

March 9, 2023

Agenda Item 8.a.

Update on 6th Cycle Housing Element Progress

**Subject:**

An update on 6th Cycle Housing Elements submitted to the California Department of Housing and Community Development (HCD) by Bay Area jurisdictions, HCD’s comments on those drafts, and available technical assistance provided by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC)

**Discussion:**

The deadline for adoption of 6<sup>th</sup> Cycle Housing Elements in the Bay Area was January 31, 2023. As of February 15<sup>th</sup>, approximately 89% of the Bay Area jurisdictions had submitted at least one draft of their Housing Elements to HCD for review. In contrast, only approximately 50% of SCAG’s jurisdictions had submitted at least one draft of their Housing Elements by their deadline of October 15, 2021. As an additional point of comparison, as of February 15<sup>th</sup> only 45% of SCAG’s jurisdictions have had their Housing Elements certified by HCD, well over a year past their deadline. Below is a summary of the status of Bay Area housing elements as of February 15<sup>th</sup>.

<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>

HCD has 90 days to review the initial draft of a Housing Element, and an additional 60 days to review a subsequent draft or adoption. Given the new complexities of Housing Element law, it is now common to see at least 2-3 rounds of review (and sometimes as many as 4-6), based on the experience of other regions that are ahead of the Bay Area. A list of the status of all Bay Area Housing Elements can be found in Attachment A. Copies of Housing Elements and HCD’s comment Letters can be found at this link, which is updated by MTC-ABAG staff on a weekly basis: <https://mtcdrive.box.com/s/rn34iqzf81et28qlz65763f51p1louq3>. Additionally, HCD maintains an online dashboard that is available here: <https://www.hcd.ca.gov/planning-and->

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[community-development/housing-open-data-tools/housing-element-review-and-compliance-report](https://www.abag.org/community-development/housing-open-data-tools/housing-element-review-and-compliance-report).

HCD's substantive comments to ABAG jurisdictions have frequently included that there was insufficient public outreach, that sites inventories lack sufficient analysis demonstrating that they are likely to develop at the stated densities in this eight-year planning cycle, and that programs to affirmatively further fair housing lack milestones, metrics, deadlines and appropriate geographic targeting.

It is important to note that January 31, 2023 is just one of several important deadlines. Other key Housing Element deadlines include the following:

- **May 31, 2023:** Deadline for HCD to certify an adopted Housing Element, in order to retain three years for rezoning (must complete rezoning within one year if deadline is missed)
- **December 31, 2023:** MTC deadline to receive HCD certification, a requirement for the receipt of OBAG 3 funding
- **January 31, 2024:** Deadline to rezone if the 5/31/23 certification deadline is missed
- **2026:** Deadline to rezone if the 5/31/23 certification deadline is satisfied

The Regional Housing Technical Assistance (RHTA) Program continues to develop and deploy a wide range of resources to support local jurisdictions with their Housing Elements. Notably, the RHTA Program has extensive resources that can assist jurisdictions to resolve the most frequent HCD comments – related to community engagement, the Housing Element Site Selection Tool, and fair housing. An updated comprehensive index of ABAG's technical assistance that highlights new products can be found in Attachment B, including the Builders Remedy Memo (Attachment C) and a summary of deadlines associated with key funding programs that are linked to Housing Element compliance (Attachment D).

Additionally, ABAG has approved nearly \$11 million in suballocations of REAP funding to Bay Area jurisdictions to assist with housing planning, approximately \$1.3 million of which remains unclaimed. A summary of those local suballocations can be found in Attachment E.

**Issues:**

None

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**Recommended Action:**

Information

**Attachments:**

- A. List of Housing Elements submitted to HCD including status
- B. Index of available technical assistance
- C. Builders Remedy Memo
- D. Summary of Housing Element Compliance and Key Funding Programs
- E. Summary of Local Suballocations
- F. Presentation Update on 6th Cycle Housing Element Progress

**Reviewed:**



Andrew Fremier



**ASSOCIATION  
OF BAY AREA  
GOVERNMENTS**



Association of Bay Area Governments  
Bay Area Housing Finance Authority  
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San Francisco, CA 94105  
[www.mtc.ca.gov](http://www.mtc.ca.gov)

**Memorandum**

DATE: March 8, 2023  
 TO: ABAG Housing Committee and BAHFA Oversight Committee  
 FR: Executive Director  
 RE: List of Housing Elements Submitted to HCD by ABAG jurisdictions (UPDATED)

The deadline for adoption of 6th Cycle Housing Elements in the Bay Area was January 31, 2023. As of March 8th, all but 10 of the Bay Area jurisdictions had submitted at least one draft of their Housing Elements to HCD for review. Below is a summary of the status of Bay Area housing elements as of March 8th.

<b>ADOPTED</b>	<b>46</b>
Certified	8
Out of compliance	0
In review	38
<b>SUBSEQUENT DRAFTS</b>	<b>14</b>
In substantial compliance	1
Out of compliance	4
In review	9
<b>INITIAL DRAFTS</b>	<b>39</b>
Out of compliance	22
In review	17
<b>NO DRAFTS</b>	<b>10</b>

The attachment to this memo lists all of these jurisdictions and the status of their Housing Element drafts. HCD has 90 days to review initial drafts, and 60 days to review subsequent drafts or adoptions. Copies of Housing Elements and HCD’s comment Letters can be found at this link, which is updated by staff on a weekly basis:

<https://mtcdrive.box.com/s/rn34iqzf81et28glz65763f51p1louq3>.

Andrew Fremier

Executive Director

**Status of ABAG 6<sup>th</sup> Cycle Housing Elements**  
(As of 3/8/23)

<b>JURISDICTION</b>	<b>LATEST VERSION SUBMITTED</b>	<b>HCD REVIEW STATUS</b>	<b>COMPLIANCE STATUS</b>
ALAMEDA	ADOPTED	REVIEW COMPLETED	IN
ALAMEDA COUNTY	N/A	N/A	OUT
ALBANY	ADOPTED	IN REVIEW	IN REVIEW
AMERICAN CANYON	INITIAL DRAFT	REVIEW COMPLETED	OUT
ANTIOCH	ADOPTED	IN REVIEW	IN REVIEW
ATHERTON	ADOPTED	IN REVIEW	IN REVIEW
BELMONT	ADOPTED	IN REVIEW	IN REVIEW
BELVEDERE	INITIAL DRAFT	IN REVIEW	OUT
BENICIA	ADOPTED	IN REVIEW	IN REVIEW
BERKELEY	ADOPTED	REVIEW COMPLETED	IN
BRENTWOOD	INITIAL DRAFT	REVIEW COMPLETED	OUT
BRISBANE	ADOPTED	IN REVIEW	IN REVIEW
BURLINGAME	INITIAL DRAFT	IN REVIEW	OUT
CALISTOGA	SUBSEQUENT DRAFT	REVIEW COMPLETED	OUT
CAMPBELL	SUBSEQUENT DRAFT	REVIEW COMPLETED	OUT
CLAYTON	ADOPTED	IN REVIEW	IN REVIEW
CLOVERDALE	INITIAL DRAFT	IN REVIEW	OUT
COLMA	ADOPTED	IN REVIEW	IN REVIEW
CONCORD	INITIAL DRAFT	REVIEW COMPLETED	OUT
CONTRA COSTA COUNTY	INITIAL DRAFT	IN REVIEW	OUT
CORTE MADERA	SUBSEQUENT DRAFT	IN REVIEW	OUT
COTATI	INITIAL DRAFT	REVIEW COMPLETED	OUT
CUPERTINO	INITIAL DRAFT	IN REVIEW	OUT
DALY CITY	N/A	N/A	OUT
DANVILLE	ADOPTED	IN REVIEW	IN REVIEW
DIXON	INITIAL DRAFT	REVIEW COMPLETED	OUT
DUBLIN	SUBSEQUENT DRAFT	IN REVIEW	OUT
EAST PALO ALTO	ADOPTED	IN REVIEW	IN REVIEW

