



375 Beale Street
Suite 700
San Francisco, California
94105

Meeting Agenda - Final

ABAG Administrative Committee

Chair, Jesse Arreguin, Mayor, City of Berkeley
Vice Chair, Belia Ramos, Supervisor, County of Napa

Friday, September 10, 2021

9:50 AM

Board Room - 1st Floor (REMOTE)

Special Meeting

Association of Bay Area Governments Administrative Committee

The ABAG Administrative Committee will conduct a public hearing on RHNA Appeals and will meet in the Bay Area Metro Center or remotely via Zoom on the following dates:

Friday, September 24, 2021, 9:00 a.m. to 5:00 p.m., via Zoom

Wednesday, September 29, 2021, 9:00 a.m. to 5:00 p.m., via Zoom

Friday, October 8, 2021, 2:00 p.m. to 5:00 p.m.

Friday, October 15, 2021, 1:00 p.m. to 5:00 p.m.

Friday, October 22, 2021, 9:00 a.m. to 5:00 p.m.

Friday, October 29, 2021, 9:00 a.m. to 5:00 p.m.

Friday, November 12, 2021, 10:30 a.m. to 12:00 p.m.

In light of Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak and in accordance with Executive Order N-29-20 issued by Governor Newsom on March 17, 2020 and the Guidance for Gatherings issued by the California Department of Public Health, the meeting will be conducted via webcast, teleconference, and Zoom for committee, commission, or board members who will participate in the meeting from individual remote locations.

A Zoom panelist link for meeting participants will be sent separately to committee, commission, or board members.

The meeting webcast will be available at: <https://abag.ca.gov/meetings-events/live-webcasts>

Members of the public are encouraged to participate remotely via Zoom at the following link or phone number:

Please click the link below to join the webinar:

<https://bayareametro.zoom.us/j/86899765276>

Or One tap mobile :

US: +14086380968,,86899765276# or +16699006833,,86899765276#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 408 638 0968 or +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 646 876 9923 or +1 301 715 8592 or +1 312 626 6799 or 833 548 0276 (Toll Free) or 833 548 0282 (Toll Free) or 877 853 5247 (Toll Free) or 888 788 0099 (Toll Free)

Webinar ID: 868 9976 5276

Detailed instructions on participating via Zoom are available at:
<https://abag.ca.gov/zoom-information>

Committee members and members of the public participating by Zoom wishing to speak should use the “raise hand” feature or dial “*9”.

In order to get the full Zoom experience, please make sure your application is up to date.

Members of the public may participate by phone or Zoom or may submit comments by email at info@bayareametro.gov by 5:00 p.m. the day before the scheduled meeting date. Please include the committee or board meeting name in the subject line. Due to the current circumstances there may be limited opportunity to address comments during the meeting. All comments received will be submitted into the record.

The ABAG Administrative Committee may act on any item on the agenda.

The meeting is scheduled to begin at 9:50 a.m.,
or immediately following the preceding ABAG/MTC committee meetings.

Agenda, roster, and webcast available at <https://abag.ca.gov>

For information, contact Clerk of the Board at (415) 820-7913.

Roster

Jesse Arreguin, Pat Eklund, Neysa Fligor, Dave Hudson, Otto Lee, Rafael Mandelman, Karen Mitchoff, Raul Peralez, David Rabbitt, Belia Ramos, Carlos Romero, Lori Wilson

1. Call to Order / Roll Call / Confirm Quorum

2. Public Comment

Information

3. Committee Member Announcements

Information

4. Chair's Report

- 4.a. [21-1117](#) ABAG Administrative Committee Chair's Report for September 10, 2021

Action: Information

Presenter: Jesse Arreguin

5. Executive Director's Report

- 5.a. [21-1118](#) Executive Director's Report for September 10, 2021

Action: Information

Presenter: Therese McMillan

6. Regional Housing Needs Allocation (RHNA)

6.a. [21-1083](#) RHNA Appeals Public Hearing Orientation

Presentation on the RHNA appeals procedures adopted by the ABAG Executive Board in May 2021, as well as further context on the adopted RHNA methodology and eligible appeal grounds identified in State law, in advance of the appeals hearing commencing later in the month.

Action: Information

Presenter: Gillian Adams

Attachments: [06a 1 Summary Sheet RHNA Appeals Hearing Orientation v2.pdf](#)
[06a 2 Attachment A HCD Comment RHNA Appeals.pdf](#)
[06a 3 Attachment B ABAG 2023-2031 RHNA Appeals Procedures.pdf](#)
[06a 4 Attachment C RHNA Appeals Hearing Schedule.pdf](#)
[06a 5 Attachment D RHNA Appeals Hearing Orientation v2.pdf](#)

7. Adjournment / Next Meeting

The ABAG Administrative Committee will commence a public hearing on RHNA Appeals remotely via Zoom on Friday, September 24, 2021, 9:00 a.m. to 5:00 p.m.

Public Comment: The public is encouraged to comment on agenda items at Committee meetings by completing a request-to-speak card (available from staff) and passing it to the Committee secretary. Public comment may be limited by any of the procedures set forth in Section 3.09 of MTC's Procedures Manual (Resolution No. 1058, Revised) if, in the chair's judgment, it is necessary to maintain the orderly flow of business.

Meeting Conduct: If this meeting is willfully interrupted or disrupted by one or more persons rendering orderly conduct of the meeting unfeasible, the Chair may order the removal of individuals who are willfully disrupting the meeting. Such individuals may be arrested. If order cannot be restored by such removal, the members of the Committee may direct that the meeting room be cleared (except for representatives of the press or other news media not participating in the disturbance), and the session may continue.

Record of Meeting: Committee meetings are recorded. Copies of recordings are available at a nominal charge, or recordings may be listened to at MTC offices by appointment. Audiocasts are maintained on MTC's Web site (mtc.ca.gov) for public review for at least one year.

Accessibility and Title VI: MTC provides services/accommodations upon request to persons with disabilities and individuals who are limited-English proficient who wish to address Commission matters. For accommodations or translations assistance, please call 415.778.6757 or 415.778.6769 for TDD/TTY. We require three working days' notice to accommodate your request.

可及性和法令第六章: MTC 根據要求向希望來委員會討論有關事宜的殘疾人士及英語有限者提供服務/方便。需要便利設施或翻譯協助者，請致電 415.778.6757 或 415.778.6769 TDD / TTY。我們要求您在三個工作日前告知，以滿足您的要求。

Acceso y el Titulo VI: La MTC puede proveer asistencia/facilitar la comunicación a las personas discapacitadas y los individuos con conocimiento limitado del inglés quienes quieran dirigirse a la Comisión. Para solicitar asistencia, por favor llame al número 415.778.6757 o al 415.778.6769 para TDD/TTY. Requerimos que solicite asistencia con tres días hábiles de anticipación para poderle proveer asistencia.

Attachments are sent to Committee members, key staff and others as appropriate. Copies will be available at the meeting.

All items on the agenda are subject to action and/or change by the Committee. Actions recommended by staff are subject to change by the Committee.



Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 21-1117 **Version:** 1 **Name:**
Type: Report **Status:** Informational
File created: 8/16/2021 **In control:** ABAG Administrative Committee
On agenda: 9/10/2021 **Final action:**
Title: ABAG Administrative Committee Chair's Report for September 10, 2021
Sponsors:
Indexes:
Code sections:
Attachments:

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
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ABAG Administrative Committee Chair's Report for September 10, 2021

Jesse Arreguin

Information



Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 21-1118 **Version:** 1 **Name:**
Type: Report **Status:** Informational
File created: 8/16/2021 **In control:** ABAG Administrative Committee
On agenda: 9/10/2021 **Final action:**
Title: Executive Director's Report for September 10, 2021
Sponsors:
Indexes:
Code sections:
Attachments:

| Date | Ver. | Action By | Action | Result |
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Executive Director's Report for September 10, 2021

Therese McMillan

Information



Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

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|----------------------|---|----------------------|---|-------------------------------|--|
| File #: | 21-1083 | Version: | 1 | Name: | |
| Type: | Report | Status: | | Informational | |
| File created: | 8/11/2021 | In control: | | ABAG Administrative Committee | |
| On agenda: | 9/10/2021 | Final action: | | | |
| Title: | RHNA Appeals Public Hearing Orientation | | | | |

Presentation on the RHNA appeals procedures adopted by the ABAG Executive Board in May 2021, as well as further context on the adopted RHNA methodology and eligible appeal grounds identified in State law, in advance of the appeals hearing commencing later in the month.

