

City of Oakland, Housing & Community Development
Notice of Funding Availability 2022
Acquisition and Conversion to Affordable Housing (ACAH) Program

Questions & Answers, Response #2, issued January 23, 2023

IMPORTANT NOTE ON 3-R REPORT DEADLINE :

Please note that the date for requesting a 3-R Report has been extended to Monday, January 23, 2023 at 5:00pm. Refer to Q5 below for additional information.

Q1: Please clarify the developer fee formula. Does the formula amount (i.e., \$80,000 base plus \$10,000 per unit) constitute a “minimum” amount, and the maximum is 5% of total developer costs excluding the developer fee? What happens when the maximum is lower than the minimum? Does a project that has existing ACAH funding use the 2022 NOFA developer fee formula, or will the total developer fee be based on the formula contained in the previous NOFA for which the project applied?

A1: As noted in the 2022 ACAH NOFA, the maximum allowable developer fee formula is based on \$80,000 plus \$10,000 per unit, up to a maximum of 5% of total development costs (excluding the developer fee). The City will calculate the maximum allowable developer fee based on the lesser amount of this developer fee formula of \$80,000 plus \$10,000 per unit, or 5% of total development costs (“TDC”) less the computed developer fee using the developer fee formula. Examples follow below.

In projects that have an existing award of ACAH funding, the City will honor the amount of developer fee calculated from that earlier award and in no case will the City lower the amount previously approved. However, if the resulting maximum allowable developer fee using the 2022 ACAH NOFA standard is higher than what was previously allowed (pursuant either to the City’s commitment letter for the prior funding award, or executed loan documents), then the City will adjust the amount of allowed maximum developer fee to provide the additional amount that would be allowed using the 2022 ACAH NOFA, and this will be reflected in the updated ACAH commitment letter as well as amended and restated loan documents.

Example 1: New ACAH funding application (no previous City funding); 4-unit project; \$2.5 million in total development costs (“TDC”)

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 4 units at \$10,000/unit = \$40,000, plus base amount of \$80,000 = \$120,000
- Calculation 2: TDC of \$2.5 million less \$120,000 = \$2,380,000
 - 5% * \$2,380,000 = \$119,000

- Lesser of results of Calculation 1 (\$120,000) or Calculation 2 (\$119,000) is \$119,000
- The maximum allowable developer fee will be \$119,000 based on Calculation 2

Example 2: Existing ACAH funding application with prior funding award that allowed for \$120,000 in developer fee; 4-unit project; \$2.5 million in TDC

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 4 units at \$10,000/unit plus base amount of \$80,000 = \$120,000
- Calculation 2: TDC of \$2.5 million less \$120,000 = \$2,380,000
 - $5\% * \$2,380,000 = \$119,000$
- Lesser of results of Calculation 1 (\$120,000) or Calculation 2 (\$119,000) is \$119,000
- Comparison to prior allowed developer fee: Prior funding award allowed for \$120,000 in developer fee; City will allow project to take up to \$120,000 in developer fee

Example 3: New ACAH funding application (no previous City funding); 18-project; \$9 million in TDC

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 18 units at \$10,000/unit plus base amount of \$80,000 = \$260,000
- Calculation 2: TDC of \$9 million less \$260,000 = \$8,740,000
 - $5\% * \$2,380,000 = \$437,000$
- Lesser of results of Calculation 1 (\$260,000) or Calculation 2 (\$437,000) is \$260,000
- The maximum allowable developer fee will be \$260,000 based on Calculation 1

Example 4: Existing ACAH funding application with prior funding award of \$2,700,000 that allowed for \$270,000 in developer fee (based on 10% of City subsidy); 18-unit project; \$9 million in TDC

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 18 units at \$10,000/unit plus base amount of \$80,000 = \$260,000
- Calculation 2: TDC of \$9 million less \$260,000 = \$8,740,000
 - $5\% * \$2,380,000 = \$437,000$
- Lesser of results of Calculation 1 (\$260,000) or Calculation 2 (\$437,000) is \$260,000
- Comparison to prior allowed developer fee: Prior funding award allowed for \$270,000 in developer fee. This exceeds the \$260,000 in maximum developer fee allowed in the 2022 ACAH NOFA; however, City will honor the previously agreed upon level of \$270,000.

