



COMMUNITY DEVELOPMENT AGENCY  
HOUSING AND FEDERAL GRANTS DIVISION

April 2, 2024



Sarah Bernstein Jones  
DIRECTOR

Board of Supervisors  
County of Marin  
3501 Civic Center Drive  
San Rafael, California 94903

Leelee Thomas  
DEPUTY DIRECTOR

**SUBJECT:** Community Development Agency requests approval of Work Plan to develop Local Expenditure Plan for Bay Area Housing Finance Authority (BAHFA) 2024 Regional Housing Bond and approval to add a Cost Covered Two Year Fixed Term Principal Planner position.

Marin County Civic Center  
3501 Civic Center Drive  
Suite 308  
San Rafael, CA 94903  
415 473 6269 T  
415 473 7880 F  
415 473 2255 TTY  
[www.marincounty.org/plan](http://www.marincounty.org/plan)

Dear Board Members:

**RECOMMENDATION:**

1. Approve Work Plan to develop a Local Expenditure Plan for Marin County in anticipation of regional housing bond funding;
2. Approve the personnel adjustment to add a 1.0 FTE full-time, two-year Fixed Term Principal Planner position to better align staffing to meet business needs in the Housing and Federal Grants Division;

**SUMMARY:**

On November 23, 2023, your Board received a briefing on the Bay Area Housing Finance Authority (BAHFA) and proposed 2024 Regional Affordable Housing Bond. The actions before you today will provide the staffing and consultant resources to oversee the countywide effort of developing a local expenditure plan and conducting outreach and community engagement for this effort. The engagement will include consultation with our cities and towns, and a focus on people most impacted by the lack of affordable housing.

**BACKGROUND:**

The San Francisco Bay Area Regional Housing Finance Act (California Government Code § 64500, et seq.) (the "Act") created the Bay Area Housing Finance Authority (BAHFA) in 2019. BAHFA's purpose is to raise, administer and allocate funding and provide technical assistance at a regional level for tenant *protections*, affordable housing *preservation*, and new affordable housing *production*, commonly referred to as the "3Ps." BAHFA's jurisdiction is the entire area within the boundaries of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma, and the city and county of San Francisco ("San Francisco Bay Area").

The BAHFA Board (which is comprised of the same members as the MTC Commission) and the ABAG Executive Board share governing responsibilities for BAHFA. Both the BAHFA Board and the ABAG Executive Board are comprised of local elected officials. For Marin County, Supervisor Moulton-Peters is a member of the BAHFA Board, while Supervisor Sackett and Novato Councilmember Pat Eklund are members of the ABAG Executive Board. These officials will participate in votes about the 2024 regional housing bond.

**The 2024 Regional Housing Bond**

In the summer of 2022, the BAHFA Board and the ABAG Executive Board began the process to consider placing a \$10-20 billion general obligation bond on the November 2024 ballot. Later this spring, they will determine whether the bond will be \$10 or \$20 billion and vote to place the bond on the ballot.

The current threshold for passing the regional housing bond is a 2/3 supermajority of all Bay Area voters (not county-by-county). However, the State Legislature recently approved ACA 1, which will place a statewide constitutional amendment on the November 2024 ballot that would reduce the threshold to 55% for funding of infrastructure or affordable housing. If ACA 1 is approved, the reduced threshold would apply to bond measures on the same ballot.

If the regional housing bond passes, eighty percent (80%) of the net revenue will be returned to counties on a “return to source” basis as determined by each county’s share of assessed property values. This portion of the funds is referred to as county housing revenue. The region’s large cities and the cities that have been assigned more than 30% of their county’s low-income RHNA obligation can elect to receive a direct allocation from the county housing revenue. In 2024, the cities that could receive a direct allocation are Oakland, San Jose, Santa Rosa, and the City of Napa. No cities in Marin met this criterion. The remaining twenty percent (20%) of the net revenue, referred to as Regional Housing Revenue, will be available to BAHFA for distribution anywhere in the region, including in Marin.

**Marin County’s Local Expenditure Planning**

***Anticipated Funding and Requirements***

As a jurisdiction receiving a direct allocation from the regional housing bond, Marin County will be required to work with cities, towns and stakeholders to produce a local expenditure plan for our portion of funds if the regional housing bond is approved. February 2025 would be the earliest date BAHFA could set for submittal of the plan. The County intends to conduct an extensive community engagement, including working closely with the cities and towns before the plan is submitted.

The Act establishes a set of investment categories with minimum investment targets that correspond to the 3Ps:

- 52% of funds must be used for production of new affordable homes,
- 15% for preservation of existing homes, and
- 5% for tenant protections,<sup>1</sup>
- The remaining 28% designed as “flexible” funding that may be used for housing or housing-related uses as defined in the ballot measure (for example, infrastructure necessary to support housing development).

---

<sup>1</sup> Currently, Section 1 of Article XIII A of the California Constitution provides that general obligation bonds can only be used for the acquisition or improvement of real property; tenant protection programs and services are generally ineligible uses of bond funds. Unless this changes, BAHFA staff plan to recommend that the BAHFA Board and the ABAG Executive Board allow for deviation from the 5% minimum allocation for tenant protections (as allowed by the Act).

Given the anticipated revenue and investment categories required, Marin County’s local expenditure plan will have the following structure and approximate amounts and could range from approximately \$352 - \$704 million, depending the amount of the bond that is put on the ballot. The following table shows potential approximate bond allocations assuming a \$10 billion total bond issuance.