**Status of ABAG 6<sup>th</sup> Cycle Housing Elements**  
(As of 3/8/23)

EL CERRITO	INITIAL DRAFT	REVIEW COMPLETED	OUT
EMERYVILLE	ADOPTED	REVIEW COMPLETED	IN
FAIRFAX	N/A	N/A	OUT
FAIRFIELD	ADOPTED	IN REVIEW	IN REVIEW
FOSTER CITY	SUBSEQUENT DRAFT	IN REVIEW	OUT
FREMONT	ADOPTED	IN REVIEW	IN REVIEW
GILROY	INITIAL DRAFT	REVIEW COMPLETED	OUT
HALF MOON BAY	N/A	N/A	OUT
HAYWARD	ADOPTED	IN REVIEW	IN REVIEW
HEALDSBURG	INITIAL DRAFT	REVIEW COMPLETED	OUT
HERCULES	SUBSEQUENT DRAFT	REVIEW COMPLETED	OUT
HILLSBOROUGH	INITIAL DRAFT	REVIEW COMPLETED	OUT
LAFAYETTE	ADOPTED	IN REVIEW	IN REVIEW
LARKSPUR	INITIAL DRAFT	IN REVIEW	OUT
LIVERMORE	SUBSEQUENT DRAFT	REVIEW COMPLETED	IN
LOS ALTOS	ADOPTED	IN REVIEW	IN REVIEW
LOS ALTOS HILLS	ADOPTED	IN REVIEW	IN REVIEW
LOS GATOS	ADOPTED	IN REVIEW	IN REVIEW
MARIN COUNTY	ADOPTED	IN REVIEW	IN REVIEW
MARTINEZ	N/A	N/A	OUT
MENLO PARK	ADOPTED	IN REVIEW	IN REVIEW
MILL VALLEY	INITIAL DRAFT	REVIEW COMPLETED	OUT
MILLBRAE	INITIAL DRAFT	REVIEW COMPLETED	OUT
MILPITAS	INITIAL DRAFT	REVIEW COMPLETED	OUT
MONTE SERENO	ADOPTED	IN REVIEW	IN REVIEW
MORAGA	ADOPTED	IN REVIEW	IN REVIEW
MORGAN HILL	ADOPTED	IN REVIEW	IN REVIEW
MOUNTAIN VIEW	SUBSEQUENT DRAFT	REVIEW COMPLETED	OUT
NAPA	INITIAL DRAFT	IN REVIEW	OUT
NAPA COUNTY	ADOPTED	IN REVIEW	IN REVIEW
NEWARK	N/A	N/A	OUT

**Status of ABAG 6<sup>th</sup> Cycle Housing Elements**  
(As of 3/8/23)

NOVATO	INITIAL DRAFT	IN REVIEW	OUT
OAKLAND	ADOPTED	REVIEW COMPLETED	IN
OAKLEY	SUBSEQUENT DRAFT	IN REVIEW	OUT
ORINDA	ADOPTED	IN REVIEW	IN REVIEW
PACIFICA	N/A	N/A	OUT
PALO ALTO	INITIAL DRAFT	IN REVIEW	OUT
PETALUMA	INITIAL DRAFT	REVIEW COMPLETED	OUT
PIEDMONT	INITIAL DRAFT	REVIEW COMPLETED	OUT
PINOLE	INITIAL DRAFT	REVIEW COMPLETED	OUT
PITTSBURG	N/A	N/A	OUT
PLEASANT HILL	INITIAL DRAFT	IN REVIEW	OUT
PLEASANTON	ADOPTED	IN REVIEW	IN REVIEW
PORTOLA VALLEY	INITIAL DRAFT	REVIEW COMPLETED	OUT
REDWOOD CITY	ADOPTED	IN REVIEW	IN REVIEW
RICHMOND	ADOPTED	IN REVIEW	IN REVIEW
RIO VISTA	INITIAL DRAFT	IN REVIEW	OUT
ROHNERT PARK	ADOPTED	IN REVIEW	IN REVIEW
ROSS	INITIAL DRAFT	IN REVIEW	OUT
SAINT HELENA	SUBSEQUENT DRAFT	IN REVIEW	OUT
SAN ANSELMO	INITIAL DRAFT	IN REVIEW	OUT
SAN BRUNO	ADOPTED	IN REVIEW	IN REVIEW
SAN CARLOS	ADOPTED	IN REVIEW	IN REVIEW
SAN FRANCISCO	ADOPTED	REVIEW COMPLETED	IN
SAN JOSE	INITIAL DRAFT	REVIEW COMPLETED	OUT
SAN LEANDRO	ADOPTED	REVIEW COMPLETED	IN
SAN MATEO	ADOPTED	IN REVIEW	IN REVIEW
SAN MATEO COUNTY	INITIAL DRAFT	IN REVIEW	OUT
SAN PABLO	INITIAL DRAFT	REVIEW COMPLETED	OUT
SAN RAFAEL	INITIAL DRAFT	IN REVIEW	OUT
SAN RAMON	ADOPTED	REVIEW COMPLETED	IN
SANTA CLARA	ADOPTED	IN REVIEW	IN REVIEW

**Status of ABAG 6<sup>th</sup> Cycle Housing Elements**  
(As of 3/8/23)

SANTA CLARA COUNTY	N/A	N/A	OUT
SANTA ROSA	ADOPTED	IN REVIEW	IN REVIEW
SARATOGA	SUBSEQUENT DRAFT	IN REVIEW	OUT
SAUSALITO	ADOPTED	IN REVIEW	IN REVIEW
SEBASTOPOL	ADOPTED	REVIEW COMPLETED	IN
SOLANO COUNTY	INITIAL DRAFT	IN REVIEW	OUT
SONOMA	ADOPTED	IN REVIEW	IN REVIEW
SONOMA COUNTY	INITIAL DRAFT	IN REVIEW	OUT
SOUTH SAN FRANCISCO	ADOPTED	IN REVIEW	IN REVIEW
SUISUN CITY	INITIAL DRAFT	REVIEW COMPLETED	OUT
SUNNYVALE	INITIAL DRAFT	REVIEW COMPLETED	OUT
TIBURON	SUBSEQUENT DRAFT	IN REVIEW	OUT
UNION CITY	SUBSEQUENT DRAFT	IN REVIEW	OUT
VACAVILLE	SUBSEQUENT DRAFT	IN REVIEW	OUT
VALLEJO	N/A	N/A	OUT
WALNUT CREEK	ADOPTED	IN REVIEW	IN REVIEW
WINDSOR	INITIAL DRAFT	REVIEW COMPLETED	OUT
WOODSIDE	INITIAL DRAFT	REVIEW COMPLETED	OUT
YOUNTVILLE	ADOPTED	IN REVIEW	IN REVIEW



## Index of Regional Housing Technical Assistance Products

### Housing Elements Adoption Templates and Timing Requirements

These templates can be used by jurisdictions to present their final Housing Elements to their governing bodies for adoption.

These include:

- [2022 Housing Element Statutory Provisions Checklist](#)
- [Staff Report Template for Adopting the Housing Element](#)
- [Planning Commission Resolution Template](#)
- [City Council or Board of Supervisors Resolution Template](#)
- [Response to HCD Findings Template](#)

[Timing Requirements for Adoption of the Housing Element and Required Rezoning](#) summarizes timing requirements for the adoption of housing elements and required rezoning. It also notes some of the potential risks that may result from missing these deadlines, including limitations on denials of housing projects and loss of eligibility for certain funding programs.

