

County of Santa Clara
Department of Planning and Development

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110



January 6, 2023

Gillian Adams, Principal Planner
Association of Bay Area Governments (ABAG) Executive Board
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105-2066

Dear Gillian,

I write to you on behalf of the County of Santa Clara, to request ABAG's approval of a RHNA transfer between the County and the City of San José. We appreciate the importance of accommodating the regional housing needs of the San Francisco Bay Area and ABAG's role in this effort. We especially appreciate recent efforts by ABAG staff to support our County in expeditiously preparing and processing this transfer request.

This request follows from the provisions of Government Code Section 65584.07(a), which states that a council of governments shall reduce the RHNA of unincorporated counties if one or more cities within the county agree to increase their shares by an equivalent amount. Pursuant to the statute, such a transfer must occur between adoption of the final RHNA and the close of the current housing element cycle, which in our case is January 31, 2023. When the County's RHNA appeal was rejected, ABAG highlighted such a transfer as an available remedy to accommodate RHNA shares in a way that fosters efficient infill and protection of agricultural and environmental resources. To date, we understand that the Counties of Sonoma and Napa have successfully completed such transfers.

By way of this letter and its attachments, we are providing an analysis of the factors and circumstances justifying the transfer, as well as supporting data.

Since January 12, 1972, when the County Board of Supervisors adopted the Urban Development Policies for Santa Clara County, an important predecessor to the County's first General Plan, the County and those cities within the County have committed through policy and practice to urban infill development and the preservation of peri-urban open space and farmland. We have renewed and redoubled this commitment in recent years, through the 2018 adoption and implementation of the Santa Clara Valley Agricultural Plan, and in 2021, through joint efforts with the City of San José to protect Coyote Valley.

In addition to its abiding commitment to preventing sprawl and preserving farmland, the County is a regional leader in the funding and development of affordable housing. Since the 2016 adoption of a \$950 million Affordable Housing Bond, our Board has approved the construction and/or rehabilitation of 5,052 affordable and supportive housing units throughout the County. The County has also begun residential redevelopment of County-owned sites to directly provide housing to our most vulnerable and poorest residents.

In accordance with Section 65584.07(b)(1), the County and the City will need to use the RHNA as revised by the transfers to complete our respective housing element updates. Given the statutory deadline of January 31, 2023, to complete this transfer, the County is looking forward to ABAG's assistance in concluding this critical step of approving the transfer. We welcome an opportunity to discuss any questions you have regarding our request, the transfer, or the information and analysis provided with this letter, and invite you to contact me at (408) 299-6741, or jacqueline.onciano@pln.sccgov.org, and Deputy Director Leza Mikhail, at (408) 299-5773, or leza.mikhail@pln.sccgov.org.

Respectfully,

DocuSigned by:

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Jacqueline R. Onciano, Director

Request for RHNA Transfer Between the County of Santa Clara and the City of San José

I. Request for Transfer

In accordance with Government Code Section 65584.07(a), the County of Santa Clara (County) requests ABAG approval of revised RHNA assignments for the County and the City of San José (City). The County and the City will execute a memorandum of agreement (MOA) wherein the City will agree to increase its RHNA assignment in an amount equivalent to the reduction of the County's RHNA assignment. Given that the statutory deadline for such a transfer is January 31, 2023, the County requests that ABAG grant conditional approval of a transfer of up to 3,125 units in advance of the necessary MOA between the County and City and subject to execution of the MOA between the County and City. The MOA between the County and City will identify the final number of units to be transferred and it will not exceed 3,125 units.

A draft of the transfer MOA is included as an attachment and supports the request for a transfer up to and not to exceed the amounts outlined in the first table below. Such a transfer is in keeping with the County's foundational policies to avoid comprehensive planning for urban densities in unincorporated islands. Analysis of the potential for residential development within the unincorporated islands of San José supports a transfer up to the full amount of the County's RHNA assignment of 3,125 units. Within the City's Urban Service Area (USA), using densities supported by the City's General Plan, the County's analysis shows that the City could realistically accommodate between 4,500 and 6,300 units on the 20 unincorporated parcels that are most appropriate and likely for residential development. These parcels have long been slated for annexation and would be annexed into San José prior to development. Once annexed, these unincorporated island parcels gain access to urban services like sewer and water, and are therefore the best locations for accommodating new residential development in the County.

The first table below delineates the breakdown of a 3,125-unit transfer to the City. As another example, the second table shows what a transfer of a lesser amount (2,000 units) would look like, pursuant to the proportionality requirement of Government Code Section 65584.07(a)(3).