Example 5: New ACAH funding application (no previous City funding); 55-unit project; \$24.75 million in TDC

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 55 units at \$10,000/unit plus base amount of \$80,000 = \$630,000
- Calculation 2: TDC of \$24.75 million less \$630,000 = \$24,120,000
 - 5% * \$24,120,000 = \$1,206,000
- Lesser of results of Calculation 1 (\$630,000) or Calculation 2 (\$1,206,000) is \$630,000
- The maximum allowable developer fee will be \$630,000 based on Calculation 1

Example 6: Existing ACAH funding application with prior award of \$5 million in City funding that allowed for \$500,000 in developer fee (based on 10% of City subsidy); 55-unit project; \$24.75 million in total development costs (“TDC”)

2022 ACAH NOFA Developer Fee Formula

- Calculation 1: 55 units at \$10,000/unit plus base amount of \$80,000 = \$630,000
- Calculation 2: TDC of \$24.75 million less \$630,000 = \$24,120,000
 - 5% * \$24,120,000 = \$1,206,000
- Lesser of results Calculation 1 (\$630,000) or Calculation 2 (\$1,206,000) is \$630,000
- Comparison to prior allowed developer fee: Prior funding award allowed for \$500,000 in developer fee. This is less than the \$630,000 in maximum developer fee allowed in the 2022 ACAH NOFA; therefore, City will increase the maximum allowed developer fee to \$630,000 through the loan commitment letter and loan documents.

Q2: *“For projects proposed as limited- or shared-equity housing cooperatives, during the cooperative phase of the project, the CLT will be required to budget for a 3rd party monitor/technical assistance provider for the first 5 years of the cooperative, to ensure that the projects acquire the necessary capacity for successful stewardship of the cooperative and long-term feasibility. This training provision may be capitalized in the development budget and is an eligible use of ACAH funds. Additional requires will pertain to projects proposed as limited or shared equity housing cooperatives – please see Term Sheet for CLTs/LEHCs in Exhibit B.”* **Our organizations provide these services. Is the intention, if awarded the third round NOFA, that the CLT hire a third party to provide the expertise we already have in-house? To be clear, we fully support budgeting for this, but it seems silly to be required to hire someone else! Makes sense for LEHCs, orgs, and projects without the expertise to hire a third-party consultant.**

A2: Yes, the CLT will be required to hire a third party for the first 5-years of the cooperative. The City has introduced this program guideline through the 2022 ACAH NOFA based on its research over the past 2 years on best practices in the area of affordable cooperative projects. Technical assistance provision is a key component for success, as City staff has learned through its conversations with practitioners and organizations working with cooperatives, as well as other public sector agencies in

the Bay Area with a history in funding cooperatives. In addition, because the City only began funding proposed cooperatives with the 2019 ACAH NOFA, but no cooperative has actually begun operation (i.e., projects are still standard rentals), it is crucial that the project owners meet the City's asset management requirements that will be specific to cooperatives. The City wants to ensure that for a relatively short period at the start of the cooperative project (5 years), that there is outside technical assistance guidance to the organization, regardless of the organization's in-house experience, which might be more general to cooperatives, but less experienced with City of Oakland requirements.

Q3: Can a stand-alone cooperative apply to the CLT/Cooperatives ACAH NOFA?

A3: As described in Section VII.G of the CLT/Cooperatives ACAH NOFA, the Community Land Trust/Cooperatives Subprogram is restricted to applicants that are Community Land Trusts (CLTs), or applicants can be shared- or limited-equity housing cooperatives, or permanent real estate cooperatives, either of which must be in a documented partnership with a CLT. The intention of this statement is that shared-equity cooperatives, limited-equity cooperatives, and permanent real estate cooperatives are eligible to apply, but they must be in a documented partnership with a CLT to apply. These entities cannot apply on their own for a proposed cooperative project, because the City wants to ensure that community land trusts are involved as the underlying land owner for the period of the City's regulatory agreement.

Q4: Could you confirm that we can apply with 1921 and 2022 36th Streets together as we did for the initial ACAH application?

A4: Yes, these two buildings constitute one project. You applied for and received funding for these two properties as one project and you operate the two buildings as one project. Thus, you can apply together for both properties.

Q5: Could you confirm if there is any flexibility with the deadline mentioned in the presentation for the 3-R report?