### Housing Elements & HCD Comments

This [page](#) includes all the RHTA resources on draft Housing Elements and HCD comments.

- Staff are tracking the submission of Bay Area draft Housing Elements and the comments jurisdictions receive from HCD. Copies of the drafts and HCD comment letters are available [via this link](#).
- ABAG staff and consultants have reviewed Housing Element comment letters for Bay Area jurisdictions as HCD has released them. A total of six jurisdictions have received comment letters as of September 15, 2022. [This document](#) summarizes key findings from the comments.
- [Learning from Southern California and Sacramento](#): Analysis of HCD comment letters and lessons for Bay Area jurisdictions as they prepare their 6th cycle Housing Elements.
- [Responding to HCD Comments for Certification](#): These case studies summarize how four cities in Southern California and the Sacramento region responded to challenging HCD comments related to sites inventory, AFFH and other Housing Element topics. The documents present important strategies that cities in the ABAG region can use to prepare their Housing Elements for certification.
- The RHTA Program has created [CommentBot](#) (C-Bot), a tool to help Bay Area jurisdictions address HCD's comments in their next draft housing element. C-Bot provides suggestions and links to RHTA and HCD resources to help jurisdictions address common concerns that HCD has raised in past comment letters. C-Bot can be found here: <https://c-bot.info/>

## Affirmatively Furthering Fair Housing

The [Affirmatively Furthering Fair Housing Policies and Programs Toolkit was released](#) to assist local jurisdictions with completing the crucial step of establishing AFFH goals, policies and actions in the Housing Element. The toolkit highlights 15 key strategies Bay Area jurisdictions can implement to further fair housing. The AFFH Policies and Programs Toolkit was reviewed by HCD staff and incorporates their feedback. HCD has emphasized in recent comments on Bay Area jurisdictions' draft Housing Elements that AFFH should be central to the Housing Element's overarching goals and inform all objectives and policies.

- An Affirmatively Furthering Fair Housing Policy Resources [Annotated Bibliography](#) also summarizes existing housing policy resources which help identify goals, policies and actions to address a range of fair housing issues.

Staff hosted two webinars and launched the first set of AFFH resource products during the summer of 2021. The first webinar, *AFFH: The Nuts and Bolts with HCD*, was held June 22 and covered the basics of AB 686 and outlined new requirements for the Housing Element. The second webinar, *AFFH: Data Deep Dive*, was held July 13 and served as a more focused look into the analysis required for the Assessment of Fair Housing (AFH), and specifically the segregation and integration patterns analysis, which featured ABAG's work with UC Merced via the [STIR Labs partnership](#). Both webinar recordings and presentation materials can be found on ABAG's Regional Housing Technical Assistance Training [website](#).

As a follow up to the July webinar, the AFFH template [staff report](#) and [slide deck](#) were released for jurisdiction staff to use in introducing the new requirements to their local decisionmakers. Additionally, staff disseminated a [AFFH Data Guidance Checklist](#) which provides sources to data points outlined in the AFH. The final version of this checklist is in development and pending release this fall.

Additional AFFH TA includes:

- AFFH layer added to HESS tool
- [Segregation and Land Use Reports](#): Each jurisdiction's report and accompanying dataset provide segregation measures for both the local jurisdiction and the region using several indices, as required by the AFFH guidance issued by the California Department of Housing and Community Development (HCD). Local jurisdiction staff can use the segregation report and dataset to complete a component of the Assessment of Fair Housing, which requires analysis of segregation patterns related to race, other protected characteristics, and lower-income households.
- [AFFH Tips Memo](#): This document provides a summary review of HCD comments on Housing Elements submitted from other jurisdictions throughout the state to identify common pitfalls and make recommendations about how Bay Area jurisdictions can craft policies to meet AFFH goals -streamlining the path towards certification.
- Leading with Equity Working Group. Launched in March 2022 with 15 planning and housing department staff who have self-selected to advance racial and housing equity policies and programs within their Housing Element work. the work group focuses on promoting leadership development, capacity building toward understanding and navigating institutional change, peer-support and one-on-one coaching.

## Webinars

Since the RHTA program began, 26 webinars have provided information on a variety of topics. All webinar materials are available on this [webpage](#)

- Annual Progress Reports with HCD
- Talking with the Media about Housing
- 2022 New Housing Laws
- Bay Area Priority Sites Pilot Program
- How to Address HCD Comments for Certification
- Turner Center and ABAG Present: Best Practices to Implement SB 9 and Missing Middle Housing in the Bay Area
- Leveraging Your Land: Best Practices for Reusing Public Land for Housing
- Transforming Aging Malls and Office Parks: Reuse Challenges and Opportunities
- Housing Planning: For the Future
- Planning Innovations Webinar: Regional Data Tools for the Housing Element
- Housing Element 101 - Overview and New Laws + Tips
- Creating Capacity: An Overview of the Sites Inventory
- Using Data Effectively in Housing Element Updates – ABAG’s Housing Needs Data Packets and Accessing the US Census
- How to Talk About Housing – Data-Driven Lessons on Housing Communications that Work and Those that Backfire
- Incorporating Environmental Justice and Safety into your Housing Element
- Housing Sites Inventory - Deep Dive
- Engage How To! Introduction to Remote Meeting Tools
- Affirmatively Furthering Fair Housing: The Nuts and Bolts with HCD
- Affirmatively Furthering Fair Housing: Data Deep Dive
- Integrating Climate Adaptation/Resilience into Your Housing Element
- Context of SB 9 and Potential Impacts
- HESS Tool 1.0 Tutorial Webinar
- Surplus Public Land: webinar and presentation
- New Housing Law: webinar and presentation
- Keep Calm and Certify On: Tips from Early Adopters
- New Annual Progress Report Requirements with HCD
- Webinar for Elected Officials: Learn About Available Assistance for Housing Element Updates

## Upcoming

- Overview of AB 2011 and SB 6

## Communications, Messaging & Community Engagement

Recent products include:

- [How to Engage Farmworkers in the Housing Element Process](#): this guide is intended to provide practical advice to cities, towns and counties for conducting outreach and engagement — even if there are not farms or farmworkers living within your community. The accompanying templates can be downloaded and edited to fit your jurisdiction's needs.

- ["Let's Talk About Housing:" Communications Guide for Local Government](#)  
This document is a data-driven communications guide for use by staff and elected officials to foster productive conversations with residents about housing. The guide is based on existing and new research and includes consistent, clear language for discussions about affirmatively furthering fair housing (AFFH) legislation.
- [Best Practices for Equitable Engagement Primer](#)  
This document shares effective ways to engage communities and stakeholder organizations that traditionally are underrepresented in local government processes. It is designed to provide local jurisdictions with a range of tools, strategies and best practices for engaging all community members.
- Consultant support (communications coaching, meeting facilitation services, meeting materials).
- [508 compliance guidelines](#)
- [Missing Middle photo gallery with density information](#)
- [CBO and media contact lists](#)

Previously released information:

- Housing Element Webinar: [How to Talk About Housing](#) – Data-Driven Lessons on Housing Communications that Work and Those that Backfire (4/27/2021)
- Housing Element Webinar: [Engage How To! Introduction to Remote Meeting Tools](#) (5/25/2021)
- Balancing Act online public engagement housing simulation tool available for 25 jurisdictions and reduced rate negotiated for additional jurisdictions
- [Access to template survey](#) for jurisdictions to send to community members to gather information about housing issues and concerns
- Access to tool kit, including messaging guide to provide assistance in discussing housing and AFFH with community members. Several items of the tool kit have already been produced and are available on the website, including [Consequences of Non-Compliance with Housing Element Update](#).
- [Housing TA portal](#), allowing ease of access to range of relevant materials
- [Guide to Housing Element + AFFH Public Participation](#)
- Assistance with translation and interpretation ([link](#)).
- [Best practices for engaging multilingual constituents](#)

### Upcoming

- AFFH outreach after comment letters
- REAP 2.0 outreach

### Housing Data Tools

[Housing Needs Data Packets](#) for all 109 Bay Area jurisdictions contain tables, figures, and accompanying text for over 60 data points that can be placed directly into the Housing Needs section of each jurisdiction's housing element. The data packets were [pre-reviewed by HCD for consistency with state requirements](#) to create predictability during the Housing Element review process.

