

TO: ABAG Administrative Committee
FROM: Therese W. McMillan, Executive Director
SUBJECT: Town of Fairfax 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 Town of Fairfax requests the reduction of its Draft RHNA Allocation by 120 units. The Town of Fairfax's appeal was heard by the ABAG Administrative Committee on October 8, 2021, at a noticed public hearing. The Town of Fairfax, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the Town of Fairfax'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=5157869&GUID=4962BE0E-535A-4FED-842C-29CD479A5431&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= SXRIbSA2LCBIYW5kb3V0IFB1YmxpYyBD b21tZW50>

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, the Town of Fairfax had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The Town of Fairfax 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 Town of Fairfax's appeal. The Administrative Committee considered the documents submitted by the Town of Fairfax, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by Town of Fairfax 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=9456. A certified transcript of the proceedings from this day of the public hearing is available at: <https://abag.ca.gov/tools-resources/digital-library/10-8-21-rhna-appeals-trial-day-3-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 Town of Fairfax, 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* – The HESS tool was not used at any point in the RHNA process. ABAG-MTC staff began developing HESS tool in fall of 2020, after

RHNA methodology development had concluded. This argument is not a valid basis for appeal.

- *Regarding Issue #2: Lack of Available Land* – The HESS Tool plays no role in determining a jurisdiction’s RHNA, and it 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. 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. Fairfax has authority to plan for housing in places with lower risk. Fairfax 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 #3: Jobs-Housing Relationship* – This 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 authority to determine if the RHNA methodology furthers the statutory objectives and HCD found that ABAG’s methodology does further the objectives. The RHNA methodology uses data about each jurisdiction’s jobs-housing relationship in the Plan Bay Area 2050 Final Blueprint and in factors related to Job Proximity, which measure job access based on commute shed to better capture lived experience of accessing jobs irrespective of jurisdiction boundaries. Housing Element Law requires the RHNA methodology to improve the *intraregional* relationship between jobs and housing—not jobs-housing balance in any particular jurisdiction. South Marin is near many of the region’s jobs, so adding housing can lead to shorter commutes, helping to reduce VMT and GHG.
- *Regarding Issue #4: Drought* – Fairfax did not submit a Local Jurisdiction Survey, so an appeal on this basis is not valid. 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.” Fairfax has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider. Even if a moratorium on new water connections is implemented in the future, there is no indication it would extend until the end of the RHNA planning period in 2031.

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