

TO: ABAG Administrative Committee
FROM: Therese W. McMillan, Executive Director
SUBJECT: Town of Windsor Appeal of Draft RHNA Allocation and Staff Response

DATE: October 29, 2021

OVERVIEW

Jurisdiction: Town of Windsor

Summary: Town of Windsor requests the decrease of its Draft RHNA Allocation by 342 units (34 percent) from 994 units to 652 units based on the following issues:

- ABAG failed to determine the jurisdiction's Draft Allocation in accordance with the Final RHNA Methodology and in a manner that furthers, and does not undermine, the RHNA Objectives.

Staff Recommendation: Deny the appeal.

BACKGROUND

Draft RHNA Allocation

Following adoption of the Final RHNA Methodology on May 20, 2021, the Town of Windsor received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
Town of Windsor	385	222	108	279	994

Local Jurisdiction Survey

The Town of Windsor submitted a Local Jurisdiction Survey. A [compilation of the surveys submitted](#) is available on the ABAG website.

Comments Received during 45-Day Comment Period

ABAG received nearly 450 comments during the 45-day public comment period described in Government Code section 65584.05(c). Some comments encompassed all of the appeals submitted, and there were nine comments that specifically relate to the appeal filed by the Town of Windsor. All comments oppose the Town's appeal. [All comments received](#) are available on the ABAG website.

ANALYSIS

Issue 1: *The Town of Windsor argues that the final RHNA methodology does not further the statutory objective related to "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” because the process ABAG used to approve the Equity Adjustment as part of the methodology was flawed.

ABAG-MTC Staff Response: This argument by the Town challenges the final RHNA methodology that was adopted by the ABAG Executive Board and approved by HCD. A valid appeal must show ABAG made an error in the application of the methodology in determining the jurisdiction’s allocation; a critique of the adopted methodology itself falls outside the scope of the appeals process. Housing Element Law gives HCD the authority to determine whether the RHNA methodology furthers the statutory objectives described in Government Code Section 65584(d), and HCD made this determination.¹ Regarding the RHNA objective noted in the City’s appeal, HCD made the following findings:

“On a per capita basis, the methodology allocates larger shares of RHNA to higher income jurisdictions, resulting in an allocation larger than their existing share of households. Jurisdictions with more expensive housing units – an indicator of higher housing demand – receive larger allocations on a per capita basis. For example, Palo Alto and Menlo Park have some of the highest housing costs in the region, according to American Community Survey Data. Both jurisdictions receive a share of the regional RHNA that is larger than their share of the region’s population, putting them in the top 15 per capita allocations. Additionally, jurisdictions with higher rates of home ownership and single-family homes receive slightly larger lower-income allocations as a percentage of their total RHNA (supporting a mix of housing types).”

Development of the equity adjustment and the decision to include it in the RHNA methodology occurred over the course of several public meetings:

- Housing Methodology Committee (HMC) meeting on September 4, 2020: Staff received a memo from several HMC members on August 31, and staff prepared [materials for the September 4 meeting](#) that explained the equity adjustment and provided data on its potential impacts on the methodology.
- HMC meeting on September 18, 2020: A [memo](#) included in the agenda packet that presented potential methodology options discussed the equity adjustment in detail. The [meeting materials](#) also included several appendices with in-depth data analysis and maps showing the impact of including the equity adjustment. Ultimately, the HMC did not reach a consensus to include the equity adjustment, and so the equity adjustment was not a component of their recommended methodology.
- Regional Planning Committee meeting on October 1, 2020: A [memo](#) included in the agenda packet that presented the HMC’s recommended methodology discussed the

¹ For more details, see [HCD’s letter](#) confirming the methodology furthers the RHNA objectives.

equity adjustment as a key topic that had been reviewed during the methodology development process.

- Executive Board meeting on October 15, 2020: A [memo](#) included in the agenda packet presented the Executive Board with two alternative methodology proposals in addition to the HMC's recommended methodology, and one of these proposals incorporated the equity adjustment. Another [document included in the meeting materials](#) provided an in-depth review of this alternative methodology proposal with the equity adjustment. The Executive Board voted to adopt the HMC's recommended methodology, which did not include the equity adjustment.
- Regional Planning Committee meeting on January 14, 2021: A [summary of comments received during the official public comment period](#) noted there had been comments advocating for the inclusion of the equity adjustment in the methodology. After much discussion, the Regional Planning Committee voted to adopt a Draft Methodology that included the equity adjustment.
- Executive Board meeting on January 21, 2021: A [memo](#) included in the agenda packet presented the Executive Board with the Regional Planning Committee's recommendation for the Draft Methodology, and this memo discussed the addition of the equity adjustment. The [meeting materials](#) also included several appendices with in-depth data analysis and maps showing the impact of including the equity adjustment. The Executive Board voted to approve the Regional Planning Committee's Draft Methodology recommendation that included the equity adjustment.

All materials related to the equity adjustment were included in agenda packets for these meetings and posted online, and local jurisdiction staff, elected officials, and residents had the opportunity to comment on the equity adjustment at these meetings.

During the HMC process, ABAG-MTC staff did not recommend including the equity adjustment because staff's analysis suggested the proposed methodology met the obligation to affirmatively further fair housing without the equity adjustment, and staff felt inclusion of the equity adjustment could introduce additional complexity. However, staff did not state the equity adjustment would hinder the RHNA methodology from furthering statutory objectives. In the end, the Regional Planning Committee and Executive Board determined that the additional equity gains produced by the equity adjustment merited this additional step in the methodology and associated RHNA calculations.