**Total Bond Allocation Estimate for Marin County \***

Bond Allocation	Required Share	Approximate Bond Allocation
<b>Total GO Bond</b>		\$10 billion
<b>Funding requirements</b>	<b>100%</b>	<b>\$352 million</b>
<b>Production</b>	<b>52% min.</b>	<b>\$174 million</b>
<b>Preservation</b>	<b>15% min.</b>	<b>\$50 million</b>
<b>Tenant Protections**</b>	<b>5% min.</b>	<b>\$17 million</b>
<b>Flexible Funding</b>	<b>28% max.</b>	<b>\$94 million</b>
<b>County Administration</b>	<b>5% max.</b>	<b>\$18 million</b>

\* Bond allocation amounts will change when updated with 2023-2024 Assessed Values from the California State Board of Equalization. The figures above are based on 2020 Assessed Values.

\*\* State law does not allow bond proceeds to be spent for non-capital (i.e., services) costs so funds assigned to tenant protection must be reassigned absent a change in law.

The Act establishes basic parameters for Marin County’s local expenditure plan, though it allows for significant flexibility within those parameters for Marin County to prioritize investments that best meet local needs. Specifically, Marin County’s expenditure plan must satisfy the following criteria:

- Production investments in new housing (minimum 52% of expenditures):
  - Can include rental and/or ownership housing;
  - Must carry a deed restriction to ensure on-going affordability;
  - Must prioritize projects that help meet extremely low-income, very low-income and low-income Regional Housing Needs Allocation (RHNA) goals, though can also serve residents with incomes up to 120% of the Area Median Income (AMI).
- Preservation investments in existing housing (minimum 15% of expenditures):
  - Can include rental and/or ownership housing;
  - Must carry a deed restriction to ensure on-going affordability for households earning up to 120% of the area median income (AMI);
  - Cannot cause the displacement of any current residents or result in a net loss of units;
- Plan for the use of 28% of funding that is “flexible” and can be used for housing and/or housing-related uses as may be allowed by the ballot measure, such as, addressing substandard housing or housing-related parks and infrastructure; and
- Be considered at a public meeting prior to its adoption by the Board of Supervisors.

Once Marin County adopts the expenditure plan in early 2025, it submits the plan to BAHFA. If the expenditure plan meets the foregoing criteria, the plan is deemed approved and will be posted to BAHFA's website.

**DISCUSSION:**

**Expenditure Plan Outreach and Engagement**

To develop Marin County's expenditure plan, staff recommends a robust community engagement and outreach process to solicit input from cities and towns, stakeholders, and members of the public. The BAHFA expenditure plan will be developed as a countywide effort involving residents of all cities and towns and unincorporated areas of Marin. The Community Development Agency serves a countywide role in the area of housing funding and will lead and staff the development of Marin County's BAHFA expenditure plan. Staff will focus on working with city and town councils and their staff to ensure jurisdiction feedback is incorporated into the expenditure plan.

The Housing Working Group (HWG) is another essential tool for outreach and development of the expenditure plan. The Housing Working Group, established in 2019, is composed of every city and town in Marin and includes Planning Directors and housing staff from each jurisdiction. The HWG is staffed by CDA , meet once monthly, and have worked together on Countywide housing projects collaboratively for years. The HWG will discuss effective outreach tools for BAHFA and priorities for expenditure planning to ensure alignment with Housing Element goals.

Staff recommend a Countywide Steering Committee to inform the Local Expenditure outreach and work plan process. The committee could include two City Managers, two Council Members, two Planning Directors and the two members of the Board of Supervisors Housing subcommittee. The steering committee would meet on an ongoing basis until the Expenditure Plan is adopted. Staff will present the expectations and schedule for this work at the City Manager Association, Council of Mayors and Council Members, and the Housing Working Group, and ask those groups to nominate two representatives each for the committee. Staff suggest that the first task for the Steering Committee include drafting general goals for the Local Expenditure Plan.

Staff will ensure there are many opportunities for the community to contribute ideas and is seeking ways to reach those less likely to participate in the process, particularly people most impacted by the lack of affordable housing. The methods of outreach could include:

- Provide updates and opportunities for feedback through the Marin County Council of Mayors and Council Members (MCCMC).
- Conduct stakeholder meetings with city/town staff, affordable housing developers, homeless service providers, and other public agencies.
- Have individual meetings with city/town staff and assist city/town staff with presentations to their councils.
- Communicate and coordinate outreach with all jurisdictions through the Housing Working Group and City Managers Group at their monthly meetings.

- Scheduling Listening Sessions for each supervisorial district, in person and online.
- Encouraging community members to participate in upcoming survey(s) and sign up for email updates through a website that will be established in 2024.
- Conduct focus groups with community-based organizations and community members.

Extensive countywide public outreach is both a critical component of BAHFA and an important goal for the County. Engaging and involving people of color, lower income and special needs community members is especially important since they are most at risk of being affected by the current housing crisis and have historically not been engaged in planning processes in the County. Staff is seeking to build on successful outreach efforts and the Needs Assessments from Housing Elements of the county, cities and towns and will work to involve all members of the community. To accomplish this, the Community Development Agency is recommending that we supplement staff resources to help facilitate the Countywide outreach process, and to improve the access to and quality of information provided to the public with a focus on empirical data through surveys, focus groups and other online and in-person outreach. With the necessary scope of this work combined with the ongoing responsibilities of the Community Development Agency Housing & Federal Grants division and the requirements for implementation of the Housing Element, staff anticipates that this work will exceed current capacity and is recommending further resources, including a contract in an amount not to exceed \$80,000 for outreach and engagement.

