

# Bay Area Partnership Board

October 23, 2023

Agenda Item 4c 23-1217

## Housing Element Certification, One Bay Area Grant (OBAG 3), and Housing Incentive Pool (HIP) Updates

---

### Subject:

Informational update on Bay Area jurisdiction Housing Elements and related MTC funding programs, including the One Bay Area Grant (OBAG) Program and Housing Incentive Pool (HIP).

### 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 state housing law.

California Department of Housing and Community Development (HCD) Housing Element certification is a requirement for several MTC grant programs, including:

- OBAG 3 County & Local Program: the OBAG 3 Project Selection and Programming Policies, adopted by the Commission in January 2023 (MTC Resolution No. 4505, Attachment A), require that jurisdictions awarded County & Local Program funds achieve HCD certification of their 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: consistent with the County & Local Program, administrative requirements for the OBAG 3 PDA Planning Grants similarly require that recipient jurisdictions achieve HCD Housing Element certification by December 31, 2023.
- Housing Incentive Pool (HIP) Program: the HIP Framework and Qualifying Criteria, adopted by the Commission in October 2018 (MTC Resolution No. 4348, Attachment A), require that jurisdictions comply with state Housing Element requirements, including Housing Element certification by December 31, 2022. Note: Staff will propose revisions

to the HIP program guidelines for adoption later this year, including aligning the Housing Element compliance deadline with the deadlines for the OBAG 3 County & Local program and PDA Planning Grant program.

### ***Bay Area Housing Element Certification Status***

Although MTC established compliance deadlines for December 31, 2023, the Bay Area jurisdiction Housing Elements for the 6<sup>th</sup> Regional Housing Needs Allocation (RHNA) cycle (2023-31) were due to the HCD in January 2023.

As of writing, only 47 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 62 uncertified jurisdictions will not receive HCD certification by the end of this year, and others may fall out of compliance as early as January 31, 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 deprogrammed and redirected to projects in compliant jurisdictions. Similarly, jurisdictions without compliant Housing Elements will not be eligible for HIP funds. Together, these programs represent over \$300 million in regional discretionary federal funds for local jurisdictions, much of which is in jeopardy of reprogramming due to widespread noncompliance with Housing Element requirements. A summary of OBAG 3 County & Local awards, PDA Planning Grants, current HIP standings, and Housing Element compliance by jurisdiction is provided as **Attachment 2**.

Conditioning regional discretionary funds on Housing Element compliance was intended to encourage timely certification throughout the region. Given the increased standards for Housing Element compliance this RHNA cycle, current MTC 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.

MTC 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.

***Proposed Grace Period Approach***

To address the issue of anticipated noncompliance, staff plan to propose that the Commission approve a 6-12 month grace period for jurisdictions to attain HCD Housing Element certification to meet requirements for the OBAG 3 County & Local Program, PDA Planning Grants, and the Housing Incentive Pool. This approach would recognize and accommodate the greater threshold for HCD Housing Element certification this RHNA cycle, while maintaining OBAG and HIP funds as an effective 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,
- Withhold any OBAG 3 PDA Planning Grant funds, with exceptions given by MTC staff on a case-by-case basis for grants that would accelerate Housing Element approval, associated rezonings, or other implementation of anticipated local Housing Element strategies, and
- Withhold TIP programming for any HIP awards.

If jurisdictions became compliant within the grace period, MTC would reinstate any withheld regional discretionary funds at the next available opportunity (monthly for TIP programming, immediately for MTC-administered PDA Planning Grants).

Any jurisdictions that fail to receive HCD Housing Element certification by the end of the grace period would have their awards deprogrammed, and these funds would be made available for reprogramming within the original grant program framework to compliant sponsors.

***Housing Incentive Pool (HIP) Update and Programming Policies***

In October 2018, the Commission established the Housing Incentive Pool (HIP) program to award transportation funds on a per-unit basis to the top 15 jurisdictions that produced or preserved the greatest number of qualifying affordable housing units from 2018 through 2022. There is \$71 million available for the HIP program, comprised of \$46 million in regionally-

controlled Regional Transportation Improvement Program (RTIP) funds and \$25 million in One Bay Area Grant (OBAG 2) Regional Program funds. In addition to HCD Housing Element certification, jurisdictions must also comply with state housing laws related to Surplus Lands, Accessory Dwelling Units, and Density Bonuses to be eligible for HIP funding.

Jurisdiction rankings for the first four years of the program (2018-2021) are provided in **Attachment 3**. The final year of housing data (2022) will be available this fall.

Staff plan to bring preliminary HIP award amounts and proposed programming policies to the Commission this December. The proposed programming policies are anticipated to include:

- Revising the deadlines for Housing Element certification and adoption of state housing law self-certification resolutions to align with OBAG 3 deadlines, including the proposed grace period described above,
- A review period for jurisdictions to submit corrections to the 2018-22 housing data as compiled by MTC from December 2023 through January 2024, and
- A rolling letter of interest process, whereby top 15 HIP jurisdictions would submit project ideas to MTC for project selection and programming through summer 2024.

Jurisdictions that are competitive for HIP funds based on the first four years of available housing data should plan to adopt a resolution affirming compliance with various state housing laws by December 31, 2023, if they have not already met this HIP requirement.

**Issues:**

Staff anticipate that some jurisdictions may remain noncompliant even after the proposed 6-12 month grace period. Jurisdictions in this situation would forfeit any awards from the regional discretionary programs discussed in this item, and any deprogrammed funds would be available for reprogramming to compliant sponsors. In some cases, these regional awards are part of a funding plan with other local, state, and federal grants; deprogramming regional discretionary funds could jeopardize those grant awards as well.

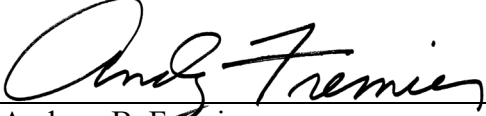
In addition, due to the nature of state requirements, jurisdictions may become noncompliant with their Housing Element or other OBAG 3 housing-related requirements at any time. Staff continue to monitor all compliance requirements on a regular basis. Noncompliant jurisdictions may be subject to deprogramming of any relevant and unobligated regional discretionary funds in the TIP.

**Recommendations:**

Information only. Staff invites feedback from this Board on Housing Element certification issues, the recommended grace period approach and appropriate length of grace period, and the proposed policy revisions to the HIP program.

**Attachments:**

- Attachment 1: Housing Element Compliance Summary
- Attachment 2: OBAG/HIP Funding and Housing Element Compliance by Jurisdiction
- Attachment 3: Current (2018-21) HIP Qualifying Units by Jurisdiction

  
\_\_\_\_\_  
Andrew B. Fernier