TO: ABAG Administrative Committee   DATE: November 12, 2021

FROM: Therese W. McMillan, Executive Director

SUBJECT: City of Belvedere RHNA Appeal Final Determination

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 City of Belvedere requests the reduction of its Draft RHNA Allocation by 30 units. The City of Belvedere's appeal was heard by the ABAG Administrative Committee on September 29, 2021, at a noticed public hearing. The City of Belvedere, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the City of Belvedere'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=5149452&GUID=3F2AB864-4B5F-4775-B0F8-C7589AB240B4&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=SXRlbSA2LCBIYW5kb3V0IFB1YmxpYyBDb21tZW50

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, the City of Belvedere had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The City of Belvedere 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 City of Belvedere's appeal. The Administrative Committee considered the documents submitted by the City of Belvedere, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by City of Belvedere and ABAG staff prior to the close of the hearing, and written public comments, which are incorporated herein by reference.

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 City of Belvedere, HCD, other local jurisdictions, and the public prior to the close of the hearing; and the ABAG-MTC staff report, the ABAG Administrative Committee denies the appeal on the bases set forth in the staff report. The key arguments are summarized as follows:

- *Regarding Issue #1: Error in RHNA Calculation* – There is no error in the calculation of Belvedere's allocation. The City's results were different because the calculations did not include the step to adjust the factor scores for all jurisdictions to ensure the

methodology allocates 100% of units in each income category assigned by HCD. When the calculations for each factor/income category include this step, the results are consistent with Draft RHNA Plan.

- *Regarding Issue #2: Implied Growth Rate* – Housing Element Law requires RHNA be consistent with the Plan Bay Area 2050 development pattern, but does not specify how to determine consistency, giving ABAG discretion to define its own approach. The approach used throughout RHNA methodology development compares RHNA allocations to Final Blueprint growth forecasts adopted at the county and subcounty (i.e., superdistrict) levels. RHNA is consistent if the 8-year growth from RHNA does not exceed the Plan's 35-year housing growth at the county or subcounty levels. This evaluation shows RHNA is consistent with Plan Bay Area 2050, including in the South Marin superdistrict where Belvedere is located.

- *Regarding Issue #3: High Resource Area Methodology* – Use of High Resource Areas in both the Plan Bay Area 2050 and RHNA processes provides a bridge between the long-term growth forecast in Plan Bay Area 2050 and the short-term focus of RHNA. Inclusion indicates these are areas prioritized for increased focus on near-term growth during the eight-year RHNA period. The Final Blueprint designates a portion of Belvedere as a Transit-Rich and High-Resource Area based on the Tiburon Ferry Terminal, which is a major transit stop based on State's definition. To help distribute RHNA units throughout the region, RHNA factors are scaled so all jurisdictions – even those with low scores – receive some RHNA units.

- *Regarding Issue #4: Lack of Available Land* – The HESS Tool was not used in developing RHNA allocations. Jurisdictions had several opportunities to review and provide feedback on baseline land use data and review the growth pattern for the Draft Blueprint and Final Blueprint, including UrbanSim land use modeling results. The HESS Tool evaluates sites based on *existing* local development policies. Government Code Section 65584.04(e)(2)(B) states 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. Belvedere does not provide evidence it is unable to consider underutilization of sites, increased densities, and other planning tools to accommodate its assigned need.

- *Regarding Issue #5: Drought* – Government Code Section 65584.04(e)(2)(A) states ABAG must consider opportunities and constraints to development of housing due to "lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary

infrastructure for additional development during the planning period." A difference in assumptions about expected growth does not represent a determination that Belvedere will not have sufficient water capacity in the future. The City has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider.

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 denies the City of Belvedere's appeal and finds that the City of Belvedere's RHNA allocation is consistent with the RHNA statute pursuant to Section 65584.05(e)(1).