The attached work plan was reviewed and recommended by the Board Subcommittee on Affordable and Workforce Housing, comprised of Supervisors Rice and Lucan. A timeline for local outreach is included in Attachment 1. Staff will work with the housing subcommittee to refine the outreach plan. Staff has also posted updates and information about the County's BAHFA outreach on its website, and will continue to do so, at:  
<https://www.marincounty.org/depts/cd/divisions/housing>.

### **Staffing**

The Community Development Agency worked with the Office of the County Executive and Human Resources to review staffing needs related to the Housing and Federal Grants Division and BAHFA planning. To meet business needs, CDA is requesting the proposed personnel change to add a 1.0 FTE two-year Fixed Term Principal Planner position.

Current staffing levels do not fully meet the evolving range of skills and knowledge critical to this program's success. The requirements of this division have significantly expanded due to increased complexity of the work, new funding sources from federal, state, and local sources, and additional program oversight and requirements.

The Principal Planner will oversee several Countywide efforts which involve a high degree of sensitivity, technical expertise, and communication skills as well

as oversight of other staff and consultants. These efforts include working with the cities and towns, community members and stakeholders on major initiatives including developing the Expenditure Plan for Marin county's share of the Bay Area Housing Finance Authority (BAHFA) bonds.

**EQUITY IMPACT:**

The County believes in equitable communities, where all community members have access to healthy affordable housing. Evidence shows that access to stable, affordable housing in communities of opportunity has broad, positive impacts. It can lead to better health and education outcomes and higher lifetime earnings, especially for children.

Throughout Marin jurisdictions Housing Element outreach process, including the needs assessment and constraint analysis, data and public comments confirmed that people with moderate and lower incomes face housing challenges due to inadequate high-quality affordable rental and ownership opportunities. This was particularly true for households of color, who also have experienced residential segregation. These conditions have wide-ranging impacts for Marin residents, workers, businesses, services, and institutions.

The BAHFA funding will specifically address existing inequities in housing access and insecurity throughout Marin County. Staff plans to design the outreach strategy for development of the expenditure plan consistent with the findings of each city and town's as well as unincorporated Marin County's Housing Element work and will be guided by the needs of lower income communities.

**FISCAL/STAFFING IMPACT:**

There is no increase to the General Fund Net County Costs as the result of this action. The estimated cost of the fixed term Principal Planner position for two years is \$450,000. The fixed term position will be added to the Affordable Housing program in org code 10025031. The total two-year cost of the position will be funded out of Non-Departmental, and staff will work with the Office of the County Executive to adjust the budget as needed.

Staff will return to your Board on a later date to award a contract for community outreach and engagement work related to the BAHFA expenditure plan in project 40BAHFA and to adjust expenditure appropriations.

If the Bond passes, staff will return to your Board to convert the fixed term Principal Planner position to ongoing regular term and will propose additional personnel and budget changes that are needed to implement the Bond. There is a 5% administration cost set aside to cover all costs of the program, including salaries.

**REVIEWED BY:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> County Executive | <input type="checkbox"/> N/A            |
| <input checked="" type="checkbox"/> County Counsel   | <input type="checkbox"/> N/A            |
| <input type="checkbox"/> Department of Finance       | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> Human Resources  | <input type="checkbox"/> N/A            |

Respectfully Submitted,



Leelee Thomas  
Deputy Director



Sarah Jones  
Director

**Attachments:**

1. Work Plan to develop a Local Expenditure Plan for Marin county
2. Local Expenditure Plan draft template
3. Frequently Asked Questions

# BAHFA Local Expenditure Outreach Work Plan and Schedule

Geography	Task	Date
County	Board consideration and approval of work plan and staffing	April 2, 2024
County	Board approval of contract for outreach and engagement	Spring 2024
Countywide	Housing Priorities Survey	Summer 2024
Countywide	Community Based Organizations Listening Sessions	Summer 2024
Countywide	Supervisor District Listening Sessions	Summer 2024
Countywide	Workshops with Marin County Council of Mayors and Council Members (MCCMC)	Periodically starting in Spring 2024
Countywide	Coordination with Board of Supervisors Housing Subcommittee	Ongoing
Jurisdictions	Presentation to City Councils	Starting in Spring 2024, as requested by Councils
Jurisdictions	Community Focus Groups (Community Based Organizations, Developers, Contractors)	Summer 2024
Jurisdictions	Planning Staff Coordination and Collaboration including Needs Assessments, Policy Discussions through the Housing Working Group (HWG)	Ongoing
Jurisdictions	City Manager Association Workshop	Fall 2024
County	Draft Expenditure Plan to Board of Supervisors	Fall 2024



## **Background and Introduction: Sample Initial Local Expenditure Plan**

February 2024

The Bay Area Housing Finance Authority (BAHFA) is planning to submit an affordable housing general obligation bond measure to Bay Area voters at the November 2024 election.