A5: The deadline for application to the 3-R Program was provided to HCDD by staff in the Building Bureau. The NOFA contained a deadline of 5 pm on Monday, January 16, 2023. Because the date was a holiday in observation of the Rev. Dr. Martin Luther King Jr. holiday, **the Building Bureau has agreed to a new deadline for filing of the 3-R report of no later than 5 pm on Monday, January 23, 2023.** The 3-R report is filed in connection with new projects and is not required for existing-funded ACAH projects unless your property has a change in the number of units proposed from the number of legal units in the City's records. We recommend that you reach out to the Building Bureau Records Division at 510-238-3606 or oakplancounter@oaklandca.gov prior to the deadline to discuss your project proposal and/or if you have questions.

Q6: If we are not an emerging developer, please confirm the number of projects we can apply with, which seems to be two for existing and two new projects, for a total of four.

A6: Please see Section IV.G (Multiple Applications) of the All-Developer Pool NOFA, or Section V.G (Multiple Applications) of the Community Land Trust/Cooperatives NOFA, as applicable. If your organization is not an emerging developer, nor plans to partner with one, you are limited to submitting up to two applications for existing funded projects, and two applications for new proposed projects.

Q7: Can a developer simultaneously meet the Minimum Developer Experience requirements under this NOFA, as well as being an Emerging Developer?

A7: Yes, a developer may be able to meet the minimum Development Entity Experience requirements as outlined in the NOFA Exhibit C (All Developer Pool) or NOFA Exhibit D (CLT/Cooperatives Subprogram), AND also meet the definition of an “Emerging Developer.” If applicant meets the Emerging Developer definition, the applicant qualifies for priority points in the scoring of applications. In addition, if a developer is an Emerging Developer, AND also meets the minimum development entity experience requirements, then the developer will not be required to enter a Joint Venture or MOU with another more experienced entity, enter an agreement with a housing development consultant, or plan for additional staffing.

Q8: If we have an LLC for a project should we apply under the LLC or as our organization?

A8: The LLC would be the applicant, but you can submit documentation as required for the project for which you are applying, as pertains to TUC the organization (e.g., resumes, organization background)

Q9: We are considering purchase of a building that has live/work units that are technically studios, but are very large in the range of 3,000 sf per unit. Is it possible to underwrite some of the rental income as commercial since residents are using the units for commercial businesses? Alternative (or concurrently) we could upgrade the units to 2- or 3-bedroom units when the units turn over. Would the City allow this kind of upgrade and how would this work with the 3-R Report?

A9: Live/work buildings are eligible types of building acquisitions in the ACAH Program. However, no, a portion of the units cannot be treated as commercial and thus exempt from the applicable rent limits. Furthermore, if the units are currently studios according to the building code, they must be underwritten as studios.

Q10: With regard to the substantiating the scope, the score sheet referenced either Home Inspection Report or CNA/PNA. Our CNA was woefully incomplete. We developed our scope using AEA (energy efficiency), architect, common sense (photos, our inspections of the units---like broken tiles, toilets, mold), contractor advice. Can we use these sources to document why these items are in our scope?

A10: Please provide the information you have to support your request. If you need additional information to determine the necessary scope of work, please get an updated CNA/PNA or additional property reports. The City will need documentation supporting the proposed scope, and we will need to feel confident in the accuracy of the proposed scope of work prior to awarding funds. Although costly, an investment in a revised and accurate CNA/PNA will likely result in cost savings throughout the entire rehabilitation process, since it will likely result in less surprises down the road once construction begins. That said, please also include your original PNA with your submittal and add any additional sources you have or documentation to support your work scope.

Q11: With regard to the maximum funding request, can you help us with the calculation? \$4.8 million (\$200,000 * 16 units) less initial ACAH (\$2,400,000) = \$2.4 million. In addition, we have third party sources (which we understand should not be included) and \$213,737 from the City of Oakland's Affordable Housing Trust Fund. Do we need to strip the latter from our total request, bringing down the total max request to \$2,186,263?

A11: The Affordable Housing Trust Fund award must be included as a City ACAH source when calculating the max subsidy. The non-City funds do not need to be counted.

Q12: What is a "Correction of Health and Safety Hazard", "Immediate health deficiency", and "code violation"? Are these actual citations or can they be validated via photos?

A12: Photographs are good documentation to include with your submittal. Some properties have documented code violations from the City's Building Department. If this is the case with your project, you would have received documentation from the City, and that documentation should be included in your application. Otherwise, in order to receive points in this category, applicants must submit documentation (reports, such as CNA/PNAs, structural reports, studies, photographs, etc.) to support your claims. Points will not be provided unless sufficient documentation is provided to support the claims.