

TO: ABAG Administrative Committee
FROM: Therese W. McMillan, Executive Director
SUBJECT: County of Contra Costa RHNA Appeal Final Determination

DATE: November 12, 2021

RHNA Background

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

ABAG convened an ad hoc [Housing Methodology Committee \(HMC\)](#) from October 2019 to September 2020 to advise staff on the methodology for allocating a share of the region's total housing need to every local government in the Bay Area. The allocation must meet the [statutory objectives](#) identified in Housing Element Law and be consistent with [Plan Bay Area 2050](#). The HMC included local elected officials and staff as well as regional stakeholders to facilitate sharing of diverse viewpoints across multiple sectors.

The ABAG Executive Board approved the Proposed RHNA Methodology in October 2020 and held a [public comment period](#) from October 25 to November 27 and conducted a public hearing at the November 12, 2020 meeting of the ABAG Regional Planning Committee. After considering comments received, the ABAG Executive Board approved the Draft RHNA Methodology in January 2021. As required by law, ABAG submitted the Draft RHNA Methodology to HCD for its review. On April 12, 2021, [HCD sent ABAG a letter](#) confirming the Draft RHNA Methodology furthers the RHNA objectives.

On May 20, 2021, the ABAG Executive Board approved the final RHNA Methodology and draft allocations, which are described in detail in the [Draft RHNA Plan](#). Release of the draft RHNA allocations in May 2021 initiated the [appeals phase of the RHNA process](#).

ABAG RHNA Appeals Process

At its meeting on May 20, 2021, the ABAG Executive Board approved the [ABAG 2023-2031 RHNA Appeals Procedures](#). The Appeals Procedures provide an overview of existing law and the statutory procedures and bases for an appeal, as outlined in [Government Code Section 65584.05](#), and outline ABAG's policies for conducting the required public hearing for considering appeals. The ABAG Executive Board also delegated authority to the ABAG Administrative Committee to conduct the public hearing and to make the final determinations on the RHNA appeals.

On May 25, 2021, ABAG notified the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public about the adoption of the draft RHNA allocations and the initiation of the appeals period. The email to jurisdictions included a link to the *ABAG 2023-2031 RHNA Appeals Procedures* on the ABAG website.

ABAG received 28 appeals from Bay Area jurisdictions during the 45-day appeals period from May 25, 2021 to July 9, 2021. On July 16, 2021, ABAG posted all [appeal materials received from local jurisdictions](#) on its website and distributed them to the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public consistent with Government Code Section 65584.05(c).

During the public comment period from July 16, 2021 to August 30, 2021, ABAG received nearly 450 comments from local jurisdictions, HCD, regional stakeholders, and members of the public on the 28 appeals submitted. On September 1, ABAG posted [all comments received during the comment period](#) on its website and distributed them along with the public hearing schedule to the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public. This notification ensured that each jurisdiction that submitted an appeal was provided notice of the schedule for the public hearing at least 21 days in advance, consistent with Government Code Section 65584.05(d). Between August 29, 2021 and September 3, 2021, legal notices were posted on the ABAG website and published in multiple languages in newspapers in each of the nine counties of the Bay Area, announcing the dates of the public hearing.

The ABAG Administrative Committee conducted the public hearing to consider the RHNA appeals at six meetings on the following dates:

- [September 24, 2021](#)
- [September 29, 2021](#)
- [October 8, 2021](#)
- [October 15, 2021](#)
- [October 22, 2021](#)
- [October 29, 2021](#).

ABAG Administrative Committee Hearing and Review

The County of Contra Costa requests the reduction of its Draft RHNA Allocation by 1,818 units. The County of Contra Costa's appeal was heard by the ABAG Administrative Committee on September 29, 2021, at a noticed public hearing. The County of Contra Costa, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the County of Contra Costa's appeal, including appeal documents submitted by the jurisdiction, the ABAG-MTC staff response, and public comments received about this

appeal during the RHNA appeals comment period, are available on the MTC Legistar page at <https://mtc.legistar.com/LegislationDetail.aspx?ID=5149451&GUID=E7107A90-B95D-463C-80CC-7822FBB8A4A3&Options=&Search=>. Additional comments on RHNA Appeals are available at:

- <https://mtc.legistar.com/View.ashx?M=F&ID=9824315&GUID=7E48C1E6-441A-4AFE-B464-2CA74C73B5B4>
- <https://mtc.legistar.com/View.ashx?M=F&ID=9836540&GUID=1603966E-228B-4907-AA28-6F50249DC3AD>
- <https://mtc.legistar.com/View.ashx?M=AO&ID=106683&GUID=11d21ca8-c7fe-42b2-b6d2-bf4125769321&N=SXRIbSA2LCBIYW5kb3V0IFB1YmxpYyBDdb21tZW50>

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, the County of Contra Costa had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The County of Contra Costa presentation was followed by a response from ABAG-MTC staff, consistent with the information provided in its written staff report (**Attachment 1**). Then, the applicant could respond to the arguments or evidence that ABAG-MTC staff presented.

After these presentations, members of the public had an opportunity to provide oral comments prior to discussion by members of the Administrative Committee. Following their deliberations, members of the committee took a preliminary vote on the County of Contra Costa's appeal. The Administrative Committee considered the documents submitted by the County of Contra Costa, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by County of Contra Costa and ABAG staff prior to the close of the hearing, and written public comments, which are incorporated herein by reference.