If the voters authorize the bond, the San Francisco Bay Area Regional Housing Finance Act (“the Act”) requires direct recipients of the bond proceeds to prepare an expenditure plan to govern how the bond proceeds will be spent. Direct recipients will have to submit an expenditure plan in the first half of 2025. Direct recipients are encouraged to begin the planning process early to ensure that they can fulfill the required outreach activities, while adopting the expenditure plan in a timely manner.

BAHFA staff have drafted the following Sample Local Expenditure Plan to assist direct recipients in understanding how they can fulfill their obligations. This document is intended to guide local staff in the planning process and should not be used or interpreted as the final guidance or official template. In certain instances, this Sample Plan includes percentages and numbers to illustrate how a direct recipient could input their specific local decisions. These numbers are highlighted to demonstrate that they are examples.

BAHFA has provided additional technical assistance resources to assist local cities and counties with meeting their requirements, including a sample outreach plan, staff memo, and communication resources in addition to this document to aid the expenditure planning process. Please contact [bahfa@bayareametro.gov](mailto:bahfa@bayareametro.gov) for access to these materials.

BAHFA Attachment 2

## **SAMPLE Initial Local Expenditure Plan for the 2024 Bay Area Housing Finance Authority's Affordable Housing General Obligation Bond**

Pursuant to the [San Francisco Bay Area Regional Housing Finance Act](#), Government Code Section 64500, et seq. (Act), the [County or City] of [REDACTED] (referred to herein as "Direct Recipient") adopts this Expenditure Plan to govern its share of bond proceeds from the Bay Area Housing Finance Authority's affordable housing bond measure. This Expenditure Plan determines how Direct Recipient will allocate its share of bond revenues to new affordable housing, [and] affordable housing preservation [and, as applicable, tenant protections and/or housing-related uses].

This Expenditure Plan further fulfills the applicable requirements of Government Code Section 64650 by:

- 1) Providing the proposed share of revenue and estimated funding amount to be spent for each of the following categories, so that such expenditures achieve the minimum shares of funding listed below over a five-year period:
  - a. A minimum of 52% to produce deed-restricted housing
  - b. A minimum of 15% to preserve affordable housing
  - c. A minimum of 5% for tenant protections programs, as such programs may be permitted by law (64650(d)(6)(B)(i)(I-III));
- 2) Demonstrating the prioritization of new construction housing developments that help achieve the Direct Recipient's regional housing need allocation targets for housing affordable to extremely low-income, very low-income and lower-income households (64650(d)(6)(B)(i)(I));
- 3) To the extent feasible, describing any specific project or program proposed to receive funding, including location, amount of funding, anticipated outcomes, and estimated funding level for each of the categories listed above in 1.a-c. (64650(d)(6)(B)(i)(IV)(ii)); and
- 4) [If Direct Recipient is a county] Demonstrating that Direct Recipient has consulted with each city in the county not receiving a direct allocation (64650)(6)(B)(iii).

This Expenditure Plan shall apply to the years 2025 through 2030 ("Expenditure Period"), and shall demonstrate that over a five-year period, Direct Recipient will meet the funding allocation requirements set forth in Sections 64650(d)(6)(B)(i)(I-III) of the Act. Counties, cities receiving direct allocations, and the Bay Area Housing Finance Authority must submit updates to these expenditure plans on an annual basis by July 1.

## **Local Expenditure Plan Assumptions**

Parts 1 through 4 below provide the information required by the Act for [REDACTED]'s initial Local Expenditure Plan, which covers 2025-2030, the five-year period following voter approval in November 2024.

This Local Expenditure Plan is based on these conditions:

- The total bond proposed is \$ [REDACTED] billion.
- The expected revenue to [REDACTED] city/county is \$ [REDACTED].
- Full expenditure of all bond funds is anticipated to occur over a 10-15 year period.
- This first Local Expenditure Plan assumes 5 separate bond issuances will occur, so that all bonds will be issued over approximately a 15-year period. However, the total number of issuances will be a function of how quickly bond funds can be deployed.
- This first Local Expenditure Plan describes spending for two of the five issuances, or an estimated 40% of total funds. Spending is anticipated to occur between 2025 and 2030 \_\_\_\_\_. The total amount of these two issuances is approximately \$ [REDACTED].
- Estimates are based on net bond proceeds after certain costs, such as election expenses, costs of issuance and Direct Recipient's administrative costs, have been deducted as allowed by the California Constitution and the Act.

*Assembly Constitutional Amendment No. 1 (2023) (ACA-1):*

- If ACA-1 passes, which will be considered by California voters at the November 2024 election. ACA 1, if it becomes law, may allow for certain tenant protection programs. Direct Recipient should consult with their legal counsel regarding additional eligible bond expenditures authorized by ACA 1. If ACA-1 does not pass, then the Local Expenditure Plan will need to be amended to reallocate the minimum 5% to tenant protections to other Spending Categories as prescribed by the Act.

All information regarding funding, households served, and units presented herein are estimates and projections based on information available at the time of preparation of

this document. Actual funding, households served, and units produced or preserved will depend on several variable factors, including market conditions.

