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February 14, 2024

Agenda Item 10.a

November 2024 Ballot Measure for General Obligation Bond for Affordable Housing

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**Subject:**

Referral to the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority (“Executive Board”) and to the Bay Area Housing Finance Authority Board adoption of a resolution to approve or submit, as applicable, a ballot measure for a general obligation bond for affordable housing in an amount not to exceed \$20 billion to the voters of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma and the city and county of San Francisco (the “Nine Bay Area Counties”) at the November 2024 general election consistent with the requirements of the final version of Assembly Constitutional Amendment No. 1 (2023)

**Discussion:**

*Authority to Place a Ballot Measure on the Ballot*

The San Francisco Bay Area Regional Housing Finance Act, codified at California Government Code Section 64500<sup>1</sup>, *et seq.* (the “Act”) authorizes the BAHFA Board, subject to the approval of the Executive Board, to place a measure on the ballot to raise revenue and allocate funds for affordable housing. If BAHFA proposes a measure that requires voter approval, the board of supervisors for the counties in which the measure will be on the ballot will call a special election to be consolidated with the next regularly scheduled statewide election. For purposes of placement of a measure on a ballot, BAHFA is considered a district, as defined in California Elections Code Section 317. Under current law, assuming the proposed ballot measure is placed on the ballot in all nine Bay Area counties, for the ballot measure to pass, 2/3 of the votes cast by the voters voting in the Nine Bay Area Counties must vote in favor of the ballot measure.

*Substantive Legal Requirements for the Ballot Measure and Program to be Funded*

A ballot measure for a general obligation bond for affordable housing submitted by BAHFA must satisfy the requirements as set forth in the Act (Section 64521(e)(1)) and Government Code Section 53410. The Legislature has approved Assembly Constitutional Amendment 1 (2023) (“ACA 1”) to be considered by California voters at the November 2024 election. ACA 1 would set the voter threshold for passage of a bond measure at 55 percent of the votes cast instead of 2/3. If ACA 1 passes, then the ballot measure submitted by BAHFA would be subject to a 55 percent approval threshold of votes cast on the measure in the Nine Bay Area Counties, provided the ballot measure meets the requirements of ACA 1.

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<sup>1</sup> All code section citations are to the California Government Code unless otherwise noted.

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In taking the legal requirements of the Act and ACA 1, as well as other state law, into consideration, BAHFA's ballot measure will contain the following elements:

**Purpose and Goal.** The purpose and goal of the ballot measure will be aligned with BAHFA's purpose as articulated in the Act (Sections 64501, 64510) and ACA 1 as well as Section 53410 of the Government Code applicable to bond proceeds.

**Categories of Eligible Expenditures to be Funded.** Pursuant to Section 64650, the categories of eligible expenditures for bond proceeds issued by BAHFA include: production of affordable housing ("Production"), preservation of affordable housing ("Preservation"), and to the extent allowed by the California Constitution, tenant protections ("Tenant Protections"). To the extent minimum allocations to the expenditure categories have been satisfied, the remaining bond proceeds may be expended on housing-related uses as allowed by the California Constitution and state law ("Housing Related Uses"), which may include, but are not limited to: home ownership programs to enable low- or moderate-income households to become or remain homeowners, public infrastructure associated with increased housing production, programs to address homelessness and technical assistance. Expenditures on administrative costs, including but not limited to election costs, to the extent permitted by law, are limited as prescribed in the California Constitution, Section 64650 and ACA 1, if it becomes law.

**Estimated Number of Affordable Housing Units to be Built and Preserved by Household Income Category.** The ballot measure will include an estimate of the number of affordable housing units to be built and preserved by household income category and the maximum number of rental units for purposes of satisfying California Constitution Article XXXIV. These estimates will depend on the value of the bond placed on the ballot. All projects funded with revenues will be consistent with the California Environmental Quality Act (California Public Resources Code Section 21000, *et seq.*)

**Estimated Minimum Funding Levels by Expenditure Category for Each County.** The ballot measure will include an estimate of minimum funding levels by expenditure category for Production, Preservation and Tenant Protection, if allowed by state law. These funding levels will depend on the value of the bond placed on the ballot. There is no minimum funding level for either the Housing Related Uses or administrative costs expenditure categories.

### **Overview of Decisionmaking and Oversight of the Bond Proceeds**

*Decisionmaking.* BAHFA and each county, city and county and city receiving a direct allocation of funds from the bond proceeds, must adopt an expenditure plan, after public outreach and participation, allocating its portion of the bond proceeds. BAHFA will adopt its own expenditure plan, known as the Regional

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Expenditure Plan. All expenditure plans and expenditures must be consistent with the Act (see § 64650), the California Constitution and other applicable law.

Eighty percent of the net bond proceeds are allocated to counties for expenditure within their county, including cities within their county. The county housing revenue is allocated based on the proportionate share of the tax revenue generated by each county. Expenditures of county housing revenue must be consistent with the expenditure plan adopted by the respective county, city and county or city receiving a direct allocation. Twenty percent of the net bond proceeds are allocated for regional housing revenue to be administered by BAHFA. The expenditure of regional housing revenue from the bond proceeds must be consistent with the expenditure plan adopted by the Executive Board and the BAHFA Board.

All expenditure plans are adopted after public outreach and public participation as prescribed by the Act.

*Oversight.* Both Section 53410 and ACA 1 require the bond program to have specific accountability measures, and some of those accountability measures overlap. The ballot measure will contain the required accountability measures: expenditures will only be for the specific purpose of the bond program and not for operating costs, a separate account for bond proceeds will be established, annual audit(s) and report(s) will be performed and produced, and an oversight committee will be convened. Other accountability measures may be added based on ACA 1 requirements.

At its January 25, 2024 meeting, the BAHFA Advisory Committee adopted the attached resolution, formally recommending that the BAHFA Board and BAHFA Executive Board adopt the resolutions necessary to submit a ballot measure that conforms to the foregoing elements to the voters at the November 2024 election.

**Issues:**

ACA 1 may be further amended before the BAHFA Board takes action to adopt a resolution to submit the ballot measure described above to the voters at the November 2024 election. The elements of BAHFA's ballot measure could be revised to reflect these amendments and retain the ability to take advantage of the 55 percent voter approval threshold. Staff is awaiting further clarity on the status of ACA 1 to prepare the resolutions that BAHFA's respective boards will adopt to submit the ballot measure to the voters. Accordingly, at this time, there is no draft resolution for either Committee to consider.

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**Recommended Action:**

Staff recommends that the ABAG Housing Committee refer to the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority and the BAHFA Oversight Committee refer to the Bay Area Housing Finance Authority Board adoption of a resolution to approve or submit, as applicable, a ballot measure for a general obligation bond for affordable housing in an amount not to exceed \$20 billion to the voters of the Nine Bay Area Counties at the November 2024 general election and that said ballot measure satisfies the requirements of the final version of Assembly Constitutional Amendment 1 (2023).

**Attachments:**

- A. Presentation
- B. BAHFA Advisory Committee Resolution No. 0001

**Reviewed:**



Andrew B. Fremier