Sponsors:

Indexes:

Code sections:

Attachments: [06a 1 Summary Sheet RHNA Appeals Hearing Orientation v2.pdf](#)
[06a 2 Attachment A HCD Comment RHNA Appeals.pdf](#)
[06a 3 Attachment B ABAG 2023-2031 RHNA Appeals Procedures.pdf](#)
[06a 4 Attachment C RHNA Appeals Hearing Schedule.pdf](#)
[06a 5 Attachment D RHNA Appeals Hearing Orientation v2.pdf](#)

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
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RHNA Appeals Public Hearing Orientation

Presentation on the RHNA appeals procedures adopted by the ABAG Executive Board in May 2021, as well as further context on the adopted RHNA methodology and eligible appeal grounds identified in State law, in advance of the appeals hearing commencing later in the month.

Gillian Adams

Information

Association of Bay Area Governments

Administrative Committee

September 10, 2021

Agenda Item 6.a.

Regional Housing Needs Allocation (RHNA)

Subject: RHNA Appeals Public Hearing Orientation

Background: RHNA is the state-mandated¹ process to identify the number of housing units (by affordability level) that each jurisdiction must accommodate in the Housing Element of its General Plan. The California Department of Housing and Community Development (HCD) determined Bay Area communities must plan for 441,176 new housing units from 2023 to 2031.

On May 20, 2021, the ABAG Executive Board approved the [Final Regional Housing Needs Allocation \(RHNA\) Methodology and Draft Allocations](#). Release of the Draft RHNA Allocations initiated the appeals phase of the RHNA process.² ABAG received 28 appeals from Bay Area jurisdictions by the July 9, 2021 deadline. Appeal materials submitted by jurisdictions are available on the [ABAG website](#).

The list below highlights the key steps and anticipated schedule for the appeals process:

- **July 9:** Deadline for appeal submissions by local jurisdictions or HCD.
- **August 30:** Deadline for comments on appeals submitted. Nearly 450 comments were received, including a letter from HCD (**Attachment A**).
- **September and October:** ABAG Administrative Committee conducts public hearing to consider appeals and comments received.
- **October or November:** ABAG Administrative Committee ratifies written final determination on each appeal and issues Final RHNA Allocations that adjust allocations because of successful appeals.
- **December:** ABAG Executive Board conducts public hearing to adopt Final RHNA Plan.

¹ See California [Government Code §65584](#).

² See [Government Code Section 65584.05](#) for an overview of the appeals process.

Association of Bay Area Governments

Administrative Committee

September 10, 2021

Agenda Item 6.a.

Regional Housing Needs Allocation (RHNA)

Issues:

Public Hearing to Consider RHNA Appeals

Per Government Code Section 65584.05(d), ABAG is required to hold a public hearing to consider all appeals filed. On May 20, 2021, the ABAG Executive Board delegated authority to the Administrative Committee to conduct the public hearing and to make the final determinations on the appeals. The Board also approved the *ABAG 2023-2031 RHNA Appeals Procedures (Attachment B)*, which includes policies for conducting the appeals hearing and the methodology for redistributing units from appeals that are upheld.

Statutory Bases for Appeal of a Draft RHNA Allocation

Housing Element Law prescribes a relatively limited and narrow set of circumstances where a jurisdiction can appeal an allocation:

1. **ABAG failed to adequately consider information submitted as part of the local jurisdiction survey.** ABAG conducted this survey in early 2020 and, as required by law, requested information related to the factors identified in Housing Element Law that must be considered in the RHNA methodology and information about affirmatively furthering fair housing.
2. **ABAG did not determine the jurisdiction's allocation in accordance with its adopted methodology** and in a manner that furthers, and does not undermine, the RHNA objectives.
3. **A significant and unforeseen change in circumstances has occurred** in the local jurisdiction or jurisdictions that merits revision of information submitted as part of the local jurisdiction survey. *Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.*

Public Hearing to Consider Appeals

The ABAG Administrative Committee will hold the required public hearing over six days in September and October. **Attachment C**

Association of Bay Area Governments

Administrative Committee

September 10, 2021

Agenda Item 6.a.

Regional Housing Needs Allocation (RHNA)

shows the hearing schedule, including the proposed date/time for hearing the appeal from each applicant.

ABAG-MTC staff presented an overview of the RHNA appeals process to the Administrative Committee in May 2021, prior to adoption of process guidelines by the ABAG Executive Board. In advance of the public hearing, ABAG-MTC staff will provide a recap on key background information to help committee members prepare for the appeals process. This presentation will review the:

- Main components of the adopted final RHNA methodology.
- Statutory requirements for an appeal, including required RHNA objectives under State law and factors that ABAG had to consider in developing the methodology.
- Approach for conducting the appeal hearing.

Recommended Action: Information

Attachments:

- A. Comment Letter from HCD on Appeals Submitted
- B. *ABAG 2023-2031 RHNA Appeals Procedures*
- C. RHNA Appeals Hearing Schedule
- D. Presentation

Reviewed:


Therese W. McMillan

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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Sacramento, CA 95833-1829
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August 30, 2021

Therese W. McMillan, Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA 94105

Dear Therese W. McMillan:

RE: Comment on Appeals of the Draft Regional Housing Need Allocation (RHNA) Plan

The California Department of Housing and Community Development (HCD) appreciates the opportunity to comment on the 28 appeals ABAG has received regarding the draft RHNA plan. The appeals process is an important phase in the development of a RHNA plan that ensures that all relevant factors and circumstances are considered.

The only circumstances under which a jurisdiction may appeal are:

- 65584.05(b)(1): The council of governments failed to adequately consider the information regarding the factors listed in subdivision (e) of section 65584.04.
- 65584.05(b)(2): The council of governments failed to determine the share of the regional housing need in a manner that furthers the intent of the objectives listed in subdivision (d) of section 65584.
- 65584.05(b)(3): A significant unforeseen change in circumstances occurred in the local jurisdiction that merits a revision of the information submitted pursuant to subdivision (e) of Section 65584.04.

HCD urges ABAG to only consider appeals that meet the statutory criteria.

Per Government Code section 65584.05(e)(1), ABAG's final determination on whether to accept, reject, or modify any appeal must be accompanied by written findings. The findings must describe how the final determination is based upon the adopted RHNA allocation methodology and why any revisions made are necessary to further the statutory objectives of RHNA described in Government Code section 65584(d).

HCD has completed review of the appeals and offers the following comments. Among the appeals based on Government Code section 65584.05(b)(1), several appeals state that ABAG failed to consider the circumstance described in Government Code section 65584.04(e)(2)(B), citing the lack of land suitable for development as a basis for the appeal. However, this section states that the council of governments may not limit its consideration of suitable housing sites to existing zoning and land use restrictions and must consider the potential for increased development under alternative zoning and land use restrictions. Any comparable data or documentation supporting this appeal

should contain an analysis of not only land suitable for urban development, but land for conversion to residential use, the availability of underutilized land, and opportunity for infill development and increased residential densities. In simple terms, this means housing planning cannot be limited to vacant land, and even communities that view themselves as built out or limited due to other natural constraints such as fire and flood risk areas must plan for housing through means such as rezoning commercial areas as mixed-use areas and upzoning non-vacant land.

With regard to appeals submitted related to Government Code section 65584.05(b)(2), that ABAG failed to determine the RHNA in a manner that furthers the statutory objectives, HCD reviewed ABAG's draft allocation methodology and found that the draft RHNA allocation methodology furthered the statutory objectives described in Government Code section 65584.

Among the appeals based on Government Code section 65584.05(b)(2), many argue that ABAG's RHNA allocation methodology does not adequately promote access to jobs and transit, as required in statutory objectives two and three. HCD's review of ABAG's RHNA methodology found the allocation does further the environmental principles of objective two. ABAG's methodology allocates nearly twice as many RHNA units to jurisdictions with higher jobs access on a per capita basis while also allocating more per capita RHNA to jurisdictions with higher jobs access via transit. Regarding objective three, HCD found ABAG's methodology allocates more per capita RHNA to jurisdictions with higher jobs/housing imbalances. According to HCD's analysis, jurisdictions within the healthy range of 1.0 to 1.5 jobs for every housing unit receive, on average, less per capita RHNA. Jurisdictions with the highest imbalances – 6.2 and higher – receive more per capita RHNA.

Several appeals are based upon the provision described in Government Code section 65584.05(b)(3), arguing that the COVID-19 pandemic represents a significant and unforeseen change in circumstances that will affect job growth, commute patterns, and transit ridership. The COVID-19 pandemic has only increased the importance of ensuring that each community is planning for sufficient affordable housing as essential workers, particularly lower income ones, continue to commute to their places of business. Appeals also argued that drought and wildfire risk represent significant and unforeseen changes in circumstances that will limit capacity for future housing. However, these issues do not affect one city, county, or region in isolation. ABAG's allocation methodology encourages more efficient land-use patterns which are key to adapting to more intense drought cycles and wildfire seasons. The methodology directs growth toward infill in existing communities that have more resources to promote climate resilience and conservation efforts.