**Part 1: Estimated Funding Allocation Per Spending Category**

Category	Percent of All Funds: 1 <sup>st</sup> and 2 <sup>nd</sup> Bond Issuances Only	2025-2030 Expenditure Plan Spending Values: 1 <sup>st</sup> and 2 <sup>nd</sup> Issuances
Production	70%	\$133,000,000
Preservation	20%	\$38,000,000
Tenant Protections <sup>1</sup>	5%	\$9,500,000
Flexible Funds	5%	\$9,500,000
Totals	100%	\$190,000,000

**Part 2: Households Served by Income Level**

As determined by the California Department of Housing and Community Development, approximately 45% of the Regional Housing Needs Allocation (RHNA) for Direct Recipient is affordable housing for extremely low- and very low-income households. Another 26% of the RHNA is housing affordable to low-income households.

Category	Household Income Levels Served	Percent of 1 <sup>st</sup> and 2 <sup>nd</sup> Bond Issuances Serving Designated Income Level
<b>Production:</b> Extremely Low- and Very Low-Income	0%-50% AMI	Approximately 45%
<b>Production:</b> Low-Income	51%-80% AMI	Approximately 35%
<b>Production:</b> Moderate- Income	81%-120%	Approximately 20%
<b>Preservation:</b> Extremely Low- and Very Low-Income	30%-50% AMI	Approximately 30%
<b>Preservation:</b> Low-Income	51%-80% AMI	Approximately 40%
<b>Preservation:</b> Moderate- Income	81%-120% AMI	Approximately 30%
<b>Tenant Protections<sup>2</sup></b>	0%-30% AMI	Approximately 100%
<b>Flexible Funding</b>	0-80%	Rebuilt neighborhood water and sewer lines to support new low- income housing development

<sup>1</sup> If permitted by law.

<sup>2</sup> If permitted by law.

**Part 3: Unit Count: Estimated Number of Affordable Housing Units Built or Preserved, and Estimated Number of Tenants Protected<sup>3</sup>**

Category	2025-2030 Expenditure Plan Unit Count: 1 <sup>st</sup> and 2 <sup>nd</sup> Issuances	Program Notes
Production	Approximately 530 Units	Assumes \$250,000 PU Gap Funding
Preservation	Approximately 150 Units	Assumes \$250,000 PU Gap Funding
Tenant Protections <sup>4</sup>	Approximately 70 Households	
Total	750 Units / Households Served	

**Part 4: Consultation with Each City not Receiving a Direct Allocation [Applicable Only to County Direct Recipients]**

Direct Recipient County includes \_\_\_ cities not receiving a direct allocation. The consultation(s) with these cities have included the following.

City	Date of Consultation(s)	City Point of Contact	Anticipated Priorities
City 1		Name, title, email	
City 2		Name, title, email	

**Part 4: [If possible] Projects<sup>i</sup> and Programs, Including Housing-Related Uses**

Project / Program Name	Location	Funding Amount	Unit Count (as applicable)	Estimated Affordability Levels Served	Other Anticipated Outcomes
Downpayment assistance program	Direct Recipient Region	\$5,000,000	40 homes	51-120% AMI	

<sup>3</sup> Note that while the Act does not explicitly require counties and direct-allocation cities to include a unit county by income level in each expenditure plan submitted, Section 64511(c)(1)(B) of the Act does require the ABAG Executive Board and BAHFA Board to review, five years after voters approve an initial ballot measure, implementation elements of the measure, including “the number of affordable housing units produced and preserved at different household income levels.”

<sup>4</sup> If permitted by law.

---

<sup>i</sup> If possible, Direct Recipients may include specific affordable housing projects that are certain to receive funds during this expenditure period.



# Technical Frequently Asked Questions – for Housing Professional and Jurisdictions

March 2024

As required by the San Francisco Bay Area Regional Housing Finance Act of 2019 (the Act, defined below), BAHFA staff conducted outreach to stakeholders, including city and county officials, in developing programs to be funded if San Francisco Bay Area voters approve a regional affordable housing bond measure at the November 2024 general election. Below are questions that arose during outreach, requiring additional information about the Act, financing requirements and bond expenditures. The FAQs are organized as follows:

- A. Definitions of Frequently Used Terms
- B. Distribution and Allocation of Revenue
- C. Expenditure Plans
- D. Use of Production Funds
- E. Use of Preservation Funds
- F. Use of Flexible Funds
- G. Background

BAHFA Attachment 3

*Disclaimer: The following questions and answers are intended to assist local governments as they develop Expenditure Plans and programs in the event that the voters approve the Bond (defined below). However, in addition to requirements set forth in the Act, any particular program or project funded with County Housing Revenue will need to comply with other applicable state laws, the voter-approved ballot measure (which, at the time of publication of this document, has not been submitted to the voters), and any guidelines that BAHFA may adopt. Local governments are encouraged to consult with their legal counsel and to check these questions for updates.*

## A. Definitions of Frequently Used Terms

**Affordable Unit:** a legally enforceable agreement for at least 30 years that restricts occupancy and requires affordable housing costs (Health and Safety Code section 50052.5 or affordable rent (Health and Safety Code section 50053) be provided to person(s) whose household income qualifies as extremely low, very low, low, or moderate income.

**AMI:** area median income. There is a different AMI for each county in the Bay Area.

**BAHFA Jurisdiction:** area within the boundaries of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma, and the city and county of San Francisco. Also referred to as the San Francisco Bay Area.

**Bond:** the general obligation affordable housing bond that BAHFA is preparing to submit to the voters at the November 2024 general election.