ABAG's draft RHNA methodology was approved by HCD in April 2021 and then adopted as the final RHNA methodology by the Executive Board in May 2021.² The Executive Board has the authority to adopt a RHNA methodology that differs from the recommendation made by the

² For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

HMC, and this appeals process cannot be used to undo the decisions of the Executive Board on the methodology itself.

Ultimately, the equity adjustment included in the Final RHNA Methodology helps ABAG make even greater progress towards its obligation to affirmatively further fair housing. HCD commended the methodology's use of the equity adjustment in its April 2021 letter affirming that ABAG's RHNA Methodology successfully furthers all statutory objectives, including the mandate to affirmatively further fair housing. This adjustment ensures that the 49 jurisdictions identified as exhibiting racial and socioeconomic demographics that differ from the regional average receive a share of the region's lower-income RHNA units that is at least proportional to the jurisdiction's share of existing households. Most of these 49 jurisdictions receive allocations that meet this proportionality threshold based on the final RHNA methodology's emphasis on access to high opportunity areas. However, the equity adjustment ensures that 18 jurisdictions that might exhibit racial and economic exclusion but do not have significant shares of households living in high opportunity areas also receive proportional allocations.

Issue 2: Windsor argues the RHNA process did not consider current population trends, including a population decline in the Town since 2019.

ABAG-MTC Staff Response: As the Town noted in its appeal, Government Code Section 65584.04(g)(3) states that stable population numbers cannot be used as a justification for a reduction of a jurisdiction's share of the regional housing need. Consistent with this statutory language, stable or declining population in a jurisdiction is not, by itself, evidence that there is not a need for additional homes in the community. It may instead be a sign of an unhealthy housing market where individuals and families lack affordable housing choices and must leave the jurisdiction to find housing elsewhere. In fact, a primary reason the Regional Housing Needs Determination (RHND) of 441,176 units was higher than the need assigned to the Bay Area in past RHNA cycles was because it included factors related to overcrowding, high housing cost burdens and a target vacancy rate as a way to address the region's challenges in meeting the housing needs of the existing population. In addition, the Town cites a population decline that has occurred over only two years, including the year impacted by COVID-19. The Town of Windsor has not provided evidence to suggest that its population will continue to decline long-term or that there has been a reduction in the jurisdiction's housing need for the 2023-2031 RHNA planning period.

Issue 3: Windsor argues the RHNA process did not consider the Town's past RHNA performance, which demonstrates the Town has entitled residential projects that have not been built.

ABAG-MTC Staff Response: ABAG-MTC staff commends the Town of Windsor's track record in entitling and permitting new homes. However, the Town's argument that developers are not building housing in Windsor does not represent one of the grounds for appeal defined by

statute. While Windsor asserts the Town's past performance in approving development should have been considered during the RHNA process, this argument challenges the final RHNA methodology that was adopted by the ABAG Executive Board and approved by HCD. A valid appeal must show ABAG made an error in the application of the methodology in determining the jurisdiction's allocation; a critique of the adopted methodology itself falls outside the scope of the appeals process. Jurisdictions had multiple opportunities to comment as the methodology was developed and adopted between October 2019 and May 2021.

Issue 4: *Windsor argues the RHNA methodology does not further the RHNA objective related to encouraging efficient development patterns. The Town asserts the RHNA process did not consider the need for city-centered growth because more urban jurisdictions saw reductions in their RHNA from the 5th Cycle to the 6th Cycle, which is contrary to the intent of Plan Bay Area 2050.*

ABAG-MTC Staff Response:

This appeal argument by Windsor again challenges the Final RHNA Methodology that was adopted by ABAG and approved by HCD, which falls outside the scope of the appeals process. As noted previously, Housing Element Law gives HCD the authority to determine whether the RHNA methodology furthers the statutory objectives described in Government Code Section 65584(d), and HCD made this determination. Regarding the RHNA objective related to "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," HCD made the following findings:

"The draft ABAG methodology³ encourages a more efficient development pattern by allocating nearly twice as many RHNA units to jurisdictions with higher jobs access, on a per capita basis. Jurisdictions with higher jobs access via transit also receive more RHNA on a per capita basis.

Jurisdictions with the lowest vehicle miles traveled (VMT) per capita, relative to the region, receive more RHNA per capita than those with the highest per capita VMT. ABAG's largest individual allocations go to its major cities with low VMT per capita and better access to jobs. For example, San Francisco – which has the largest allocation – has the lowest per capita VMT and is observed as having the highest transit accessibility in the region. As a major employment center, San Jose receives a substantial RHNA allocation despite having a higher share of solo commuters and a lower share of transit use than San Francisco. However, to encourage lower VMT in job-rich areas that may not yet be seeing high transit

³ Pursuant to Government Code Section 65584.04(i), HCD must review the Draft RHNA Methodology developed by the Council of Governments. On May 20, 2021, ABAG adopted the Draft RHNA Methodology without any modifications as the Final RHNA Methodology.

ridership, ABAG's Plan Bay Area complements more housing in these employment centers (which will reduce commutes by allowing more people to afford to live near jobs centers) with strategies to reduce VMT by shifting mode share from driving to public transit."

The Draft RHNA Plan's emphasis on city-centered growth is demonstrated by the fact that 50 percent of the region's RHNA units are allocated to the ten largest jurisdictions in the Bay Area.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by Town of Windsor to reduce its Draft RHNA Allocation by 342 units (from 994 units to 652 units).