[Housing Element Site Selection "HESS" Tool](#), launched in Fall 2020, is a web-based mapping platform that assists Bay Area jurisdictions with site identification for Housing Element site inventories and flags sites that will likely require rezoning to be used under new state laws. In Fall 2021, ABAG launched a [1.0 update](#) to the HESS Tool based on feedback received from local planning staff, consultants, subject-matter experts and HCD. Updates included more granular screening categories, additional filters, an editing module to update underlying local land use data, and more.

**HESS Tool 2.0 Modules** were released in April 2022. The first module is an **AFFH Map** which allows local planners to visualize the distribution of their site inventories alongside key AFFH data layers. The second module supports jurisdictions with the **Realistic Capacity Calculations** for sites included in their inventories. ABAG has collected and analyzed data from local jurisdictions' Annual Progress Reports, Zoning Ordinances, and General Plans to adjust the theoretical maximum capacity of sites to reflect historical building trends more accurately. Users can generate realistic capacity reports prepopulated with this data, which can be submitted to HCD as supportive documentation. AFFH attributes have also been added to the site inventory form and local staff can produce their own pivot tables.

HESS Office Hours are available on an ongoing basis – staff can request office hour and make other data requests by emailing Heather Peters at [hpeters@bayareametro.gov](mailto:hpeters@bayareametro.gov).

### Webinar Recordings

- 10/29/2020: [Planning Innovations Webinar: Regional Data Tools for the Housing Element: Webinar video recording](#) and [Webinar presentation](#)
- 3/9/2021: ABAG Housing Element Series: [Creating Capacity: An Overview of the Sites Inventory: Webinar video recording](#) and [Webinar presentation](#)
- 3/23/2021: ABAG Housing Element Series: [Using Data Effectively in Housing Element Updates: Webinar video recording](#) and [Webinar presentation](#). Introduces the ABAG housing needs data packets and provides information on accessing the U.S. Census.
- [HESS Tool 1.0 Tutorial Webinar](#)

### Peer Cohorts and Work Groups

- Missing Middle Workgroup
  - a. Products
    1. Slide templates and talking points for use by staff
    2. Market report and interactive feasibility analysis tool
    3. Zoning guidebook
    4. Affordability strategies guidebook
    5. RHNA guidance memo
    6. [Middle Market Housing Development Tool](#)
  - b. Links
    - [Session 1: What is the Missing Middle?](#)
    - [Session 2: The Middle Housing Market](#)
    - [Session 3: Making Middle Housing Happen](#)
    - [Session 4: Making Middle Housing Affordable](#)
    - [Session 5: Projecting Middle Housing Production](#)
- Wildfire: all four sessions including webinar recordings, presentations, and resource guides are on [this website](#).
- “Big 3” Cohort (Oakland, San Francisco and San Jose)
- Leading with Equity Work Group
- [Malls & Office Parks Transformation Work Group](#)

### Upcoming

- Leading with Equity Work Group resources and products

- Agricultural Communities Cohort

## Other Regional Products

- [The Builders' Remedy and Housing Element Paper](#)
  - This paper describes the provisions of the Housing Accountability Act that constitute the "Builder's Remedy" and how they may apply to a proposed housing development project.
- [Overview of AB 2011 and SB 6](#)
  - AB 2011, the Affordable Housing and High Road Jobs Act of 2022 and SB 6, the Middle Class Housing Act of 2022, are intended to permit residential development on sites currently zoned and designated for commercial or retail uses. Both bills were signed into law by Governor Gavin Newsom on September 29, 2022, and will go into effect on July 1, 2023. This document presents a summary of key details of each bill.
- [Farmworker Housing Toolkit](#)
  - This Farmworker Housing Toolkit provides a one-stop source of information to assist local agencies in including the special housing needs of Farmworkers within their Housing Elements with the legislative framework, data, policies and programs that local jurisdictions can reference in the development of their farmworker housing needs analysis for their Cycle 6 Housing Element.
- [SB 9 materials:](#)
  - Webinar, slide deck, memo templates, Summaries, FAQ and Other References
  - Model ordinance
  - Objective Design and Development Standards (ODDS)
  - SB 9 application checklist for two-unit developments and urban lot splits
  - Sample deed restrictions for two-unit development and lot splits
  - Sample Affidavit regarding owner-occupancy
- ADU Affordability Safe Harbor – counting towards RHNA
- [Consequences of Non-Compliance with Housing Element Update](#)
- Pilot of Symbium Plancheck software to streamline permitting ([see announcement](#))
- Parking TA:
  - [Parking toolbox and handbook](#)
  - [Parking presentation and webinars](#)
  - Future parking assistance [sign up form](#)

## Upcoming

- Round 2 legal products under way (draft in a month)
  - Regulator agreements checklist
  - New laws cheat sheet
  - Affordable housing replacement requirements/tenant relocation

## Templates

- [Jurisdiction Housing Element RFP Template](#) a request for Proposals (RFP) template for local jurisdictions to hire consultants to assist with Housing Element updates
- [Housing Element Staff Report Template](#)
- [Housing Element Timeline Template](#)
- [What is a Housing Element? Briefer Template](#)

- [What is a Housing Element? Briefer Template \(Word version\)](#)
- [What is a Housing Element? Briefer Template \(Spanish translation version\)](#)
- [What is a Housing Element? Briefer Template \(Chinese translation version\)](#)
- [Housing Element FAQs Template](#)
- [AFFH Template Staff Report](#)
- [AFFH Template Staff Slide Deck](#)
- [AFFH Data Guidance Checklist](#)

## Resilience TA

- [Briefer on Integrated Planning - EJ and Safety Element Updates](#)
- [Sample Agenda for Integrating Planning](#)
- [Safety Element New Requirements](#)
- [Status of Resilience and EJ Planning in the Bay Area](#)
- ABAG webinar co-hosted by California Office of Planning & Research: [Incorporating Environmental Justice and Safety into your Housing Element: Webinar video recording](#) and [Webinar presentation](#)

## Regional Planning Consulting Bench

ABAG has established a Regional Planning Bench with 92 consultants in 11 service categories. The Bench is available to all jurisdictions in the Bay Area to use in accordance with their local procurement rules.

ABAG launched a labor-saving online tool from City Innovate that allows jurisdictions to easily search bench consultant profiles and compare consultants' qualifications and rates. The tool also facilitates informal solicitations of quotes for work when applicable procurement rules allow.