Lastly, several appeals state that the Regional Housing Needs Determination (RHND) HCD provided to the ABAG region is too large. The council of government may file an objection within 30 days of HCD issuing the RHND, per Government Code section 65584.01(c)(1). ABAG did not object to the RHND. Government Code section 65584.05(b) does not allow local governments to appeal the RHND during the 45-day period following receipt of the draft allocation. There are no further appeal procedures available to alter the ABAG region's RHND for this cycle.

HCD acknowledges that many local governments will need to plan for more housing than in the prior cycle to accommodate a RHND that more fully captures the housing need and to accommodate statutory objectives of RHNA that shift more housing planning near jobs, transit, and resources. The Bay Area region's housing crisis requires each jurisdiction to plan for the housing needs of their community and the region. In recognition of this effort there are more resources available than ever before to support jurisdictions as they prepare to update their 6th cycle housing elements:

- Regional Early Action Planning Grants (REAP) 2.0 (available early 2022) – A \$600 million one-time allocation for regional governments. Eligible REAP applicants can apply for these funds for use on transformative planning and implementation activities that support infill housing, and other actions that enable meeting housing goals that also result in per capita VMT reductions.
- SB 2 Permanent Local Housing Allocation – Approximately \$175 million annually in ongoing funding for local governments to increase affordable housing stock.
- Prohousing Designation Program – Ongoing awards distributed over-the-counter to local jurisdictions with compliant Housing Elements and prohousing policies. Those awarded receive additional points or application processing preference when applying to housing and non-housing funding programs including the Affordable Housing & Sustainable Communities (AHSC), Infill Infrastructure Grant (IIG), and Transformative Climate Communities (TCC).

If HCD can provide any additional assistance, or if you, or your staff, have any questions, please contact Tyrone Buckley, Assistant Deputy Director of Fair Housing, tyrone.buckley@hcd.ca.gov



Tyrone Buckley
Assistant Deputy Director of Fair Housing



2023-2031 RHNA Cycle Appeals Procedures

Pursuant to [Government Code Section 65584.05](#), any local jurisdiction within the ABAG region may file an appeal to modify its Draft Regional Housing Needs Allocation (RHNA) Allocation or another jurisdiction's Draft RHNA Allocation included as part of ABAG's Draft RHNA Plan. The California Department of Housing and Community Development (HCD) may also file an appeal to the Draft RHNA Allocation for one or more jurisdictions. No appeal shall be allowed relating to post-appeal reallocation adjustments made by ABAG, as further described in Section I.I, below. For the purposes of these procedures, the entity filing an appeal is referred to as an "applicant."

Note: This document contains a description of the appeals procedures, which are designed to comply with applicable provisions of the Government Code. Applicants are encouraged to review the full content of relevant code sections. In any apparent conflict between these procedures and the Code, the Code provisions will prevail.

I. APPEALS PROCESS

A. DEADLINE TO FILE

The period to file appeals shall commence on May 25, 2021, which shall be deemed as the date of receipt by jurisdictions and HCD of the Draft RHNA Plan. To comply with Government Code Section 65584.05(b), a jurisdiction or HCD seeking to appeal a Draft RHNA Allocation must submit an appeal by 5:00 p.m. PST on July 9, 2021. ABAG will not accept late appeals.

B. FORM OF APPEAL

The local jurisdiction or HCD shall state the basis and specific reasons for its appeal on the [RHNA Appeal Request Form](#) prepared by ABAG (see Attachment A for an example of the information to be included in the form). Additional documents may be submitted by the local jurisdiction as attachments, and all such attachments should be properly labeled and numbered.

C. BASES FOR APPEAL

Per Government Code Section 65584.05, a local jurisdiction or HCD shall only be entitled to file an appeal based upon the three criteria listed below. Appeals based on "change of circumstance" can only be filed by the jurisdiction or jurisdictions where the change in circumstance occurred.

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). An appeal shall be consistent with, and not to the detriment of, [the development](#)

[pattern in the sustainable communities strategy \(Plan Bay Area 2050 Final Blueprint\).](#)

Applicants should ensure that their appeal satisfies the criteria in the applicable Government Code section.

Appeals may be brought on one of the following three grounds:

1. Information about Local Planning Factors and Affirmatively Furthering Fair Housing from the Local Jurisdiction Survey – That ABAG failed to consider information submitted relating to certain local factors outlined in [Government Code Section 65584.04\(e\)](#) and affirmatively furthering fair housing pursuant to Government Code Section 65584.04(b)(2) and [65584\(d\)\(5\)](#) including the following:
 - a. Each jurisdiction’s existing and projected jobs and housing relationship.
 - b. The opportunities and constraints to development of additional housing in each jurisdiction, including the following:
 - i. Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.
 - ii. The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. ABAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.
 - iii. Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to non-agricultural uses.

- iv. County policies to preserve prime agricultural land, as defined pursuant to Government Code Section 56064, within an unincorporated area and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to non-agricultural uses.
- c. The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.
- d. Agreements between a county and cities in a county to direct growth toward incorporated areas of the county and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.
- e. The loss of units contained in assisted housing developments, as defined in Government Code Section 65583(a)(9), that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- f. The percentage of existing households at each of the income levels listed in Government Code Section 65584(e) that are paying more than 30 percent and more than 50 percent of their income in rent.
- g. The rate of overcrowding.
- h. The housing needs of farmworkers.
- i. The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- j. The housing needs of individuals and families experiencing homelessness.
- k. The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis. For purposes of these guidelines, this applies to loss of units during a state of emergency occurring since January

31, 2015 and have not yet been rebuilt or replaced by February 5, 2020 (the deadline for jurisdictions to submit surveys to ABAG).

- I. The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080, to be met by Plan Bay Area 2050.
 - m. Information based upon the issues, strategies, and actions that are included, as available in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the California Department of Housing and Community Development, and in housing elements.
2. Methodology – That ABAG failed to determine the jurisdiction's share of the regional housing needs in accordance with the information described in the Final RHNA Methodology approved by ABAG on May 20, 2021, and in a manner that furthers, and does not undermine the five objectives listed in Government Code Section 65584(d).
3. Changed Circumstances – That a significant and unforeseen change in circumstance has occurred in the jurisdiction after February 5, 2020 (the deadline for jurisdictions to submit surveys to ABAG) and merits a revision of the information previously submitted by the local jurisdiction. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

D. LIMITS ON SCOPE OF APPEAL

Existing law explicitly limits ABAG's scope of review of appeals. Specifically, ABAG shall not grant any appeal based upon the following:

1. Any other criteria other than the criteria in Section I.C above.
2. A local jurisdiction's existing zoning ordinances and land use restrictions, including but not limited to, the contents of the local jurisdiction's current general plan. Pursuant to Government Code Section 65584.04(e)(2)(B), ABAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.
3. Any local ordinance, policy, voter-approved measure or standard limiting residential development. Pursuant to Government Code Section 65584.04(g)(1), any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in a city's or county's share of regional housing need.
4. Prior underproduction of housing in a jurisdiction from the previous regional housing need allocation. Pursuant to Government Code Section 65584.04(g)(2), prior

underproduction of housing in a jurisdiction from the previous housing need allocation, as determined by each jurisdiction's annual production report submitted pursuant to Government Code Section 65400(a)(2)(H) cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

5. Stable population numbers in a jurisdiction. Pursuant to Government Code Section 65584.04(g)(3), stable population growth from the previous regional housing needs cycle cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

E. COMMENTS ON APPEALS

At the close of the appeals period as set forth in I.A., ABAG shall notify all jurisdictions within the region and HCD of all appeals and shall make all materials submitted in support of each appeal available on its website after the close of the appeals filing period. Members of the public who are interested in receiving notification about appeals submitted can sign up on the ABAG website. ABAG will accept comments on submitted appeals from jurisdictions, HCD, and members of the public for 45 days following the end of the appeals filing period. All comments must be filed by 5:00 p.m. PST on August 30, 2021. ABAG will not accept late comments. Members of the public who are interested in receiving notification about comments received can sign up on the ABAG website. ABAG will notify jurisdictions, HCD, and members of the public who have signed up on the ABAG website about comments received following the end of the comment period.

F. HEARING BODY

The ABAG Executive Board has delegated the responsibility of considering appeals regarding Draft RHNA Allocations to the ABAG Administrative Committee. All decisions on RHNA appeals made by the Administrative Committee are considered final and will not be reviewed by the ABAG Executive Board.

G. APPEAL HEARING

ABAG shall conduct one public hearing to consider all appeals filed and comments received on the appeals no later than September 26, 2021. This public hearing may be continued (over several days if necessary) until all appeals are heard. Notice shall be provided to the appealing jurisdictions, commenting jurisdictions, HCD, and members of the public who have signed up on the ABAG website at least 21 days in advance of the hearing. Consistent with the requirements of the Brown Act, members of the public may submit written comments in advance of the meeting or provide oral comments at the meeting. Per Government Code Section 65584.05(i), ABAG may extend the deadline to conduct the appeals hearing by up to thirty (30) days.