**County Housing Revenue:** the portion of the Revenue that the Act requires to be disbursed to counties, and to cities that qualify as a Direct Recipient. *See Questions B.Q1 and B.Q2.*

**Direct Recipient:** a county or city that receives a direct distribution of County Housing Revenue. *See Question B.Q2.*

**Expenditure Plan:** the plan that a Direct Recipient adopts to plan for expenditure of its distribution of the County Housing Revenue.

**Flexible Funds:** the remaining allocation after the minimum allocations for Production Funds, Protection Funds and tenant protections, as required by the Act, have been made. *See Question C.Q1.*

**Local Government:** a city or county or city and county within BAHFA's jurisdiction.

**Production Funds:** the minimum allocation that must be allocated to the production of new affordable housing as required by the Act. *See Question C.Q1.*

**Preservation Funds:** the minimum allocation that must be allocated to the preservation of affordable housing as required by the Act. *See Question C.Q1.*

**Real Property:** a qualified interim housing project.

**Regional Housing Revenue:** the portion of the Revenue that the Act requires to be disbursed to BAHFA. *See Question B.Q1.*

**Revenue:** the funds derived from the Bond and consisting of both County Housing Revenue and Regional Housing Revenue.

**RHNA:** Regional Housing Needs Allocation.

**San Francisco Bay Area Regional Housing Finance Act:** California Government Code § 64500, et seq., the Act creating the Bay Area Housing Finance Authority (BAHFA).

## B. Distribution and Allocation of Revenue

**Q1: If the voters pass the Bond, how will the Revenue be distributed throughout the San Francisco Bay Area?**

**A:** Eighty percent of the net Revenue will be distributed to the counties of origin, based on assessed property values, with the distribution referred to as County Housing Revenue. The remaining 20% of the Revenue will be distributed to BAHFA, commonly called Regional Housing Revenue.

---

**Q2: Who will receive direct distributions of the County Housing Revenue, i.e., who are the Direct Recipients?**

**A:** Each county in the San Francisco Bay Area, including the City and County of San Francisco, on whose ballot the bond appears will receive a direct distribution of the County Housing Revenue. In addition, certain cities receive a direct distribution of funds, based upon



their assessed property values. The Direct Recipient cities include Oakland and San Jose, as the largest cities in the region. Any other city in the San Francisco Bay Area that carries 30% or more of the RHNA obligation for its county to plan for very low-income housing will receive a direct distribution. Currently, this includes the cities of Napa and Santa Rosa.

**Q3: Does the Act prescribe how entities receiving direct distributions expend the Bond proceeds?**

**A:** Yes. If San Francisco Bay Area voters pass the Bond, the counties and cities receiving direct distributions of County Housing Revenue must follow the rules set forth in the Act. (See Government Code § 64650.) *See also Question No. C.Q1 below.*

**Q4: Which entity will administer distributions for Direct Recipients?**

**A:** Each Direct Recipient will select an entity to administer its distribution of the County Housing Revenue consistent with the jurisdiction’s Expenditure plan. A county may request that BAHFA administer all or a portion of its distribution of the County Housing Revenue. If the ABAG Executive Board and the BAHFA Board approve the request, BAHFA will administer the county’s distribution in accordance with the Expenditure Plan approved by the county, BAHFA’s board and the ABAG Executive Board.

**Q5: Can County Housing Revenue be used to cover administrative costs?**

**A:** Yes. Direct Recipients may use up to five percent of their direct distribution to cover administrative costs.

**Q6: Can BAHFA require labor standards for Direct Recipients’ use of the County Housing Revenue?**

**A:** No. The Act does not authorize BAHFA to implement labor standards specific to the Direct Recipients’ use of the County Housing Revenue. Direct Recipients should contact their local counsel to determine what state or local labor standards apply to their use of the County Housing Revenue.

**Q7. Can Direct Recipients contract out the administration of their funds to a community-based organization?**

**A:** Yes. The Act allows Direct Recipients to select the appropriate entity within their counties to administer the funds. *See also Question B.Q.4.*



**Q8. What is the timeline by which Direct Recipients must spend their funding?**

**A:** The Act states that after counties commit funds to a specific project, they shall remain available for expenditure for three years. Counties are able to authorize expenditures beyond three years, but they must do so in accordance with guidelines approved by the BAHFA Board and the ABAG Executive Board. Direct Recipient cities must commit funds to a specific project within five years and they shall remain available for expenditure for an additional 5 years unless an extension is authorized under the Act.

**C. Expenditure Plans**

**Q1: Does the Act impose any requirements on Expenditure Plans adopted by Direct Recipients?**

**A:** Yes. For an initial Direct Recipient Expenditure Plan to be deemed complete, it must demonstrate that over a five-year period it achieves the following:

- A minimum of 52% of the distribution is allocated towards construction of new affordable housing (“Production Funds”). These expenditures must prioritize developments that help achieve the jurisdiction’s regional housing need allocation (RHNA) targets for housing affordable to extremely low income (ELI), very low income (VLI), and low income (LI) households.
- A minimum of 15% of the distribution is allocated towards affordable housing preservation (“Preservation Funds”).
- A minimum of five percent of the distribution is allocated towards tenant protection programs (see C.Q2 below for additional information).

The Expenditure Plan must demonstrate that the remaining 28% of unallocated funds, referred to as Flexible Funds, will be expended on programs and projects that are consistent with voter approval of the Bond measure and the legal requirements of the Act and general obligation bonds.

Subsequent Expenditure Plans must include a report on the allocations and expenditures to date of projects and programs funded.