### Related Links

- [Frequently Asked Questions](#) regarding the Grants and Regional Planning Consulting Bench
- [Request for Qualifications](#) used to seat the Regional Planning Consulting Bench

## Local Grants

Funding amounts can be found in this [Grant Amounts spreadsheet](#). Draft funding agreements were sent to all Bay Area jurisdictions in July offering each the option of receiving reimbursements for eligible expenses, or the option of electing to have ABAG hold the funds and administer consulting contracts on behalf of the recipient jurisdiction. [REAP Non-competitive Allocation: Eligible Activities](#)

## County Planning Collaboratives

County-based groups staffed by a paid coordinator who provides technical assistance and facilitate cross-jurisdiction engagement for the Housing Element updates and other housing-related topics.

### Collaborative Contacts:

1. Alameda: Alexia Rotberg, UPP, [arotberg@up-partners.com](mailto:arotberg@up-partners.com)
2. Contra Costa: Shawna Bekke-Read, MIG, [sbekkeread@migcom.com](mailto:sbekkeread@migcom.com)
3. Marin: Jillian Zeiger, Marin County, [jzeiger@marincounty.org](mailto:jzeiger@marincounty.org)
4. Napa/Sonoma: Jane Riley, 4Leaf, [jriley@4leafinc.com](mailto:jriley@4leafinc.com)
5. Santa Clara: David Driskell Peninger, BAIRD + DRISKELL, [driskell@bdplanning.com](mailto:driskell@bdplanning.com)
6. San Mateo: Josh Abrams, BAIRD + DRISKELL, [abrams@bdplanning.com](mailto:abrams@bdplanning.com)
7. Solano: Robert Guerrero, STA, [rguerrero@sta.ca.gov](mailto:rguerrero@sta.ca.gov)

Recording of Planning Collaboratives Kick-Off April 13, 2021. This webinar introduces the County Planning Collaboratives.

- [Planning Collaboratives Kick-Off: Webinar video recording](#)
- [Planning Collaboratives Kick-Off: Presentation](#)
- Additional resource from the webinar: [A Collaborative Approach to Addressing our Housing Challenges](#)



**DISCLAIMER:** This document is intended solely as a technical overview of the provisions of certain provisions of the Housing Accountability Act. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel when determining the applicability of these provisions to any proposed housing development project in their jurisdiction. **UPDATE:** This document was updated on February 15, 2023, to add Footnote 2 regarding information received related to HCD's approval of housing elements.

## The “Builder’s Remedy” and Housing Elements

There have recently been press reports regarding the so-called “Builder’s Remedy” that can be used to avoid local zoning requirements when a locality’s housing element does not substantially comply with state law. These reports have stated that, if a locality has a noncompliant housing element the city or county must approve the housing development project, regardless of the local zoning.

The “Builder’s Remedy” arises from the Housing Accountability Act (Government Code Section 65589.5<sup>1</sup>; the HAA). This paper describes the provisions of the HAA that constitute the “Builder’s Remedy” and how they may apply to a proposed housing development project.

### How Does the “Builder’s Remedy” Work?

The HAA requires that cities and counties make one of five findings to deny, or to apply conditions that make infeasible, a housing development project “for very low, low- or moderate-income households” or an emergency shelter. (Section 65589.5(d).) A housing development project with 20 percent of the total units available to lower income households or with all of the units available for moderate or middle income households may qualify as housing “for very low, low- or moderate income households” (see detailed description below). Any of the five findings would allow denial of an eligible project:

1. The city or county has met or exceeded its Regional Housing Needs Allocation (RHNA) for the proposed income categories in the development.
2. The housing development or emergency shelter would have a specific adverse impact on public health and safety, and there is no way to mitigate or avoid the impact without making the development unaffordable. The impact must be based on objective, written public health or safety standards in place when the application was deemed complete.
3. The denial or condition is required to meet state or federal law, and there is no feasible method to comply without making the development unaffordable.
4. The project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agriculture or resource preservation or there are not adequate water or sewage facilities to the serve the project.

<sup>1</sup> All future references are to the Government Code unless otherwise specified.

## Regional Housing Technical Assistance Program

5. The project is inconsistent with both the zoning ordinance and the land use designation as specified in any general plan element. **However, a city or county cannot make this finding if it has not adopted a housing element in substantial compliance with state law.**

If a locality has not adopted a housing element in substantial compliance with state law, developers may propose eligible housing development projects that do not comply with either the zoning or the general plan. The term “Builder’s Remedy” is used to describe the situation where a local agency may be required to approve an eligible housing development project because it cannot make one of the other four findings.

### Are Projects Using the “Builder’s Remedy” Exempt from CEQA Review?

The HAA contains no exemptions from the California Environmental Quality Act. The HAA states specifically that nothing relieves the local agency from making the required CEQA findings and otherwise complying with CEQA. (Section 65589.5(e).) However, there is a growing debate as to the interplay between the Builder’s Remedy and CEQA. A project may be exempt from CEQA under other provisions of CEQA, other state laws, or the CEQA Guidelines. Agencies may wish to consult their legal counsel regarding the appropriate CEQA review.

### When Does a Housing Element No Longer Comply with State Law? Is There a Grace Period If the Housing Element Is Not Adopted by the Due Date?

Housing elements are required to comply with current state housing element law on the established due date (**January 31, 2023** in the ABAG region). State law has changed significantly since fifth cycle housing elements were adopted, and it would be unlikely that a fifth cycle housing element would substantially comply with current state law. If a sixth cycle element has not been adopted by the due date, the housing element would likely be out of compliance with state law until a complying sixth cycle housing element is adopted. **There is no grace period**, even for the period when a housing element is being reviewed by the Department of Housing and Community Development (HCD).

HCD approval is not required for a housing element to be found substantially compliant with state law.<sup>2</sup> State law provides that a city or county may adopt its own findings explaining why its housing element is substantially compliant with state law despite HCD’s findings. (Section 65585(f).) However, HCD is authorized to refer agencies to the Attorney General if it finds a housing element out of compliance with state law. (Section 65585(j).)

### Are a Local Agency’s Development Standards Null and Void If the Housing Element is Not in Compliance with State Law?

No, the local agency’s development standards are not null and void if the housing element is not in substantial compliance with state law. The “Builder’s Remedy,” however, may require a local agency to approve an eligible housing

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<sup>2</sup> News outlets are reporting that HCD’s spokesperson, Alicia Murillo, is communicating that HCD’s approval is required for a housing element to be found substantially compliant with state law. See Savidge, Nico. “The state rejected Berkeley’s housing plans. What happens next?” (Feb. 1, 2023)(available at <https://www.berkeleyside.org/2023/02/01/berkeley-housing-element-builders-remedy-hcd>); Booth, Edward “Napa County’s Jurisdictions fall behind on California’s housing element deadline.” (Feb. 14, 2023)(available at [https://napavalleyregister.com/news/local/napa-county-jurisdictions-fall-behind-on-californias-housing-element-deadline/article\\_de8457e2-acc6-11ed-8032-0ff8f723745b.html#tracking-source=home-top-story](https://napavalleyregister.com/news/local/napa-county-jurisdictions-fall-behind-on-californias-housing-element-deadline/article_de8457e2-acc6-11ed-8032-0ff8f723745b.html#tracking-source=home-top-story))



## Regional Housing Technical Assistance Program

development project despite its noncompliance with local development standards. Conversely, other projects may be challenged because a finding of general plan consistency cannot be made if the general plan is out of compliance with state law.

### What Projects Are Eligible to Use the “Builder’s Remedy”?

The “Builder’s Remedy” applies only to a housing development project “for very low, low- or moderate-income households” and to emergency shelters. The HAA defines a “housing development project” as either:

- Residential units only;
- Mixed-use developments with at least two-thirds of the square footage designated for residential use; or
- Transitional housing or supportive housing.<sup>3</sup> (Section 65589.5(h)(2).)

