

# Update on 6<sup>th</sup> Cycle Housing Element Progress

ABAG Housing &  
BAHFA Oversight  
Committees

March 9, 2023



# The 6<sup>th</sup> Cycle Housing Elements are significantly more challenging than ever before.

## Changes in State Law

- New state methodology resulted in larger Bay Area RHNA numbers (235% of last cycle)
- Tighter rules for identifying land where development is feasible and likely to occur in the 8-yr planning cycle
- New Affirmatively Furthering Fair Housing (AFFH) requirements

## Increased State Enforcement

- New HCD “Housing Accountability Unit”
- New Attorney General “Housing Strike Force”

# ABAG HOUSING ELEMENTS

## ABAG 6<sup>th</sup> Cycle Housing Element Statistics

**Deadline: 1/31/23**  
*(as of 2/15/23)*

<b>ADOPTED</b>	<b>39</b>
Certified	4
Out of compliance	1
In review	34
<b>SUBSEQUENT DRAFTS</b>	<b>10</b>
In substantial compliance	1
Out of compliance	1
In review	8
<b>INITIAL DRAFTS</b>	<b>48</b>
Out of compliance	18
In review	30
<b>NO DRAFTS</b>	<b>12</b>

# 6<sup>th</sup> Cycle Housing Element Statistics in Other Regions

*(as of 2/10/23)*

COG	# of Jurisdictions	HCD CERTIFIED
SLOCOG Due 12/31/20	8	100%
SANDAG Due 4/15/21	19	58%
SACOG Due 5/15/21	28	86%
SCAG Due 10/15/21	197	45%

**AFFH GUIDANCE ISSUED 4/27/21**

# Jan 31 was one milestone in a multi-year process. Other deadlines have different consequences.

Jan. 31, 2023: Deadline to adopt compliant Housing Element

- Consequence: Builder's Remedy

★ May 31, 2023: HCD must certify the Housing Element

- Consequence: Rezoning must be completed in 1 year instead of 3

Dec. 31, 2023: MTC requires HCD certification for OBAG3

- Consequence: Ineligible for some regional funding

Jan. 31, 2024: Rezoning deadline if did not satisfy the 5/31/23 certification deadline

- Consequence: HCD will not certify Housing Element until rezoning is complete

2026: Rezoning deadline if 5/31/23 certification deadline was met

## State Funding Eligibility

- Various programs require HE certification: IIG, AHSC, Caltrans Sus. Trans. Planning Grant
- Deadlines depend on program; Mar-Sept 2023
- Guidelines depend on program; some allow conditional award based on “presumptive compliance”

# The “Builder’s Remedy”

## When does Builder’s Remedy apply?

- What’s Clear:
  - It applies when a jurisdiction has not adopted a final Housing Element “in substantial compliance” with state law
- What’s Not Clear:
  - Whether it applies if HCD finds the adopted Element out of compliance
  - Whether it applies if HCD has not made any finding of compliance (e.g., HCD has not returned comments to the local jurisdiction yet)
  - Uncertainty potentially resolved via litigation

## Practical limitations on the Builder’s Remedy

- Financial feasibility (20% lower-income or 100% moderate/middle-income units)
- Hesitance to erode political goodwill from “repeat players”
- Lack of clarity in application

# Regional Housing Technical Assistance

- **Funding for every jurisdiction**
- **County-based Planning Collaboratives**
  - Tailored technical assistance from consultant paid by ABAG
  - Types of assistance are determined by member cities & towns
- **Engagement/outreach resources**
  - Free translation assistance & meeting facilitation
- **Wide range of technical products**
  - Housing Element Site Selection (HESS) Tool
  - Pre-approved data packets
  - AFFH policies & programs
- **Template staff reports and presentations**
- **Coming Soon**: model ordinances; additional support for Housing Element implementation

Full Technical Assistance Index updated monthly: <https://abag.ca.gov/tools-resources/digital-library/indexavailabletechnicalassistancedocx>

# From Planning to Production: Bay Area RHNA Progress 1999-2021

RHNA		Permits	Percent of RHNA Permitted				
Cycle	Total Need	Permits Issued	All	Very Low Income	Low Income	Moderate Income	Above Moderate Income
1999-2006	230,743	213,024	92%	44%	79%	38%	153%
2007-2014	214,500	123,098	57%	29%	26%	28%	99%
2015-2022	187,990	193,539	103%	31%	43%	51%	189%
2023-2031	441,176	---	---	---	---	---	---

Sources: 1999-2006 and 2007-2014 data compiled by ABAG staff. 2015-2023 data from [HCD's Housing Element Implementation and APR Dashboard](#).



# **BAHFA, ABAG, and MTC can play a critical role in implementing 6<sup>th</sup> Cycle Housing Elements.**

**Land use and housing policies that rely on market-driven development can help meet lower-income RHNA.**

- Given trends of above-moderate income production, value recapture strategies (inclusionary, density bonus, etc.) can make a difference if implemented region-wide
- Differing market conditions will require local calibration of policies
- BAHFA, ABAG, and MTC will provide technical assistance.

**However, meeting 6<sup>th</sup> Cycle lower-income RHNA targets will require significant new public subsidy.**

- BAHFA Board and ABAG Executive Board have directed staff to explore potential \$10-20 billion regional housing bond in 2024
- 80% of funding would return to counties of origin, based on assessed values
- BAHFA retains 20% for high-impact, regional funding programs (with ABAG consent on Expenditure Plan)



# Thank You

## Daniel Saver

[dsaver@BayAreaMetro.gov](mailto:dsaver@BayAreaMetro.gov)