Each appeal shall be heard individually before the Administrative Committee and a preliminary decision on the appeal may be reached by the Committee. At the conclusion of all the individual appeals, the Administrative Committee will take a final vote determining the outcome for each appeal application. In the event an individual appeal involves a

Committee member's or alternate's respective jurisdiction, the member or alternate may not participate in the discussion of or vote on that individual item by the Administrative Committee. If the Committee decides to take one final vote ratifying prior preliminary decisions, a Committee member may participate in that vote and note for the record their abstention from the portion of the decision relating to their jurisdiction.

Due to the ongoing COVID-19 pandemic, RHNA appeals hearings may be conducted via teleconference per the Governor's executive orders or any amendments to the Brown Act. ABAG-MTC staff will apprise the public of any updates to meeting procedures and will include information relevant to public participation in the public noticing of the appeal hearings.

Appeal Hearing Procedures

The hearing shall be conducted to provide applicants and jurisdictions that did not file appeals but are the subject of an appeal with the opportunity to make their case regarding a change in their Draft RHNA Allocation or another jurisdiction's Draft RHNA Allocation. The burden is on the applicants to prove that adjustment of the Allocation is appropriate under the statutory standards set forth in the Government Code. The appeals hearing will be organized by the specific jurisdiction subject to an appeal or appeals and will adhere to the following procedures:

1. Initial Arguments

Applicants who have filed an appeal for a particular jurisdiction will have an opportunity to present their request and reasons to grant the appeal. The information and arguments presented by the applicant shall be limited to what was presented in the written appeal filed by the applicant. In the event of multiple appeals filed for a single jurisdiction, the subject jurisdiction will present their argument first if it has filed an appeal on its own Draft RHNA Allocation. Applicants may present their cases either on their own, or in coordination with other applicants, but each applicant shall be allotted five (5) minutes each. If the subject jurisdiction did not file an appeal on its own Draft RHNA Allocation, it will be given an opportunity to present after all applicants have provided initial arguments on their filed appeals. Any presentation from the jurisdiction who did not appeal but is the subject of the appeal is limited to five (5) minutes unless it is responding to more than one appeal, in which case the jurisdiction is limited to eight (8) minutes.

An appealing jurisdiction may choose to have technical staff present its case at the hearing. At a minimum, technical staff should be available at the hearing to answer any questions from the Administrative Committee.

2. Staff Response

After initial arguments are presented, ABAG-MTC staff will present their recommendation to approve or deny the appeal(s) filed for the subject jurisdiction. The staff response is limited to five (5) minutes.

3. **Rebuttal**

Applicants and the jurisdiction who did not file an appeal but is the subject of the appeal may elect to provide a rebuttal but are limited to the arguments and evidence presented in the staff response. Each applicant and the subject jurisdiction that did not file an appeal on its own Draft RHNA Allocation will be allotted three (3) minutes each for a rebuttal.

4. **Extension of Time Allotment**

The Chair of the Administrative Committee may elect to grant additional time for any presentation, staff response, or rebuttal in the interest of due process and equity.

5. **Public Comment**

Members of the public will have an opportunity to comment on the arguments presented related to the appeal(s) for the subject jurisdiction under consideration. Each speaker will be allotted two (2) minutes to speak, or as adjusted at the discretion of the Chair.

6. **Administrative Committee Discussion and Determination**

After arguments and rebuttals are presented, the Administrative Committee may ask questions of applicants, the subject jurisdiction (if present), and ABAG-MTC staff. The Chair of the Administrative Committee may request that questions from the Administrative Committee be asked prior to a discussion among Administrative Committee members. Any voting Committee member may make a motion regarding the appeal(s) for the subject jurisdiction. The Committee will take a preliminary vote on the appeal(s) for a subject jurisdiction. The Administrative Committee is encouraged to make a single determination on the subject jurisdiction after hearing all arguments and presentations on each subject jurisdiction.

The Administrative Committee shall generally administer appeal hearings according to these procedures. However, the Chair of the Committee has the discretion to adjust the procedures as deemed necessary and formal rules of evidence and procedure do not apply. Further, any alleged failure to adhere to these procedures shall not be grounds for overturning a decision.

H. DATA REQUIREMENTS

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology and supported by adequate documentation. To the extent a local jurisdiction submits evidentiary documentation to ABAG in support of its appeal, such data shall meet the following requirements:

1. The data shall be readily available for ABAG's review and verification. Data should not be constrained for use by proprietary conditions or other conditions rendering them difficult to obtain or process.

2. The data shall be accurate, current, and reasonably free from defect.
3. The data shall be relevant and germane to the local jurisdiction's basis of appeal.
4. The data shall be used to support a logical analysis relating to the local jurisdiction's request for a change to its or another jurisdiction's Draft RHNA Allocation.

I. DETERMINATION OF APPEAL AND POST-APPEAL REALLOCATION OF REGIONAL HOUSING NEEDS

The Administrative Committee shall issue a written final determination on all filed appeals after the conclusion of the public hearing. The written final determination shall consider arguments and comments presented on revising the Draft RHNA Allocation of the subject jurisdiction and make a determination that either accepts, rejects, or modifies the appeal for each subject jurisdiction. Per Government Code Section 65584.05(e)(1), the Administrative Committee has the discretion in its final determination on an appeal to require the adjustment of the allocation of a local jurisdiction that is not the subject of an appeal, if the adjustment(s) are supported by evidence and the Administrative Committee makes specific findings in its determination on the appeal.

The final determinations shall be based upon the information and methodology set forth in Government Code Section 65584.04 and whether the revision is necessary to further the objectives listed in Government Code Section 65584(d). The final determination shall include written findings as to how the determination is consistent with Government Code Section 65584.05. The final determinations for all appeals will be ratified by the Administrative Committee following release of the written final determinations on all filed appeals. The decision of the Administrative Committee shall be final, and local jurisdictions shall have no further right to appeal.

In accordance with Government Code Section 65584.05(g), after the conclusion of the appeals process, ABAG shall distribute the adjustments proportionally to all Bay Area jurisdictions, including those jurisdictions whose Draft RHNA Allocation was successfully appealed. For purposes of these procedures, proportional distribution shall be based on the share of regional housing needs after the appeals are determined and prior to the required redistribution. The redistribution of units successfully appealed could result in increases to the Draft RHNA Allocations for all jurisdictions.

If, consistent with Government Code Section 65584.05(e)(1), the Administrative Committee's final determination included adjustments to the allocations of a jurisdiction or jurisdictions that were not the subject of an appeal, these adjustments may be excluded from the cumulative total adjustments to be reallocated proportionally to all jurisdictions in the region.

J. FINAL RHNA PLAN

After ABAG reallocates units to all local jurisdictions resulting from successful appeals, the ABAG Executive Board shall review and consider adoption of the Final RHNA Plan for ABAG's 2023-2031 RHNA. This is scheduled to occur in either November or December 2021.

List of Attachments

- Attachment A: RHNA Appeal Request Form

**2023-2031 Regional Housing Needs Assessment (RHNA) Appeal Request**

Submit appeal requests and supporting documentation to rhna@bayareametro.gov
by 5:00 pm PST on July 9, 2021. **Late submissions will not be accepted.**

Jurisdiction Whose Allocation is Being Appealed:

Date: _____

APPEAL AUTHORIZED BY:Filing Party: _____
(Jurisdiction or HCD)

Name: _____

Contact Name: _____

PLEASE SELECT BELOW:

Title: _____

☐ Mayor☐ Chair, County Board of Supervisors

Phone: _____

☐ City Manager☐ Chief Administrative Officer

Email: _____

☐ Other: _____**IDENTIFY ONE OR MORE BASES FOR APPEAL [Government Code Section 65584.5(b)]**

- ☐ ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey regarding RHNA Factors (Government Code Section 65584.04(e)) and Affirmatively Furthering Fair Housing (See Government Code Section 65584.04(b)(2) and 65584(d)(5)):
 - ☐ Existing and projected jobs and housing relationship.
 - ☐ Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
 - ☐ Availability of land suitable for urban development or for conversion to residential use.
 - ☐ Lands protected from urban development under existing federal or state programs.
 - ☐ County policies to preserve prime agricultural land.
 - ☐ Distribution of household growth assumed for Plan Bay Area 2050.
 - ☐ County-city agreements to direct growth toward incorporated areas of county.
 - ☐ Loss of units contained in assisted housing developments.
 - ☐ Households paying more than 30% or 50% of their income in rent.
 - ☐ The rate of overcrowding.
 - ☐ Housing needs of farmworkers.
 - ☐ Housing needs generated by the presence of a university campus within a jurisdiction.
 - ☐ Housing needs of individuals and families experiencing homelessness.
 - ☐ Loss of units during a declared state of emergency from January 31, 2015 to February 5, 2020.
 - ☐ The region's greenhouse gas emissions targets to be met by Plan Bay Area 2050.
 - ☐ Affirmatively furthering fair housing.
- ☐ ABAG failed to determine the jurisdiction's Draft RHNA Allocation in accordance with the Final RHNA Methodology and in a manner that furthers, and does not undermine the RHNA Objectives (see Government Code Section 65584(d) for the RHNA Objectives).
- ☐ A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted in the Local Jurisdiction Survey (*appeals based on change of circumstance can only be made by the jurisdiction or jurisdictions where the change occurred*).