“Housing for very low, low-, or moderate-income households” includes either:

- 20% of the total units sold or rented to lower income households;
- 100% of the units sold or rented to moderate income households; or
- 100% of the units sold or rented to middle income households.<sup>4</sup>

Monthly housing costs for lower income households cannot exceed 30 percent of 60 percent of median income, adjusted for household size, and the units must remain affordable for 30 years. Monthly housing costs for moderate income households cannot exceed 30 percent of 100 percent of median income. There are no standards in the HAA for housing costs for middle income households. (Sections 65589.5(h)(3), (h)(4).)

An emergency shelter is housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. (Section 65582(d); Health & Safety Code Section 50801(e).)

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<sup>3</sup> As defined in Section 65582.

<sup>4</sup> Those earning no more than 150 percent of median income.



# Housing Element Compliance and Key Funding Programs: Summary

December 13, 2022, updated January 30, 2023

Some state and regional funding sources are tied to having a certified Housing Element. This overview memo and attached table summarize housing element requirements and key deadlines for several funding programs. Jurisdictions should review the funding sources they plan on utilizing and ensure they will comply.

**DISCLAIMER: ABAG/MTC believes this information to be correct at the time of publication, but jurisdictions should independently confirm these assumptions as deadlines and guidelines continue to evolve.** This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this FAQ. Seek the advice of your attorney before acting or relying upon the following information.

## Summary: Funding Programs that Require Compliant Housing Elements

Unless otherwise noted, each program requires a certified housing element, defined as an “adopted housing element that has been found by the Department to be in substantial compliance.”

More details, including links to sources, are included in the appendix below.

Funding Program	Agency	When the Housing Element Needs to be Certified	Relevant Deadline in 2023 <sup>1</sup>
<b>Affordable Housing &amp; Sustainable Communities (AHSC)</b> Note language about “presumptive compliance” in the regulations: if jurisdictions are undergoing review at the time of the award, awards will be conditioned upon final certification at the time of disbursement.	Strategic Growth Council (SGC)	Time of award recommendation	April 4, 2023

<sup>1</sup> If the deadline for having housing element certification is tied to the time of the application, the due date for the application is listed. If the funding is tied to the time of award, the expected date that the money will be awarded is listed. Please double-check deadline dates as the NOFA calendar is not fixed.



# Regional Housing Technical Assistance Program

Funding Program	Agency	When the Housing Element Needs to be Certified	Relevant Deadline in 2023 <sup>1</sup>
<p><b>California Department of Transportation (Caltrans) Sustainable Transportation Planning Grant</b></p> <p>Note: The application guide for the Caltrans Sustainable Transportation Planning Grant requires a certified housing element at the time of application. However, STP Grant Applicants are able to explain in the application that they are in the process of updating their housing element. Caltrans will then condition their grant, if awarded, to require the jurisdiction to have an adopted Housing Element before they can execute a grant agreement with Caltrans.</p>	Caltrans	Time of application	March 9, 2023
<p><b>Community Development Block Grant Program</b></p> <p>Note that statutory requirement reads: "Submit a draft or adopted housing element to the Department in accordance with state law"</p>	California Department of Housing & Community Development (HCD)	Time of award	August 2023
<p><b>Infill Infrastructure Grant (IIG)</b></p> <p>Note language in the guidelines that reads: "If award decision made within 120 days of housing element due date, Dept may refer to prior cycle compliance."</p> <p>Note language about "presumptive compliance" in the guidelines: if jurisdictions are undergoing review at the time of the award, awards will be conditioned upon final certification at the time of disbursement.</p>	HCD	Time of award	June 2023 (Qualifying Infill Projects and Adaptive Reuse)  March 2023 (Catalytic Qualifying Infill Areas)  July-Sept 2023 (Small Jurisdiction)
<p><b>Local Housing Trust Fund (LHTF)</b></p>	HCD	Time of award	May 2023
<p><b>One Bay Area Grant (OBAG)</b></p>	Metropolitan Transportation Commission (MTC)	December 31, 2023	December 31, 2023

# Regional Housing Technical Assistance Program

Funding Program	Agency	When the Housing Element Needs to be Certified	Relevant Deadline in 2023 <sup>1</sup>
<b>Permanent Local Housing Allocation (PLHA)</b> Note language in the guidelines that reads: “If award decision made within 120 days of housing element due date, Dept may refer to prior cycle compliance”	HCD	Time of award, by February 2023	Dates depend on specific PLHA program
<b>Transit Oriented Development (TOD)</b>	HCD	Time of application	No funding currently available

## Summary: Funding Programs that Reward Projects in Jurisdictions with Compliant Housing Elements

Several programs use HCD’s Prohousing Designation as a possible evaluation criterion. Prohousing Designation requires “an adopted housing element that has been duly found to be in substantial compliance with the requirements of Housing Element Law” at the time of the Prohousing application OR prior to designation.

Funding Program	Agency	Evaluation Criteria
<b>Active Transportation Program</b>	California Transportation Commission (CTC)	Prohousing Designation is among possible evaluation criteria at time of funding application (helps with score)
<b>HOME Investment</b>	HCD	Scoring factor at time of funding application – the next planned deadline is July 2023
<b>Local Partnership Program</b>	CTC	Prohousing Designation is among possible evaluation criteria at time of funding application
<b>Solutions for Congested Corridors Program</b>	CTC	Prohousing Designation application is one way to demonstrate efficient land use and housing at time of funding application
<b>Transit and Intercity Rail Capital Program</b>	California State Transportation Agency (CalSTA)	Prohousing Designation application is one way to demonstrate efficient land use and housing at time of funding application

## Funding Programs that Do Not Require Compliant Housing Elements

- **Multifamily Housing Program (MHP)** – no mention of housing element compliance in HCD’s current MHP Guidelines

Document references dates from HCD’s [NOFA Schedule](#) updated as of November 2022. Note that HCD updates its calendar regularly, so dates in this document may not remain current.

## Appendix A: Details of Funding Programs that Require Housing Element Compliance

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>2</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 1/30/2023	FUNDING PROGRAM WEBPAGE
<b>Affordable Housing &amp; Sustainable Communities (AHSC)</b>	Strategic Growth Council (SGC)	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	At time of award recommendation  Note language about “presumptive compliance:” if jurisdictions are undergoing review at the time of the award, awards will be conditioned upon final certification at the time of disbursement.	April 4, 2023	The Housing Element for the jurisdiction in which the Project is located must be in substantial compliance by the date of award recommendation. Housing Element in substantial compliance means the local public entity’s adopted housing element is in substantial compliance as demonstrated by a letter from the Department which sets forth findings that the housing element adopted within the time frames required by Section 65588 of the Government Code includes that substance essential to every requirement of Article 10.6, commencing with Section 65580, of Chapter 3 of Division 1 of Title VII of the Government Code. A jurisdiction’s current housing element compliance status can be obtained by referencing the Department’s website. Projects located on Trust Land, as defined under Indian country, are exempt from this requirement.  (A) For the purposes of this section alone, jurisdictions that are undergoing Department review of their housing element at the time of award and jurisdictions which are receiving Department technical assistance to bring their housing element into compliance at the time of award, shall both be deemed to be in a presumptive state of substantial compliance by the Department. All awards premised on presumptive substantial compliance shall include conditions in their respective standard agreements requiring that prior to funds disbursement the subject jurisdiction must	<a href="#">Program guidelines</a>	<a href="#">Program webpage</a>

<sup>2</sup> HCD programs reference [HCD's NOFA Calendar](#)

