

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

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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