**Q2: Can the Expenditure Plan lawfully allocate a minimum of five percent towards tenant protection programs, such as rental assistance and homeless prevention services?**

**A:** Currently, Section 1 of Article XIII A of the California Constitution provides that general obligation bonds may be used for the acquisition or improvement of Real Property. However, state legislators approved Assembly Constitutional Amendment 1 (ACA 1) in 2023, which will be submitted to California voters at the November 2024 general election. If that measure passes, it is possible that the eligible uses of general obligation bonds may be expanded to include some form of tenant protections. If the measure does not pass or does not include an expansion of allowable general obligation bond uses and the Bond passes, BAHFA staff will take forward an

agenda item recommending that the BAHFA Board and the ABAG Executive Board allow Direct Recipients to deviate from the five percent minimum allocation for tenant protections. *See also Question C.Q3.*

**Q3: May a county deviate from the Act’s prescribed minimum allocations in its Expenditure Plan?**

**A:** Yes. If after consulting with the BAHFA Advisory Committee, the BAHFA Board and the ABAG Executive Board each adopt a finding by two-thirds vote that the minimum allocations are not the best use of the funds to address the Direct Recipient’s affordable housing needs, then the Direct Recipient’s proposed alternative allocations may be implemented.

In addition, at least five years after passage of the Bond, the ABAG Executive Board and the BAHFA Board may change the minimum allocation rules by adopting a finding by a two-thirds vote that the region’s housing need in any given expenditure category differs from the Act’s requirements.

**Q4: What role does BAHFA play in Expenditure Plans adopted by Direct Recipients?**

**A:** The Direct Recipients will submit their adopted expenditure plans to BAHFA by a deadline set by BAHFA. The deadline will be at least 90 days after voters approve the Bond. BAHFA staff will confirm that submitted Expenditure Plans meet the requirements of the Act as outlined in Question C.Q1. BAHFA will post all approved Expenditure Plans on its website.

**Q5: Are there any special notice procedures that Direct Recipients must follow prior to adopting an Expenditure Plan?**

**A:** Yes. At least 30 days prior to the governing body of a Direct Recipient adopting the Expenditure Plan, the governing body must discuss the proposed Expenditure Plan at a properly noticed meeting of the governing body. In addition, Direct Recipients should consult with their legal counsel regarding compliance with other noticing requirements, such as the Ralph M. Brown Act (Cal. Gov. Code § 54950, *et seq.*).

**Q6: Does the Act require a county Expenditure Plan to incorporate input from cities in their jurisdiction regarding the cities’ housing needs?**

**A:** Yes. As discussed in Question C.Q5, counties must have a discussion meeting prior to adopting their Expenditure Plan, and the Act requires counties to demonstrate in their Expenditure Plans that they have consulted with each city in the county (exclusive of cities that are Direct Recipients). To assist counties with this outreach effort, BAHFA is offering technical assistance. Please contact BAHFA@bayareametro.gov for further information on the technical assistance.



## D. Use of Production Funds

**Q1: How does an Expenditure Plan demonstrate that it prioritizes projects that help achieve RHNA targets for housing affordable to extremely low income, very low income and low-income households?**

**A:** Of the RHNA assigned to every county, approximately 45% is comprised of housing affordable to extremely low income and very low-income households (affordability up to 30% AMI and 50% AMI, respectively). Another approximately 26% of the RHNA is attributable to low-income housing needs (affordability up to 80% AMI). Expenditure Plans should clearly outline the jurisdiction’s intent to spend at least approximately 45% of their total production funding on extremely low income and very low-income housing and at least approximately 26% on low-income housing. In addition, Expenditure Plans should include a narrative regarding their prioritization process that is rationally tied to their RHNA obligations.

---

**Q2: How long do new affordable housing developments using Production Funds need to remain affordable?**

**A:** For projects funded with County Housing Revenue, the Act does not specify the term that the new affordable housing developments must remain affordable. However, Expenditure Plans must prioritize new developments that meet RHNA obligations. In determining the projections for RHNA, the California Department of Finance defines an Affordable Unit which then requires that new affordable housing developments funded with County Housing Revenue that are identified as RHNA prioritization projects must remain affordable for a minimum of 30 years.

All production and preservation development funded by BAHFA must remain affordable for a minimum of 55 years.

---

**Q3: How do Local Governments ensure that affordable housing developments remain affordable for the applicable term?**

**A:** A regulatory agreement executed by both the funding public entity and the property owner prescribes the term for affordability for the development and is recorded against the property. Future property owners are obligated to comply with the regulatory agreement.

---

**Q4: Could adaptive reuse projects use Production Funds?**

**A:** Yes. If the project to be funded converts commercial property to a new residential use, then the project may use Production Funds.

Note that a project could use both Production and Preservation Funds if, for an existing mixed-use building, the project includes rehabilitation of the existing residential portion and the conversion of the commercial space to a new residential use.

**Q5: Could construction of new Accessory Dwelling Units (ADUs) use Production Funds?**

**A:** Yes. Local Governments may use Production Funds for construction of ADUs. If the ADU is to satisfy the Local Government’s RHNA obligation, then it must satisfy certain deed-restricted occupancy requirements (see *Question D.Q2*). Otherwise, occupancy of the ADU must be restricted to households earning 120% of AMI or less.