Table 1. County and City RHNA Allocations Before and After a 3,125-unit Transfer

	RHNA		Transfer		Revised RHNA	
	City	County	City	County	City	County
Very Low-Income Units	15,088	828	828	-828	15,916	0
Low-Income Units	8,687	477	477	-477	9,164	0
Moderate-Income Units	10,711	508	508	-508	11,219	0
Above Moderate-Income Units	27,714	1,312	1,312	-1,312	29,026	0
Total	62,200	3,125	3,125	-3,125	65,325	0

Table 2. County and City RHNA Allocations Before and After a 2,000-unit Transfer

	RHNA		Transfer		Revised RHNA	
	City	County	City	County	City	County
Very Low-Income Units	15,088	828	530	-530	15,618	298
Low-Income Units	8,687	477	305	-305	8,992	172
Moderate-Income Units	10,711	508	325	-325	11,036	183
Above Moderate-Income Units	27,714	1,312	840	-840	28,554	472
Total	62,200	3,125	2,000	-2,000	67,325	1,125

Since the 2016 passage of a \$950 million Affordable Housing Bond, the County has already approved funding for the construction and/or rehabilitation of 5,052 units of affordable and supportive housing, and since 2019, the County has begun the process of redeveloping five sites owned by the County for over 300 units of affordable housing, much of which will be reserved specifically for teachers, individuals with disabilities, and former foster youth.

Irrespective of the number of units transferred to the City, the County will continue to make significant investments in affordable housing across jurisdictions in the County and to utilize County-owned properties for the development of the most-needed forms of housing, all of which will be within the USAs.

II. Compliance with Requirements of Section 65584.07(a)

Under Government Code Section 65584.07(a), counties may reduce their share of regional housing needs by transferring units to one or more of the cities within the county. This section of the law serves to recognize the challenges faced by unincorporated jurisdictions, which often steward agricultural and environmental resources and are not broadly served by municipal utilities.

As stated in Section 65584.07(a)(4), the council of governments *"shall approve the proposed reduction if it determines that conditions set forth in paragraphs (1), (2), and (3) have been satisfied."*

- a. The condition in Section 65584.07(a)(1) states: *"One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction."* An understood condition of any transfer is that an agreement between the County and the City of San José must be executed on or before January 31, 2023, and that any increase in the City's RHNA will be equivalent to a decrease in the County's RHNA.
- b. The condition in Section 65584.07(a)(2) states: *"The transfer of shares shall only occur between a county and cities within that county."* The requested transfer would only occur between the County and the City of San José, which is within Santa Clara County.
- c. The condition in Section 65584.07(a)(3) states: *"The county's share of low-income and very*

low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above-moderate income housing is reduced." Any transfer of units between the City and the County will be proportionately distributed across all income levels.

III. Factors and Circumstances Justifying this Request

Section 65584.07(a)(4) further requires that *"the county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision."* The factors and circumstances justifying the requested transfer are summarized below, revolving around a key principle: that cohesive and orderly growth, coordinated between the County and its cities, will result in the preservation of important remaining agricultural lands and open space, and spur the development of infill development that will be inherently more affordable, equitable, sustainable, and climate-resilient than sprawl development.

The County's land use policies have been forged through a longstanding commitment to curtail sprawl by focusing growth within incorporated areas and urban unincorporated areas within USAs. On January 12, 1972, the County Board of Supervisors adopted the Urban Development Policies for Santa Clara County, which explicitly states that "existing and future urban land uses should be in cities" and that unincorporated areas within a city's USA should be: (1) pre-zoned by the city, (2) annexed by the city as soon as possible, and (3) that the County should not allow urban uses. The development of the County's first General Plan followed from and further elaborated upon these policies. Today, the County's General Plan reflects these principles, and each iteration of the General Plan has employed them as a foundation for the policies that have followed.

County policies facilitate greater cohesive development patterns between incorporated and unincorporated areas and should be followed to accommodate the County's RHNA assignment of 3,125 units, which is a 1,028 percent increase from the prior RHNA cycle. This allocation represents an urban scale of housing development that is most appropriately located within the USAs of the County and annexed into incorporated jurisdictions, consistent with countywide policies. First, General Plan Policy C-GD 2 states that "[u]rban development shall occur only within cities' urban services areas (USAs) and under city jurisdiction" and General Plan Policy R-4 further explains that "[p]lanning for and providing services to urban development is the responsibility of cities in cooperation with special districts involved[.]" The General Plan assumes, as a matter of policy, that urban unincorporated areas will be annexed, and General Plan Policy R-6 provides, "[a]ssuming that all urban unincorporated areas will eventually be annexed by the cities, it is appropriate that the city which will have ultimate jurisdiction over an area have the ongoing authority to plan for what are presently unincorporated areas." Relatedly, the County's Zoning Ordinance provides that the County does not allow any significant projects within these areas unless the project conforms with the affiliated city's General Plan, and the city has the option to annex the project area. In addition, the County works with cities to ensure all utilities and services to USAs are provided for by the respective cities. These policies have been in place for over 25 years and are actively utilized by cities to plan for the unincorporated areas within their respective USAs.