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). An appeal shall be consistent with, and not to the detriment of, [the development pattern in the sustainable communities strategy \(Plan Bay Area 2050 Final Blueprint\)](#).

Number of units requested to be reduced or added to jurisdiction's Draft RHNA Allocation:

Number of Units Reduced _____ Number of Units Added _____

Brief description of appeal request and statement on why this revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d) and how the revision is consistent with, and not to the detriment, of the development pattern in Plan Bay Area 2050. Please include supporting documentation for evidence as needed, and attach additional pages if you need more room.

SAMPLE

List of supporting documentation, by title and number of pages

(Numbers may be continued to accommodate additional supporting documentation):

1. _____
2. _____
3. _____



RHNA Appeals Hearing Schedule

| | | |
|--|--------------------------------|---------------------|
| RHNA Appeals Day 1 by Zoom | Friday, September 24 | 9:00 to 5:00 |
| <ul style="list-style-type: none">• Appeal #1: ALA - Alameda• Appeal #2: ALA - Dublin• Appeal #3: ALA - Pleasanton• <i>Lunch Break</i>• Appeal #4: CC - Clayton• Appeal #5: CC - Danville• Appeal #6: CC - Lafayette• Appeal #7: CC - Pleasant Hill | | |
| RHNA Appeals Day 2 by Zoom | Wednesday, September 29 | 9:00 to 1:00 |
| <ul style="list-style-type: none">• Appeal #8: CC - San Ramon• Appeal #9: CC - Unincorporated Contra Costa County• Appeal #10: MRN - Belvedere• Appeal #11: MRN - Corte Madera | | |
| RHNA Appeals Day 3 | Friday, October 8 | 2:00 to 5:00 |
| <ul style="list-style-type: none">• Appeal #12: MRN - Fairfax• Appeal #13: MRN - Larkspur• Appeal #14: MRN - Mill Valley | | |
| RHNA Appeals Day 4 | Friday, October 15 | 1:00 to 5:00 |
| <ul style="list-style-type: none">• Appeal #15: MRN - Ross• Appeal #16: MRN - San Anselmo• Appeal #17: MRN - Sausalito• Appeal #18: MRN - Tiburon | | |
| RHNA Appeals Day 5 | Friday, October 22 | 9:00 to 5:00 |
| <ul style="list-style-type: none">• Appeal #19: MRN - Unincorporated Marin County• Appeal #20: SCL - Los Altos• Appeal #21: SCL - Los Altos Hills• <i>Lunch Break</i>• Appeal #22: SCL - Monte Sereno• Appeal #23: SCL - Palo Alto• Appeal #24: SCL - Saratoga• Appeal #25: SCL - Unincorporated Santa Clara County | | |
| RHNA Appeals Day 6 | Friday, October 29 | 9:00 to 5:00 |
| <ul style="list-style-type: none">• Appeals #26 & #27: SON - Unincorporated Sonoma County• Appeal #28: SON - Windsor• Appeals Carried Over from Prior Hearing Days• Final Deliberations | | |



RHNA Appeals Public Hearing Orientation

ABAG Administrative
Committee
September 10, 2021

Today's Presentation




Review of
Final RHNA
Methodology

1



Statutory
Requirements
for an Appeal

2



Procedures for
Considering
Appeals

3

- **Goal:** ensure Administrative Committee members are familiar with statutory requirements and ABAG's adopted procedures for considering appeals.
- *We will not be delving into arguments raised in the appeals; that is the purpose of the upcoming public hearing.*



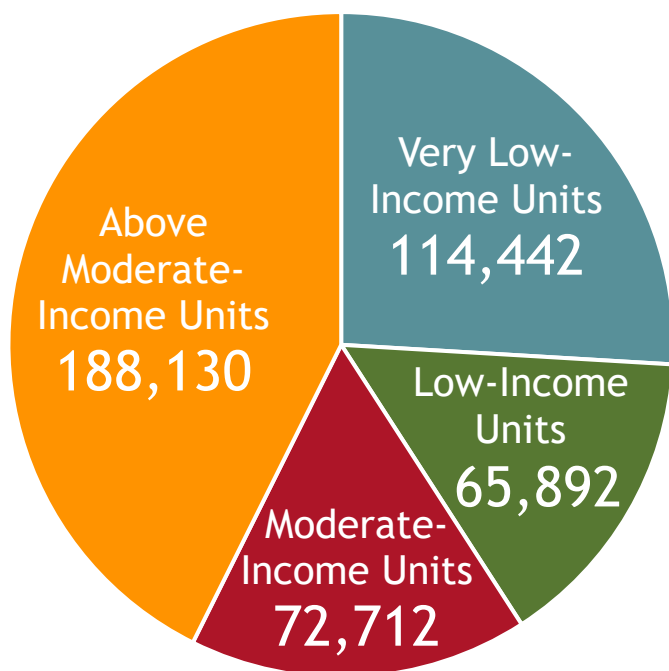
Part 1: Review of Final RHNA Methodology

Review of Final Methodology: RHNA Methodology Development Process

| | |
|--------------------------------|--|
| October 2019 to September 2020 | Housing Methodology Committee (HMC) worked collaboratively and voted to recommend a Proposed RHNA Methodology. |
| October 15, 2020 | ABAG Executive Board approved Proposed RHNA Methodology. |
| October 25 - November 27, 2020 | Public comment period on Proposed RHNA Methodology, including public hearing on November 12. |
| January 2021 | ABAG Regional Planning Committee and Executive Board voted to include “equity adjustment” as part of the Draft RHNA Methodology. |
| February 11, 2021 | As required by law, ABAG submitted Draft RHNA Methodology to HCD for review. |
| April 12, 2021 | HCD confirmed Draft RHNA Methodology furthers statutory objectives. |
| May 20, 2021 | ABAG Executive Board approved Final RHNA Methodology and release of Draft RHNA Allocations. |

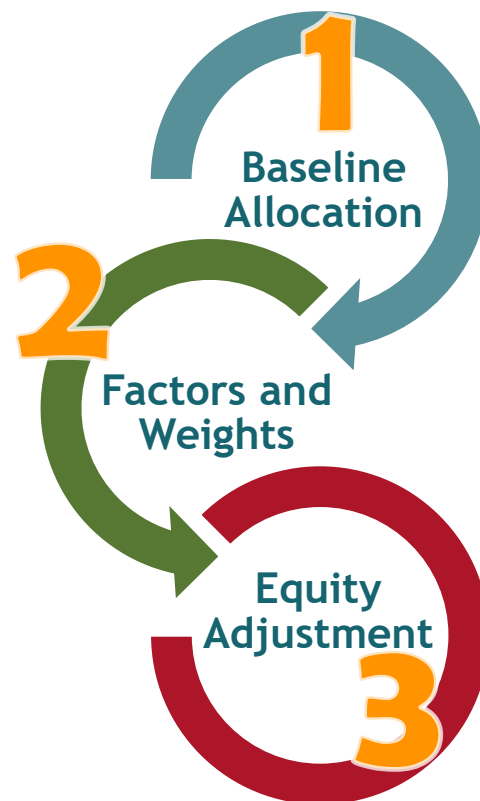
Review of Final Methodology: RHNA Process Overview

Regional Housing Needs Determination from HCD



Total RHND: 441,176

Final RHNA Methodology



Allocation to Local Jurisdiction

Very Low-Income Units

Low-Income Units

Moderate-Income Units

Above Moderate-Income Units

Review of Final Methodology:

Refresher: Regional Housing Needs Determination

- ABAG received the RHND from HCD on June 9, 2020.
- Procedures for calculating the RHND are clearly specified in state law; ABAG-MTC staff reviewed HCD's methodology and believe it adheres to applicable legal requirements.
- With narrow statutory grounds for objecting to RHND, the ABAG Executive Board decided in June 2020 not to file an objection.
- ***The window to appeal the RHND is now closed.*** ABAG Administrative Committee does not have authority to change HCD's RHND for the Bay Area.
- Arguments based on the RHND do not meet statutory criteria for an appeal established by Government Code Section 65584.05.