If BAHFA funds construction of ADUs, the new ADUs must remain affordable for a minimum of 55 years to households earning 80% of area median income or less.

**Q6: Could master-leased housing serving special needs populations use Production Funds?**

**A:** Yes. However, if a master leasing housing project is to satisfy a portion of a Local Government’s extremely low income, very low income or low income RHNA obligation for state reporting purposes then Local Government should consult with its legal counsel. Note that in its Housing Element Annual Progress Report (APR) instructions, HCD indicates that local governments should not include group quarters facilities.

BAHFA can use Production Funds for master leased housing serving special needs populations as long as it carries a recorded deed restriction ensuring 55 years of affordability for households earning 80% AMI or less.

**Q7: Could “interim” housing use Production Funds?**

**A:** Under current law, an interim housing development may qualify as an eligible use of Production Funds if the funds will be used for the acquisition or improvement of Real Property (a “qualified interim housing project”). Note, some interim housing developments use fixtures to provide shelter, such as tiny houses on wheels, and such fixtures may not be considered an improvement of Real Property. Local Governments are encouraged to consult with their legal counsel to ensure the use of Production Funds for an interim housing development is consistent with the funding requirements of general obligation bonds.

In addition to Production Funds being a source for qualified interim housing under the Act, a Local Government may use Flexible Funds from County Housing Revenue for qualified interim housing.

BAHFA can use Regional Housing Revenue for a qualified interim housing development as long as the development is subject to a recorded deed restriction limiting occupancy to households earning 80% of area median income and below for 55 years.

**Q8: Could homeless encampment closures use Production Funds?**

**A:** Local Governments could use Production Funds for activities related to homeless encampment closures if the activities are necessary to construct new affordable housing and



they otherwise meet general bond requirements. For example, if a Local Government sought to purchase the site of an encampment or prepare it for housing (e.g., by bringing utilities to the site) Production Funds could be expended on such activity. However, under current law, Production Funds cannot be used to assist residents with relocation assistance payments.

**Q9: Can Production Funds be used for predevelopment activities?**

**A:** Yes, as relates to the acquisition and improvement of real property. For example, costs directly related to building such as the creation of architectural drawings, engineering, geotechnical work, and permitting processes would be eligible.

**Q10: Can Production funds be used for grants?**

**A:** Yes, direct recipients of Bond funds may provide them to developer partners as grants as well as loans. BAHFA recommends that direct recipients work with their city/county counsel to ensure that grants include enforceable compliance language to ensure that the deed restrictions required by the Act will be met. In addition, BAHFA recommends tax counsel advice for direct recipients wishing to layer grants with other funding sources such as LIHTC and CDLAC.

**E. Use of Preservation Funds**

**Q1: What type of projects qualify for Preservation Funds use?**

**A:** There are three main types of qualifying Preservation projects:

1. The conversion of market-rate housing to affordable housing.
2. The preservation of affordable housing with expiring restrictions.
3. The rehabilitation of existing affordable housing not facing expiring restrictions.

Further, all Preservation projects may be subject to the following requirements:

- Projects funded by BAHFA must have a 55-year deed restricting the use of the project for affordable housing.
- Projects funded with County Housing Revenue must have a deed restricting the use to affordable housing, but the length of time is not prescribed by the Act.
- All preservation projects must cap affordability at 120% AMI.
- Both rental and ownership housing are eligible for use of Preservation Funds.



---

## F. Use of Flexible Funds

### Q1: Could the Revenue fund “silent second” mortgages to protect low to moderate income homeowners from foreclosure?

**A:** Yes. A “silent second” mortgage refers to a second loan held by a homeowner and provided by the Local Government for the purpose of curing a default on the primary mortgage to avoid foreclosure. The homeowner generally makes no payment or very little payment on the second mortgage, with the second lender being repaid when the property transfers. For Direct Recipients, Flexible Funds are the best source for this activity.

Any program to protect low to moderate income homeowners from foreclosure that is funded with either Regional Housing Revenue or County Housing Revenue must ensure that the program is consistent with the laws that govern the use of proceeds from general obligation bonds. Under current law, general obligation bond proceeds must be expended on the acquisition or improvement of Real Property. Local Governments are encouraged to work with their legal counsel to ensure that any “silent second” mortgage programs are designed to be consistent with the rules governing the use of funds from general obligation bonds.

---

## G. Background

### Bay Area Housing Finance Authority

The San Francisco Bay Area Regional Housing Finance Act (California Government Code § 64500, et seq.) (the Act) created the Bay Area Housing Finance Authority (BAHFA). BAHFA’s purpose is to raise, administer and allocate funding and provide technical assistance at a regional level for tenant protection, affordable housing preservation and new affordable housing production. BAHFA’s jurisdiction is the entire area within the boundaries of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma, and the city and county of San Francisco (San Francisco Bay Area).

### BAHFA Governance

BAHFA is a joint effort of the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG). MTC was created by the state Legislature in 1970 (California Government Code § 66500 et seq.) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area.

BAHFA is governed by the same board that governs MTC. ABAG was formed in 1961 by a joint powers agreement among Bay Area local governments and serves as the comprehensive regional planning agency and Council of Governments for the nine counties and 101 cities and towns of the San Francisco Bay Area. The Executive Board of ABAG serves as BAHFA’s executive board. Some actions require approval by both the BAHFA Board and the ABAG Executive Board in its role as BAHFA’s executive board.

---