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, Supervisor Karen Mitchoff recused herself from participating in consideration of the County of Contra Costa's appeal.

Video of this day of the public hearing is available at:

http://baha.granicus.com/MediaPlayer.php?view_id=1&clip_id=9359. A certified transcript of the proceedings from this day of the public hearing is available at: <https://abag.ca.gov/tools-resources/digital-library/9-29-21-rhna-appeals-day-2-certifiedpdf>.

ABAG Administrative Committee Decision

Based upon ABAG's adoption of the final RHNA methodology and the 2023-2031 RHNA Appeals Procedures and the process that led thereto; all testimony and all documents and comments submitted by the County of Contra Costa, HCD, other local jurisdictions, and the public prior to the close of the hearing; and the ABAG-MTC staff report, the ABAG

Administrative Committee partially grants the appeal on the bases set forth in the staff report. The key arguments are summarized as follows:

- *Regarding Issues #1, #2 and #3: Areas Identified for Growth in Final Blueprint* – The Final Blueprint, which is the baseline allocation in the final RHNA methodology, does not allow any significant growth outside the Urban Limit Line. As a result, none of the areas identified in this appeal contributed to the County's allocation.
- *Regarding Issue #4: Region's Greenhouse Gas Target* – The final RHNA methodology adequately considers the region's greenhouse gas target by using the Final Blueprint as its baseline allocation, as the Final Blueprint was developed specifically to meet the greenhouse gas reduction target. The County's argument challenges the final RHNA methodology adopted by ABAG and approved by HCD, and thus falls outside the scope of the appeals process. HCD has the authority to determine if the RHNA methodology furthers the statutory objectives, and HCD found that ABAG's methodology does further these objectives. As HCD notes, ABAG's methodology allocates "nearly twice as many RHNA units to jurisdictions with higher jobs access, 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."
- *Regarding Issue #5: Development Constraints* – Areas at risk of natural hazards are not identified in Housing Element Law as a constraint to housing development. While new development is subject to additional regulations, neither the Town nor FEMA prohibits new housing in the floodplain. Given the variety of natural hazard risks the Bay Area faces, it is not possible to address the region's housing needs and avoid planning for new homes in places at risk. The Town has the authority to plan for housing in places with lower risk. Government Code Section 65584.04(e)(2)(B) states that ABAG may not limit its consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions and jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing. The Plan Bay Area 2050 growth forecast is adopted at the county and subcounty levels only. The parcel-specific forecast simulates the region's future growth pattern; an issue with growth projected for a particular parcel is not a valid basis for a RHNA appeal, as the Plan does not dictate where a jurisdiction sites housing. ABAG-MTC staff's review of the Final Blueprint showed nearly all sites identified by the County were not forecasted to have households on them, with two exceptions. Bethel Island is projected to have 19 additional households by 2050, many of which are assumed to be accessory dwelling units (ADUs). The impact of 19 households on the County's share of the region's total households in 2050 and, as a result, its draft RHNA allocation, is deemed negligible.

Parcels along SR-4 east of Hercules within the Urban Limit Line are projected to have 5,684 households in 2050, driven by baseline land use data made available to the County during the BASIS review period in 2019 and 2020. The potential for future housing in this area, as envisioned in the Final Blueprint, is possible as a result of the upcoming closure of the Phillips 66 Carbon Plant in 2023, as part of the Phillips 66 Rodeo Renewed Project.

- *Regarding Issue #6: Change in Circumstances* – An annexation by San Ramon and one by Pittsburg were not incorporated in the Final Blueprint. However, no households were forecasted in these areas, so a shift of jurisdictional responsibility would have no impact on either jurisdiction's RHNA allocation. The Faria Southwest Hills Boundary Organization affecting Pittsburg is incomplete according to Contra Costa LAFCO and is still part of Unincorporated Contra Costa County. A Pittsburg annexation (LAFCO 17-08) was incorrectly included as part of the unincorporated County in the Final Blueprint. Reducing the County's 2050 households baseline by the 412 households projected in that area results in a reduction in the County's total RHNA of 35 units.
- *Regarding Issue #6: Change in Circumstances (continued)* – This argument challenges the final RHNA methodology adopted by ABAG and approved by HCD, and thus falls outside the scope of the appeals process. The Access to High Opportunity Areas factor is based on the percentage of households in High or Highest Resource census tracts on the State's Opportunity Map. The County's score (36% of households) is relatively low compared to other jurisdictions, so this factor reduces the County's allocation.

Conclusion

For the foregoing reasons and based on the full record before the ABAG Administrative Committee at the close of the public hearing (which the Committee has taken into consideration in rendering its decision and conclusion), the ABAG Administrative Committee hereby partially grants the appeal filed by the County of Contra Costa by reducing its Draft RHNA Allocation by 35 units and transferring these units to the City of Pittsburg, as allowed by Government Code Section 65584.05(e)(1).

With this adjustment to the County's draft RHNA allocation, the ABAG Administrative Committee finds that the County of Contra Costa's RHNA allocation is consistent with the RHNA statute pursuant to Section 65584.05(e)(1).