Review of Final Methodology: **Baseline Allocation**



- Jurisdiction receives initial share of RHND using its **share of the region's total households in 2050** using data from the Plan Bay Area 2050 Final Blueprint.
- Benefits of incorporating the Final Blueprint include:
 - **Prioritizes growth in Growth Geographies:** Priority Development Areas, Transit-Rich Areas, and High-Resource Areas (with at least basic transit service).
 - Uses UrbanSim model to **analyze wide variety of land use data and market feasibility; integrates local jurisdiction information** about plans, zoning, and physical characteristics that affect development.
 - **Avoids growth outside urban growth boundaries and areas with unmitigated high hazard risk** from wildfires and sea level rise.
 - **Increases consistency between RHNA and Plan Bay Area 2050**, as required by law.

Review of Final Methodology:
Refresher: Confirming Consistency with Final Blueprint



Plan Bay Area 2050
*Final Blueprint
Growth Pattern*

35-Year Projections (2015 to 2050):

- Regional Scale
- County Scale
- Sub-County Scale

1.5 million
new homes

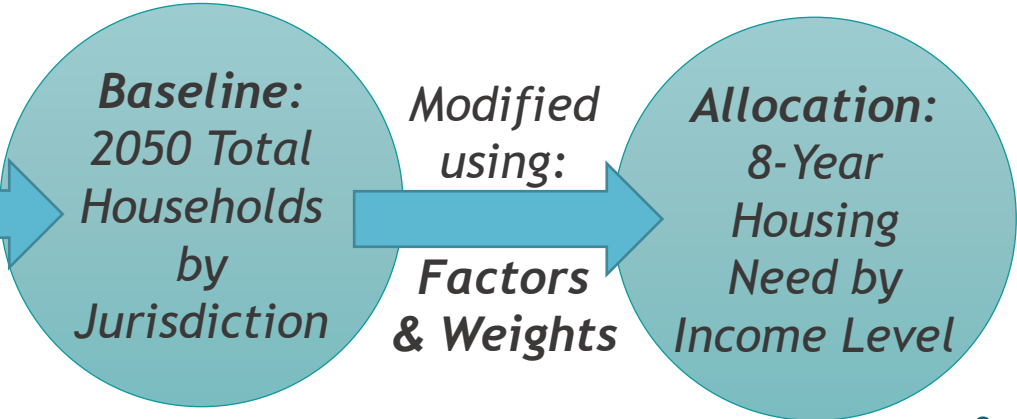
Regional Housing Needs Allocation
Final Methodology

8-Year Need Estimates (2023 to 2031):

- Regional Scale
- Jurisdiction Scale

441,000+
new homes

Housing Element Law requires RHNA to be consistent with the development pattern in Plan Bay Area 2050. Staff’s analysis indicates that the Draft RHNA Allocation achieves this outcome.



Review of Final Methodology: Factors and Weights



- **Factors and weights adjust a jurisdiction's baseline allocation up or down.**
 - Jurisdictions with a higher score receive more housing.
 - Higher weight means more housing units assigned by that factor.
- **Factors standardized by scaling to a specific range to limit baseline adjustment.**
 - A jurisdiction with a low score still receives an allocation from a factor.

Access to High Opportunity Areas Factor

- Encourages housing in jurisdictions with well-resourced schools and access to jobs and open space, among other advantages.
- Based on data from State's Opportunity Map
- Directly addresses RHNA objective to affirmatively further fair housing.

Job Proximity-Transit & Job Proximity-Auto Factors

- Encourage housing in jurisdictions with easier access to the region's job centers.
- Based on number of jobs that can be accessed with 30-minute auto or 45-minute transit commute.
- Evaluate jobs-housing balance using commute shed rather than jurisdiction boundary to better reflect lived experience.

Review of Final Methodology: Equity Adjustment



- Ensures each jurisdiction identified as exhibiting above average racial and economic exclusion receives an allocation of lower-income RHNA units that is at least proportional to the jurisdiction's share of households in 2020.
- 49 jurisdictions identified using a composite score of jurisdiction's divergence index score (which measures segregation by looking at how much local racial demographics differ from the region) and share of higher-income households.
- Modest change: ~3,000 lower-income units redistributed from remaining 60 jurisdictions.
- HCD applauded inclusion of equity adjustment as key component in advancing statutory objective to affirmatively further fair housing.