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>2</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 1/30/2023	FUNDING PROGRAM WEBPAGE
						have received a final housing element certification letter from the Department.		
<b>Caltrans Sustainable Transportation Planning (STP) Grant</b>	California Department of Transportation (Caltrans)	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	At time of application  The application guide requires a certified housing element at the time of application. However, STP Grant Applicants are able to explain in the application that they are in the process of updating their housing element. Caltrans will then condition their grant, if awarded, to have an adopted Housing Element before they can execute a grant agreement with Caltrans.	March 9, 2023	To be eligible for a grant award, city and county primary/sub-grant applicants are required to submit:  1. A housing element adopted by the local government to the Department of Housing and Community Development (HCD), and HCD must find the adopted housing element in substantial compliance with state housing element law pursuant to Government Code Section 65585.	<a href="#">Program Application Guide</a>	<a href="#">Program website</a>
<b>Community Development Block Grant (CDBG) Program</b>	California Department of Housing & Community Development (HCD)	Threshold requirement: definition of eligible applicant	Submit a draft or adopted housing element to the Department in accordance with state law	At time of award	August 2023	As per HSC §50829, the Applicant must submit a draft or adopted housing element to the Department in accordance with the requirements listed in Government Code (GC) §65580, et seq. and GC §65585 (see Appendix B) prior to an award being granted. Applicants that fail to comply with the procedural requirements (i.e., GC §65585) of the Housing Element Law are ineligible for funding through the state CDBG program. Eligibility cannot be restored until the Applicant has met such procedural requirements.	<a href="#">Program NOFA memo</a>	<a href="#">Program website</a>

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>2</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 1/30/2023	FUNDING PROGRAM WEBPAGE
<b>Infill Infrastructure Grant (IIG)</b>	HCD	Threshold requirement: definition of Qualifying Infill Area	Adopted housing element that has been found by the Department to be in substantial compliance	At time of award  If award decision made within 120 days of housing element due date, HCD may refer to prior cycle compliance  Note language about “presumptive compliance:” if jurisdictions are undergoing review at the time of the award, awards will be conditioned upon final certification at the time of disbursement.	June 2023 (Qualifying Infill Projects and Adaptive Reuse)  March 2023 (Catalytic Qualifying Infill Areas)  July-Sept 2023 (Small Jurisdiction)	(2) Be located in a city, county, or city and county in which the general plan of the city, county, or city and county has an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the GC, pursuant to GC Section 65585 at time of Award. If the Award decisions are made within 120 days of the housing element due date, the Department may refer to the jurisdiction’s compliance from the prior cycle.  For the purpose of this section alone, jurisdictions that are undergoing Department review of their housing element at the time of Award, and jurisdictions that are receiving Department technical assistance to bring their housing element into compliance at the time of Award, shall both be deemed to be in a presumptive state of substantial compliance by the Department. All Awards premised on presumptive substantial compliance shall include conditions in their respective Standard Agreements requiring that prior to funds disbursement, the subject jurisdiction must have received a final housing element certification letter from the Department.	<a href="#">Program website</a>  Download June 16, 2022 IIG-2019 Guidelines under “Archive”  <a href="#">Program NOFA memo</a>	<a href="#">Program website</a>  <a href="#">Program guidelines</a>
<b>Local Housing Trust Fund (LHTF)</b>	HCD	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	At time of award	May 2023	City or County Applicants must have a Housing Element that was adopted by the Applicant’s governing body and subsequently determined by the Department to be in compliance with state Housing Element law by the time awards are announced. If an applicant is determined to be out of compliance at the time awards are announced, it will be ineligible to receive funding and the next highest scoring eligible application may be funded in its place.	<a href="#">Program NOFA memo</a>	<a href="#">Program website</a>

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>2</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 1/30/2023	FUNDING PROGRAM WEBPAGE
<b>Multifamily Housing Program (MHP)</b>	HCD	n/a	n/a	n/a	n/a	n/a No language in guidelines	<a href="#">Program guidelines</a>	<a href="#">Program website</a>
<b>One Bay Area Grant (OBAG)</b>	Metropolitan Transportation Commission (MTC)	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	By December 31, 2023	31-Dec-23	Have a general plan housing element adopted and certified by the California Department of Housing and Community Development (HCD) for the 2023-31 Regional Housing Needs Allocation (RHNA) cycle by December 31, 2023, and maintain certification throughout the OBAG 3 program period.	<a href="#">Program details</a>	<a href="#">Program website</a>
<b>Permanent Local Housing Allocation (PLHA)</b>	HCD	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	At time of award, by February 28, 2023  If application submitted within 120 days of housing element due date, Dept may refer to prior cycle compliance	Jan-March 2023 depending on specific program  Aug-Dec 2023 (rolling awards for the formula program)	Housing Element Compliance: The Applicant and delegating Local government, if applicable, must be a locality with an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of Article 10.6 (commencing with section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, pursuant to Government Code section 65585 at the time of award. Awards will be made through February 2023. If a jurisdiction submits an application prior to the November 30th application closing deadline but fails to demonstrate that their housing element is in compliance by February 28, 2023, will not be eligible and any 2019 funds will revert to the Housing Rehabilitation Loan Fund per statute. If the application is submitted within 120 days of the housing element due date, the Department may refer to the jurisdiction's compliance from the prior cycle.  NOTE: Please be advised that no funding from any subsequent year will be disbursed if the Local government is not in compliance with the housing element requirement and the Housing Element Annual Progress Report (APR) requirement stated in Guidelines Section 302(a) and (b), or in the event that the Local government has not submitted its	<a href="#">Program NOFA memo</a>	<a href="#">Program website</a>

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>2</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 1/30/2023	FUNDING PROGRAM WEBPAGE
						annual PLHA report, as required by Guidelines Section 503. Please refer to Appendix D for more information on verifying housing element and APR status.		
<b>Transit Oriented Development (TOD)</b>	HCD	Threshold requirement	Adopted housing element that has been found by the Department to be in substantial compliance	At time of application	n/a All funds have been awarded	The Housing Development must be located in a Locality with an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of California’s Housing Element Law (Gov. Code, § 65580 et seq.) at time of application.	<a href="#">Program guidelines</a>	<a href="#">Program website</a>

## Appendix B: Details of Funding Programs that Incentivize Housing Element Compliance

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>3</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 12/1/2022	FUNDING PROGRAM WEBPAGE
<b>Active Transportation Program</b>	California Transportation Commission (CTC)	Prohousing designation among possible evaluation criteria (helps with score)	See Prohousing Designation, below	See Prohousing Designation, below	2022 application deadline was June 15, 2022  Adoption June 2023  2023 deadlines TBD?	Under Scoring Criteria (Transformative Projects): Applicants are encouraged to apply for the California Department of Housing and Community Development’s (HCD) Prohousing Designation Program and to describe how local policies align with prohousing criteria. If housing is not an issue for the community, the applicant should explain why it is not a concern.	<a href="#">Program guidelines</a>	<a href="#">Program website</a>
<b>HOME Investment</b>	HCD	Scoring factor (50 points out of minimum 930 needed; 1550 points possible)	Adopted housing element that has been found by the Department to be in substantial compliance	At time of application	Jul-23	Applicants that meet the definition of a local public entity (cities and counties) are required to be in substantive compliance with state Housing Element Law, as defined in state HOME regulations Section 8201(t), as of the NOFA application due date.  “Housing element in substantive compliance” means the city or county’s adopted housing element is in substantive compliance as demonstrated by a letter from the Department which sets forth findings that the housing element adopted within the time frames required by Section 65588 of the Government Code includes that substance essential to every requirement of Article 10.6, commencing with Section 65580, of Chapter 3 of Division I of Title VII of the Government Code.	<a href="#">Program NOFA memo</a>  <a href="#">Program regulations</a>	<a href="#">Program website</a>
<b>Local Partnership Program</b>	CTC	Prohousing designation among possible evaluation criteria	See Prohousing Designation, below	See Prohousing Designation, below	2022 application deadline is November 29, 2022	Among the evaluation criteria: Demonstrating the local jurisdiction applied to the Department of Housing and Community Development’s Prohousing Designation Program and meets Prohousing criteria that support efficient land use.	<a href="#">Program guidelines</a>	<a href="#">Program website</a>