Without the transfer of units from the County to the City of San José, the County will be required to consider modifying existing policies to facilitate urban development of unincorporated pockets by the County while concurrently selecting rural sites for housing, outside the USAs, which would upend the County's foundational land use policies and upset longstanding working relationships with the incorporated jurisdictions. Selecting rural sites outside USAs would inevitably result in an

increase of vehicle miles traveled (VMT) and related greenhouse gas emissions and increase the vulnerability and loss of prime agricultural lands and open space.

Additionally, the County continues to be a strong advocate for and significant funder of affordable housing in the incorporated and urbanized areas of the County. The Board has taken a strong leadership position and actions to support housing production within Santa Clara County and to meet the ongoing housing needs of County residents. This includes implementation of the 2016 "Measure A" Affordable Housing Bond, a \$950 million general obligation bond approved by voters in 2016, to fund supportive and affordable housing. As of November 1, 2022, the Board has approved funding to support the construction and/or rehabilitation of 5,052 affordable and supportive housing units throughout the County. All these housing units have been counted towards the individual cities' RHNA requirements. Furthermore, the County continues to purchase parcels in cities and repurpose existing county-owned sites to build affordable housing to address the regional shortage. In 2019, the County began a process to select developers that are aligned with the County's goals of increasing affordable housing for Santa Clara County's most vulnerable and poorest residents, and the County has since begun residential redevelopment of five County-owned sites that are within USAs, which will result in over 300 units of affordable housing, much of which will be reserved for teachers, individuals with disabilities, and former foster youth.

The requested transfer would advance the principles of agricultural preservation and urban-centered infill growth by ensuring that additional housing is planned and developed within the City. In addition, the transfer will support more housing being developed in areas where water and wastewater utilities and access to other urban services are available, something that is not available in the unincorporated County.

IV. Conformance with RHNA Objectives in Section 65584(d)

ABAG has asked that the transfer request demonstrate conformance with the RHNA objectives in Section 65584(d), although this is not a requirement for a transfer. Nonetheless, the requested transfers would conform to the RHNA Objectives in Government Code Section 65584(d), as outlined below.

- **65584(d)(1):** *Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.*

The RHNA transfer will not change the total amount or type of housing that must be accommodated within the County but rather will place that housing on sites with available public utilities and access to urban services. The unincorporated areas with the greatest housing development potential have been annexed to the cities. The requested transfer will likely result in greater increases in affordable housing supply than would occur in the County because of the services available to the incorporated areas and access to services is required to obtain tax credits and other affordable housing funds.

The County will also continue to offer financial support for affordable housing developments in the City as well as in the unincorporated urban areas. The County provides a broad array of services to City residents, especially lower-income residents, including child welfare services, public health services, mental health services, self-

sufficiency services, and services for older adults.

- **65584(d)(2):** *Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region's greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.*

ABAG encouraged counties that appealed their Draft RHNA (Contra Costa, Sonoma, Marin, Santa Clara) to pursue transfer agreements with their cities to "foster efficient infill and protection of agricultural and environmental resources."

The requested transfer would promote infill development and other listed objectives by encouraging development within urbanized areas, rather than in agricultural zones, where parcel sizes are considerably larger, development is more dispersed, and fewer urban services (including utilities) are available. While residents of the City who work in the unincorporated area will have to travel to their jobs, most jobs in the county are located within the cities, and the cities are where employees go for most urban services like groceries, hospitals, schools, etc. The cities also have more frequent transit service. All this means that, in general, development of infill housing in the cities would result in fewer and shorter auto trips and lower emissions than housing in the unincorporated area.

- **65584(d)(3):** *Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.*

The County and the cities within Santa Clara County have long agreed that urban services and development incompatible with agriculture belong within the cities, and approach the preservation of our remaining farmland and open spaces as a joint responsibility. The requested transfer would not change the region's jobs-housing balance, although by encouraging additional units in the City, where development of housing is more likely, it could incrementally improve the balance between jobs and housing while also reducing VMT and associated greenhouse gas emissions.

The County also recognizes that there are agricultural uses within the unincorporated area that involve employment. Farmworkers, winery employees, and similar workers must travel from the cities to their job sites unless they can find housing closer to their employment. The County strongly encourages, and in 2020 significantly streamlined, the permitting of new agricultural employee housing developments. The County is now working with ABAG staff to support similar streamlining efforts in other counties and cities in the region.

- **65584(d)(4):** *Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.*

The requested transfer will comply with State law, which requires lower-income (very low-income and low-income) units to be transferred in an amount proportionate to moderate and above-moderate units. In other words, the County is not seeking to transfer a disproportionate share of its lower income units.

- **65584(d)(5):** *Affirmatively furthering fair housing. (Based on Section 65584(e), "affirmatively furthering fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.)*

As stated above, the requested transfer will comply with State law and the County is not seeking to transfer a disproportionate share of its lower income units. Also, consistent with State law and HCD guidance, both the County and City have conducted detailed AFFH assessments as part of their Housing Element updates.

V. Supporting Information

The draft transfer MOA between the City and the County is included here as an attachment.