STEP 1:
Group RHND
by income

Total Regional Housing Need
Determination (RHND) from HCD

441,176

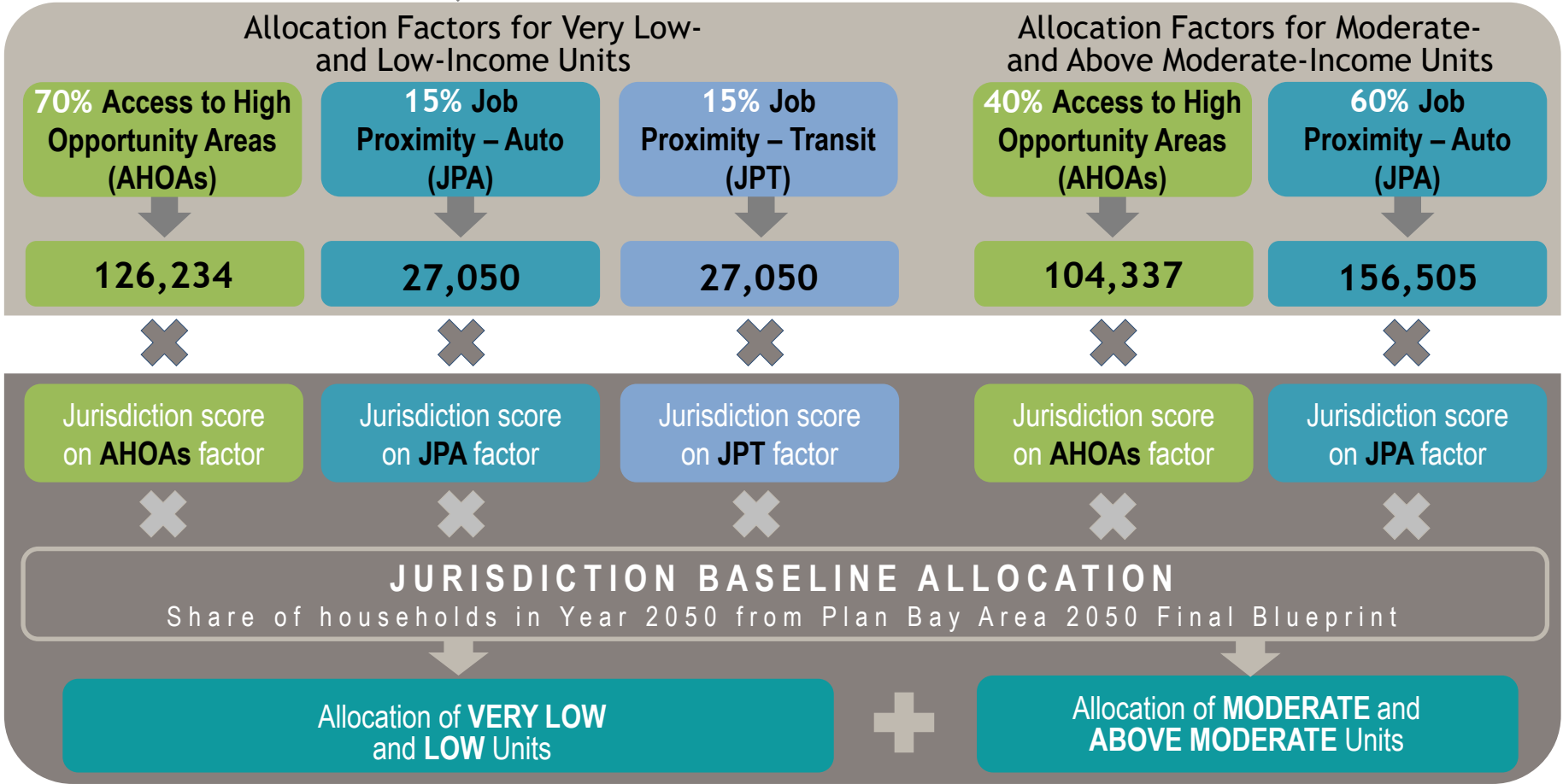
VERY LOW
114,442

LOW
65,892

MODERATE
72,712

ABOVE MODERATE
188,130

STEP 2:
Factor weight =
units allocated
by factor



STEP 3:
Calculate
jurisdiction's
units from
each factor

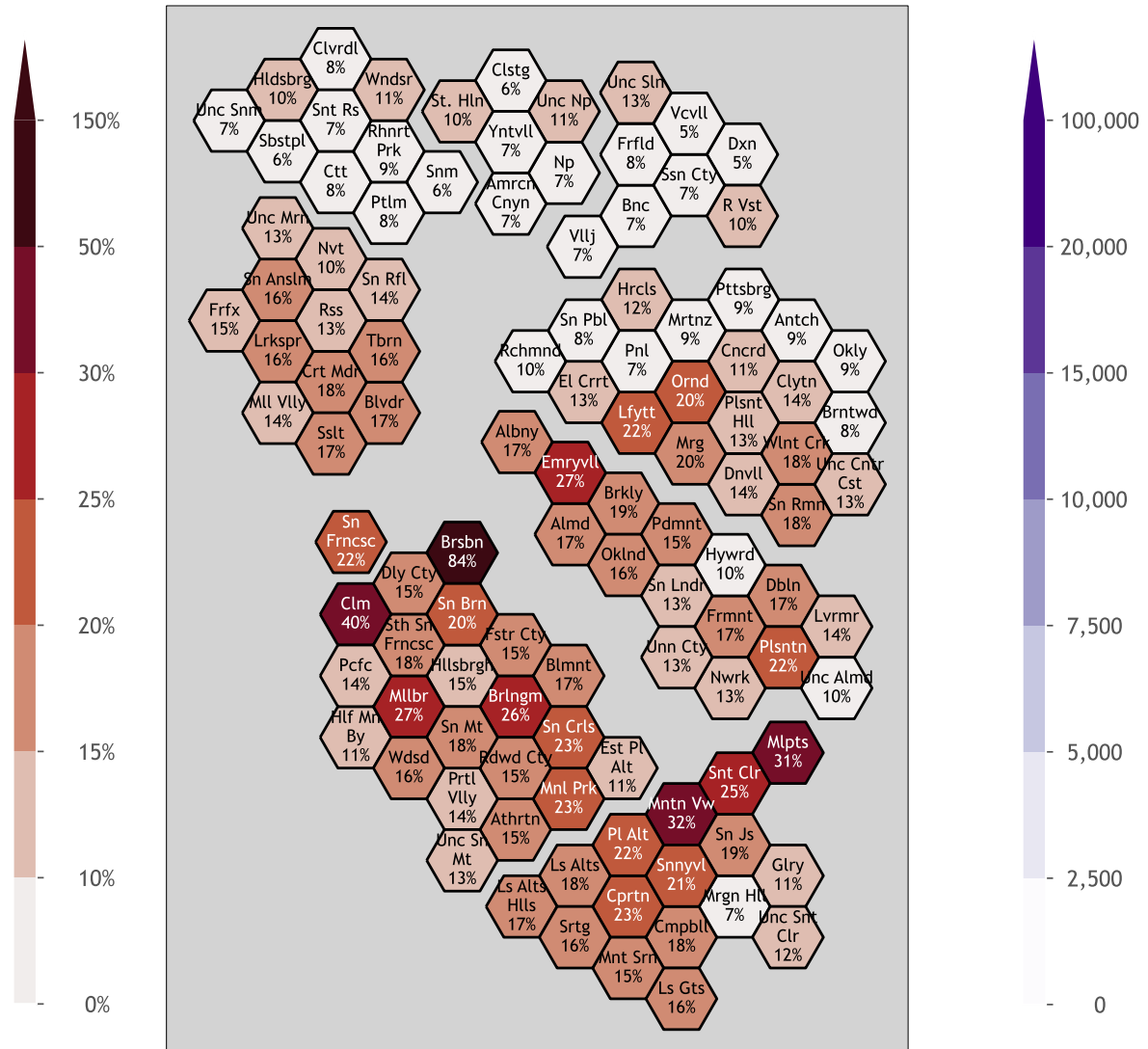
STEP 4:
Apply equity
adjustment

Equity Adjustment redistributes lower-income units to ensure all 49 jurisdictions identified as exhibiting above average racial and economic exclusion receive an allocation of lower-income units that is at least proportional to its share of households in 2020

TOTAL
JURISDICTION
ALLOCATION

Review of Final Methodology:
Draft RHNA Allocations

Jurisdiction
Growth
Rate
Compared
to 2020
Households





Part 2: Statutory Requirements for an Appeal

Statutory Requirements for an Appeal: RHNA Appeals Process Overview

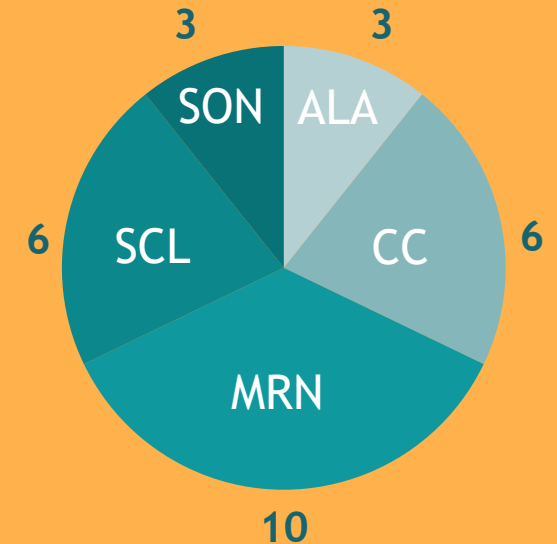
- A jurisdiction or HCD can appeal any jurisdiction's draft allocation.
- 27 jurisdictions submitted a RHNA appeal (with one jurisdiction submitting two separate appeals); these appeals generated almost 450 comments from the public and other stakeholders.
- Under state law, ABAG must conduct a public hearing to consider appeals and comments.
- Goals for appeals public hearing:

Strict
adherence to
statutes

Fair and
transparent
procedures and
outcomes

Consistent
decision-making

ABAG received 28 appeals by the July 9, 2021 deadline:



Appeals and comments are on the ABAG website:

<https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation/2023-2031-rhna-appeals-process>

Statutory Requirements for an Appeal:

Allowable Reasons for an Appeal

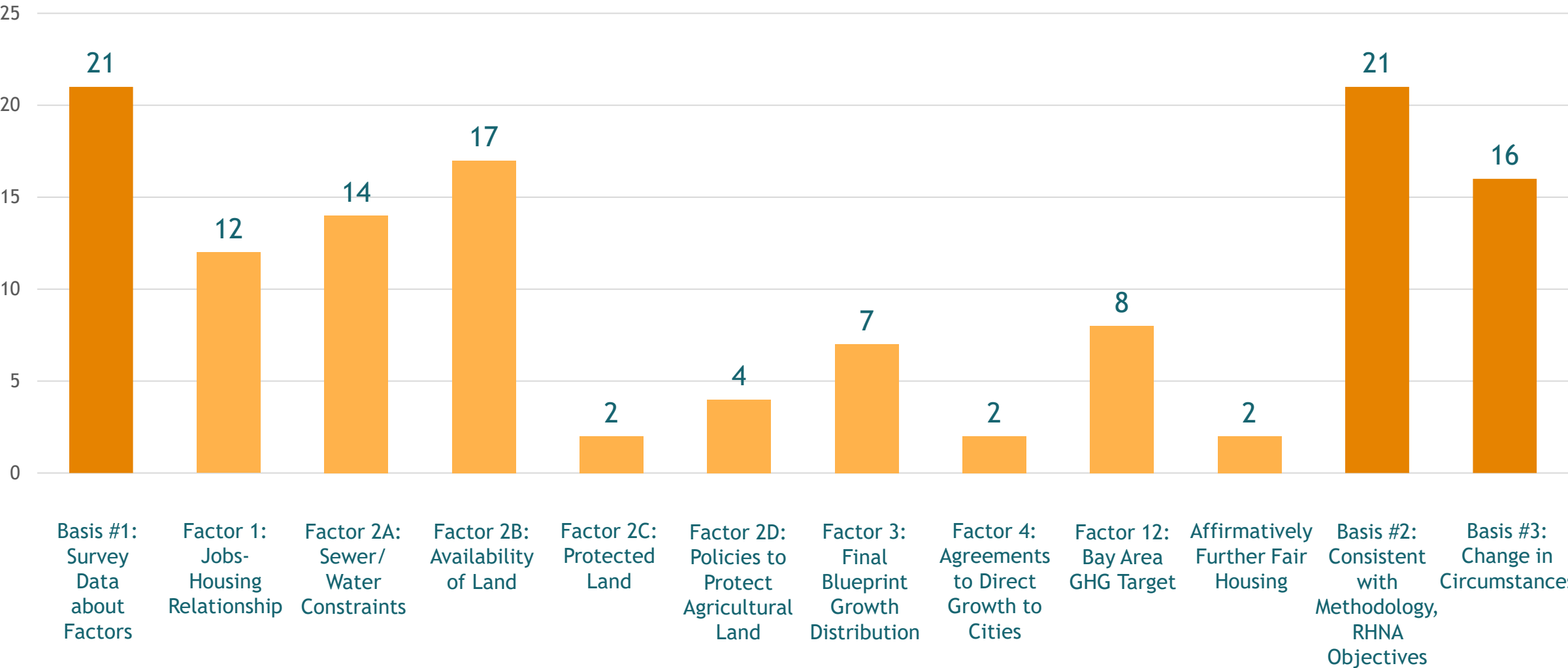
An appeal can be filed only if:

1. ABAG failed to adequately consider information submitted in the local jurisdiction survey.
2. ABAG failed to determine the jurisdiction's allocation in accordance with the information described in, and methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the RHNA objectives.
3. A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits revision of information submitted in the local jurisdiction survey. *Appeals on this basis shall only be made by the jurisdiction(s) where the change in circumstances occurred.*

By law, appeals cannot be based on:

- Any local ordinance, policy, voter-approved measure or standard limiting residential development.
- Underproduction of housing from the last RHNA cycle.
- Stable population numbers in a jurisdiction.

