HCD by January 31, 2023.

As of writing, only 53 of the 109 regional jurisdictions have received HCD approval of their Housing Elements (**Attachment 1**). In addition, MTC staff estimate that at least 55 jurisdictions will need to complete rezoning to achieve or maintain HCD certification of their Housing Elements. Of these, at least 41 will need to complete rezoning by the end of January 2024 to maintain their certification.

Staff anticipate that many of the 56 uncertified jurisdictions will still not receive HCD certification by the end of this year, and others may fall out of compliance as early as February 1, 2024 due to rezoning requirements.

Funding Implications & Considerations

Under current policies for the OBAG 3 County & Local Program and PDA Planning Grants, sponsors that fail to achieve or maintain HCD Housing Element certification after December 31, 2023 will have their relevant awards rescinded and redirected to projects in compliant jurisdictions. Together, these programs represent nearly \$220 million in regional discretionary federal funds for local jurisdictions, over half (\$127 million) of which is in jeopardy of reprogramming due to widespread noncompliance with Housing Element requirements. A summary of OBAG 3 County & Local awards and PDA Planning Grants and Housing Element compliance by jurisdiction is provided as **Attachment 2**.

The Commission first directed staff to condition OBAG 3 funding on HCD Housing Element certification at a January 2020 Commission Workshop, which was formalized through the adoption of the Transportation Funding Housing Linkages Consensus in August of that year. Since then, the Commission has maintained a strong commitment to achieving and maintaining regional compliance with state housing laws, and MTC staff continue to work diligently to support jurisdiction compliance through our Regional Housing Technical Assistance program.

While the higher standards for 6th Cycle RHNA Housing Elements were known in early 2020, MTC staff and local jurisdictions now have a better understanding of the substantial increase in time and effort required to receive HCD certification in practice. Staff acknowledges the challenges that local jurisdictions face in securing Housing Element approval and appreciate the

significant time and resources that jurisdictions have dedicated to this effort, regardless of current certification status. In addition, staff understand that many jurisdictions will be at risk of losing HCD Housing Element certification in January due to rezoning deadlines, although the impact to MTC funding programs is difficult to predict due to limited precedent.

Given the increased standards for Housing Element compliance this RHNA cycle, current OBAG funding policies could have a punitive effect on jurisdictions that are making good-faith efforts to achieve HCD certification by rescinding funds on important projects prioritized for their safety, climate, and equity benefits. In addition, rescinding OBAG 3 funding could jeopardize additional state and federal discretionary funds that jurisdictions have secured for their projects. The staff recommendation to add a grace period (below) seeks to balance these considerations with the need to incentivize prompt completion of Housing Elements across the region as a first step in addressing our urgent housing and affordability needs. Important for the delivery of the regional goals outlined in *Plan Bay Area 2050*, the proposed policy also protects scarce state and federal competitive funds for the region and gives jurisdictions more certainty in delivering OBAG 3 funded transportation projects.

Proposed Grace Period Approach

To address the issue of anticipated noncompliance, staff recommend a 12-month grace period for jurisdictions to attain HCD Housing Element certification to meet requirements for the OBAG 3 County & Local Program and PDA Planning Grants. This approach would recognize and accommodate the greater threshold for HCD Housing Element certification this RHNA cycle, while continuing to leverage OBAG funds as an incentive to encourage compliance within a reasonable timeframe.

Under the proposed grace period approach, MTC would take the following steps for jurisdictions that did not achieve HCD Housing Element certification by December 31, 2023:

- Deprogram any **OBAG 3 County & Local Program** awards from the Transportation Improvement Program (TIP) to prevent the project from proceeding with obligation before achieving HCD Housing Element certification. Once a jurisdiction's Housing Element is certified, MTC would reinstate its OBAG 3 funds at the next available opportunity (monthly for TIP programming). Staff recommend two limited exceptions:
 - Staff propose retaining OBAG 3 County & Local Program funds in the TIP for projects awarded state or federal competitive grants that may be jeopardized by

the loss of OBAG 3 funds. This exception intends to minimize the potential loss of additional state and federal discretionary funds to the region.

- For capital projects that have not received final National Environmental Policy Act (NEPA) approval, a sponsor may request to retain a nominal amount of OBAG 3 funds in the TIP on a future year construction phase. The retention a small amount of federal funds in the TIP would enable Caltrans to continue environmental approval processes without interruption, while also ensuring that the sponsor cannot proceed with obligating their full OBAG 3 grant on construction until it has achieved HCD Housing Element certification.
- **Withhold OBAG 3 PDA Planning Grant** funds until the local jurisdiction achieves HCD Housing Element certification. Once a jurisdiction's Housing Element is certified, MTC would reinstate its OBAG 3 funds at the next available opportunity (immediately for MTC-administered PDA Planning Grants). To ensure that program requirements do not impede progress on regional housing goals, staff may make exceptions to this policy. Such exceptions would be determined by staff on a case-by-case basis, based on the ability of the PDA Planning Grant to accelerate Housing Element approval, associated rezonings, or other implementation of anticipated local Housing Element strategies.

HCD Housing Element certification would be required to reprogram jurisdictions' OBAG 3 awards in the TIP. Any jurisdictions that fail to receive HCD Housing Element certification by the end of the grace period (December 31, 2024) would have their OBAG 3 awards rescinded. Rescinded funds may be reprogrammed to other compliant sponsors or retained for programming through a future OBAG cycle.

Issues:

The proposed grace period approach would preserve over \$127 million in OBAG 3 County & Local and PDA Planning Grant awards to currently noncompliant jurisdictions that would otherwise be rescinded at the end of this calendar year under existing policies. While withholding these funds during the grace period may create project delays or other issues for noncompliant sponsors, the proposed approach attempts to strike a balance between incentivizing jurisdictions to complete their Housing Elements in a timely manner while retaining OBAG 3 funding for projects that advance regional objectives.

Recommendations:

Refer MTC Resolution No. 4505, Revised to the Commission for approval. Resolution No. 4505 is proposed for additional revisions under Agenda Item 2g, and is included once under that item with all proposed revisions. Only items approved by the Committee will be forwarded to the Commission.

Attachments:

- Attachment 1: Housing Element Compliance Summary
- Attachment 2: OBAG Funding and Housing Element Compliance by Jurisdiction
- MTC Resolution No. 4505, Revised, Attachment A and Appendix A-1 (**provided under Agenda Item 2g**)



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