<sup>3</sup> HCD programs reference [Notice of Funding Availability Calendar](#)

PROGRAM	AGENCY	REQUIREMENT /CRITERIA	DEFINITION OF COMPLIANCE	DEADLINE FOR COMPLIANCE	RELEVANT 2023 DEADLINE (PLANNED) <sup>3</sup>	LANGUAGE FROM GUIDELINES OR REGULATIONS	REFERENCE URL AS OF 12/1/2022	FUNDING PROGRAM WEBPAGE
					Program adoption June 28-29, 2023  2023 deadlines TBD?			
<b>Solutions for Congested Corridors Program</b>	CTC	Prohousing application is one way to demonstrate efficient land use and housing	See Prohousing Designation, below	See Prohousing Designation, below	2022 application deadline is December 2, 2022  Program adoption June 28-29, 2023  2023 deadlines TBD?	Under Additional Evaluation Criteria (Efficient Land Use and Housing): The applicant may also identify 1) local government jurisdictions that will be served by the proposed project and have obtained a Prohousing Designation, or 2) enacted or developing local land-use policies in the project area which support efficient land-use patterns or incorporate Prohousing criteria.	<a href="#">Program guidelines</a>	<a href="#">Program website</a>
<b>Transit and Intercity Rail Capital Program</b>	California State Transportation Agency (CalSTA)	Prohousing designation among possible evaluation criteria	See Prohousing Designation, below	See Prohousing Designation, below	2023 application deadline is February 10, 2023  Anticipated award date is April 24, 2023	Under Primary Evaluation Criteria: Projects must document the degree to which ridership growth expected over the life of the project is supported by housing policies that will support such growth, including evidence of compliance with state-required housing plans (such as an Adopted Housing Element), and may include a designation of the community as Prohousing, as determined by the Department of Housing and Community Development's Prohousing Designation Program.	<a href="#">Program guidelines</a>	<a href="#">Program website</a>
<b>*Prohousing Designation</b>	HCD	Threshold requirement	An adopted housing element that has been duly found to be in substantial compliance with the requirements of Housing Element Law	At time of application OR prior to designation	Rolling applications and approvals	(1) The applicant has adopted a Compliant Housing Element at the time of application or prior to designation.  (6) Compliant Housing Element. An adopted housing element that has been duly found to be in substantial compliance with the requirements of Housing Element Law.	<a href="#">Regulation text</a>	<a href="#">Program website</a>



**ASSOCIATION  
OF BAY AREA  
GOVERNMENTS**



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Bay Area Housing Finance Authority  
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[www.mtc.ca.gov](http://www.mtc.ca.gov)

**Memorandum**

DATE: March 9, 2023  
TO: ABAG Housing and BAHFA Oversight Committees  
FR: Executive Director  
RE: Status of Local Suballocations of REAP Funding

On November 19, 2020, the ABAG Executive Board approved minimum local suballocations of Regional Early Action Planning (REAP) Grant funds to all 109 local jurisdictions and Subregional Planning Collaboratives in the Bay Area. On May 20, 2021, the ABAG Executive Board approved additional local suballocations bringing the total amount of local suballocations to \$10.88M of the \$24M REAP grant. Each of the 109 members of ABAG has been suballocated a minimum of \$20,000 to support local housing planning with supplemental suballocations based on the number of RHNA units received. The amounts of each suballocation [can be found at this link](#).

As of February 13, 2023, 77 jurisdictions and all 7 Subregional Planning Collaboratives had claimed a total of \$9,434,097 in REAP suballocations, amounting to approximately 87% of the available funding. Another 4 jurisdictions have scope of works in progress (summing to \$166,637, approximately 2% of total funding). However, another 23 jurisdictions still need to submit scopes of work to claim their suballocation awards (summing to \$1,134,100 or approximately 10% of total funding) and 5 jurisdictions have yet to respond at all to their award notifications (summing to \$145,166 or approximately 1% of total funding). Table 1 in this Memorandum details the unclaimed suballocations and Table 2 details the suballocations that still need scopes of work. Staff has conducted extensive outreach to all local jurisdictions in a variety of ways during the last 18 months to encourage local governments to claim their awards. Staff continues to reach out to all of the remaining jurisdictions to offer one-on-one assistance to complete their Agreements. Time is of the essence as REAP funding must be fully expended by December 31, 2023 under ABAG’s current grant agreement with the state. If local grant awards remain unclaimed by April 2023, staff will bring a recommendation to reprogram funds to ensure that ABAG fully expends these funds by the statutory expenditure deadline.

Andrew Fremier

Executive Director

**Table 1**  
**Unclaimed REAP Suballocations**  
(\$145,166 as of 2/13/22)

<b>Jurisdiction</b>	<b>County</b>	<b>Amount</b>
Belmont	San Mateo	\$ 32,688
Brentwood	Contra Costa	\$ 30,819
Fairfield	Solano	\$ 41,659
Portola Valley	San Mateo	\$ 20,000
Woodside	San Mateo	\$ 20,000
<b>TOTAL:</b>		<b>\$ 145,166</b>

**Table 2**  
**REAP Suballocations Missing Scope of Work**  
(\$1,134,100) as of 2/13/22)

<b>Jurisdiction</b>	<b>County</b>	<b>Amount</b>		<b>Jurisdiction</b>	<b>County</b>	<b>Amount</b>
Albany	Alameda	\$27,919		Mountain View	Santa Clara	\$99,152
Atherton	San Mateo	\$20,000		Napa County	Napa	\$102,201
Daly City	San Mateo	\$54,390		Newark	Alameda	\$33,321
Danville	Contra Costa	\$35,930		Novato	Marin	\$34,856
Fairfax	Marin	\$20,000		Palo Alto	Santa Clara	\$63,262
Fremont	Alameda	\$111,677		San Rafael	Marin	\$117,889
Hayward	Alameda	\$52,869		Santa Clara City	Santa Clara	\$102,684
Healdsburg	Sonoma	\$20,000		Sausalito	Marin	\$20,000
Hillsborough	San Mateo	\$20,000		St. Helena	Napa	\$20,000
Lafayette	Contra Costa	\$35,027		Suisun City	Solano	\$20,000
Livermore	Alameda	\$52,478		Vallejo	Solano	\$40,884
Martinez	Contra Costa	\$29,561				

**TOTAL: \$1,134,100**

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

ABAG Housing &  
BAHFA Oversight  
Committees

March 9, 2023

 Association of Bay Area Governments



Technical Assistance  
for Local Planning  
**HOUSING**



*Photo Credit: Amie Holbrook*

# 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 3/8/23)*

<b>ADOPTED</b>	<b>46</b>
Certified	<b>8</b>
Out of compliance	<b>0</b>
In review	<b>38</b>
<b>SUBSEQUENT DRAFTS</b>	<b>14</b>
In substantial compliance	<b>1</b>
Out of compliance	<b>4</b>
In review	<b>9</b>
<b>INITIAL DRAFTS</b>	<b>39</b>
Out of compliance	<b>22</b>
In review	<b>17</b>
<b>NO DRAFTS</b>	<b>10</b>

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

(as of 3/8/23)

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	48%

**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
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

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