Statutory Requirements for an Appeal: Appeal Bases Cited by Jurisdictions



Statutory Requirements for an Appeal:

Basis #1: Jurisdiction Survey Data About Factors

- Focuses on whether ABAG adequately considered information about methodology factors that a jurisdiction provided in the Local Jurisdiction Survey
 - Appeal on this basis can only be brought by a jurisdiction that completed survey.
- Government Code Section 65584.04(e) identifies 12 factors that ABAG shall include in developing the RHNA methodology to the extent sufficient data is available.
- ABAG is required to survey local jurisdictions for information about these factors.
 - The survey was conducted in January/February 2020 and received 72 responses.
 - Data collected was shared with Housing Methodology Committee for its consideration during development of the methodology.
 - Draft RHNA Plan describes how factors are addressed in the methodology.

Statutory Requirements for an Appeal:

Basis #1: Statutory Background for Methodology Factors

Factors are in Government Code 65584.04(e). Only factors cited in appeals included here.

1. Each member's existing and projected jobs and housing relationship, including comparison of low-wage jobs and affordable housing.
- 2A. Lack of capacity for sewer or water service due to decisions outside jurisdiction's control that preclude jurisdiction from providing necessary infrastructure for additional development during RHNA planning period.
- 2B. Availability of land for urban development or conversion to residential use, availability of underutilized land, and opportunities for infill and increased residential densities.
 - ABAG may not limit consideration of available land to jurisdiction's existing zoning and land use restrictions, but shall consider potential for increased residential development under alternative zoning and land use restrictions.
 - Available land may exclude lands where Federal Emergency Management Agency (FEMA) or Department of Water Resources has determined flood management infrastructure to protect that land is not adequate.

Statutory Requirements for an Appeal:

Basis #1: Statutory Background for Methodology Factors *(continued)*

- 2C. Lands protected from urban development under existing federal or state programs to protect open space, farmland, environmental habitats, and natural resources including land subject to a local ballot measure to restrict conversion to nonagricultural uses.
- 2D. County policies to preserve prime agricultural land within unincorporated area.
 - 3. Distribution of household growth assumed in Plan Bay Area 2050 and opportunities to maximize use of public transportation and existing transportation infrastructure.
 - 4. Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.
- 12. The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.

Statutory Requirements for an Appeal:

Basis #2: Consistent with Methodology, Furthers RHNA Objectives

- A valid appeal must show an error in the *application* of the methodology; a critique of the adopted methodology itself is outside the scope of the appeals process.
- The final RHNA methodology was developed over 20 months with significant deliberation and opportunities for input and adopted by the ABAG Executive Board in May 2021.
- Government Code Section 65584.04(i) provides HCD with the authority to determine whether the methodology furthers the RHNA objectives; on April 12, 2021, HCD confirmed that ABAG's methodology furthered the RHNA objectives.

Statutory Requirements for an Appeal:

Refresher: Statutory Objectives of RHNA

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.

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.

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.

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.

Affirmatively furthering fair housing.

Statutory Requirements for an Appeal:

Basis #3: Change in Circumstance

- If a jurisdiction experienced a significant and unforeseen change in circumstances that affects information provided in the Local Jurisdiction Survey conducted in early 2020.
 - Appeal on this basis can only be brought by a jurisdiction that completed survey.
- In its comment letter on appeals, HCD responded to issues raised as changed circumstances:
 - *“The **COVID-19 pandemic** has only increased the importance of ensuring that each community is planning for sufficient affordable housing as essential workers, particularly lower income ones, continue to commute to their places of business.”*
 - ***Drought and wildfire risk** “do not affect one city, county, or region in isolation. ABAG’s allocation methodology encourages more efficient land-use patterns which are key to adapting to more intense drought cycles and wildfire seasons. The methodology directs growth toward infill in existing communities that have more resources to promote climate resilience and conservation efforts.”*

More Comments from HCD on Appeals Submitted

- **Statutory factor related to availability of land for housing:** *ABAG “may not limit its consideration of suitable housing sites to existing zoning and land use restrictions and must consider the potential for increased development under alternative zoning and land use restrictions. . . . In simple terms, this means housing planning cannot be limited to vacant land, and even communities that view themselves as built out or limited due to other natural constraints such as fire and flood risk areas must plan for housing through means such as rezoning commercial areas as mixed-use areas and upzoning non-vacant land.”*
- **Whether ABAG’s methodology furthers the RHNA objectives:** *“HCD reviewed ABAG’s draft allocation methodology and found that the draft RHNA allocation methodology furthered the statutory objectives described in Government Code section 65584.”*



Part 3: Procedures for Considering Appeals

Procedures for Considering Appeals:

Redistributing Units from Successful Appeals

- ABAG will redistribute units to all local governments in the region in proportion to a jurisdiction's share of the RHND after appeals are determined and prior to the required distribution.
- Applicants whose appeals are upheld are not excluded from redistribution.
- When appropriate, the Committee can make a determination on an appeal that adjusts the allocation for a jurisdiction that is not the subject of the appeal. These adjustments may be excluded from the cumulative total to be reallocated proportionally to all jurisdictions in the region (*e.g., in situations where an annexation only affects a limited number of jurisdictions, including the applicant*).

Procedures for Considering Appeals:

Appeal Hearing Procedures

- ABAG must hold a public hearing to consider appeals. The hearing will occur over multiple days.
- Appeals will be heard by the ABAG Administrative Committee, which will have final authority for decisions on appeals.
- A committee member must recuse him/herself on an appeal affecting his/her jurisdiction.
- The Administrative Committee will issue a preliminary determination on each appeal and then ratify final decisions at a meeting after close of the public hearing to ensure uniform decision-making.

Procedures for Considering Appeals: **Appeal Hearing Structure**

1. Applicant presentation (5 min).
2. Staff response (5 min).
3. Rebuttal by applicant. Limited to arguments/evidence presented by staff (3 min).
4. Public comment (2 min per speaker, or as adjusted by the Chair).
5. Committee questions/discussion.
6. Committee motion for a determination on appeal.
7. Committee vote.

** The Chair may elect to grant additional time for any presentation, staff response, or rebuttal in the interest of due process and equity.*

Procedures for Considering Appeals: **Appeal Hearing Schedule**

Day 1: September 24, 9:00-5:00 (by zoom)

1. ALA - Alameda
2. ALA - Dublin
3. ALA - Pleasanton

Lunch Break

4. CC - Clayton
5. CC - Danville
6. CC - Lafayette
7. CC - Pleasant Hill

Day 2: September 29, 9:00-1:00 (by zoom)

8. CC - San Ramon
9. CC - Unincorporated Contra Costa County
10. MRN - Belvedere
11. MRN - Corte Madera

Day 3: October 8, 2:00-5:00

12. MRN - Fairfax
13. MRN - Larkspur
14. MRN - Mill Valley

Day 4: October 15, 1:00-5:00

15. MRN - Ross
16. MRN - San Anselmo
17. MRN - Sausalito
18. MRN - Tiburon

Day 5: October 22, 9:00-5:00

19. Unincorporated Marin County
20. SCL - Los Altos
21. SCL - Los Altos Hills

Lunch Break

22. SCL - Monte Sereno
23. SCL - Palo Alto
24. SCL - Saratoga
25. SCL - Unincorporated Santa Clara County

Day 6: October 29, 9:00-5:00

26. & 27. SON - Unincorporated Sonoma County
28. SON - Windsor
 - *Appeals Carried Over*
 - *Final Deliberations*

For More Information

Contact: RHNA@bayareametro.gov

Visit ABAG's RHNA website: <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation>

Review the Final RHNA Methodology Report:
https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_Draft_RHNA_Plan.pdf

Review the RHNA Appeals Procedures:
https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_RHNA_Appeals_Procedures.pdf