

TO: ABAG Administrative Committee  
FROM: Therese W. McMillan, Executive Director  
SUBJECT: City of Mill Valley 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 City of Mill Valley requests the reduction of its Draft RHNA Allocation by 286 units. The City of Mill Valley's appeal was heard by the ABAG Administrative Committee on October 8, 2021, at a noticed public hearing. The City of Mill Valley, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the City of Mill Valley'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=5180916&GUID=F6E8652D-5878-4225-B295-D1094B343B60&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 City of Mill Valley had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The City of Mill Valley 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 Mill Valley's appeal. The Administrative Committee considered the documents submitted by the City of Mill Valley, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by City of Mill Valley 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](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 City of Mill Valley, 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 and #5: Methodology Does Not Further RHNA Objective 2 or Consider Hazard Constraints* – The City's argument challenges the Final RHNA Methodology adopted by ABAG and approved by HCD, which falls outside scope of appeals process.

HCD has authority to determine if the RHNA methodology furthers the statutory objectives and HCD found ABAG's methodology does further the objectives. 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. Areas at risk of natural hazards are not identified in Housing Element Law as a constraint to housing except when FEMA or Department of Water Resources has determined the flood management infrastructure to protect land is inadequate. Mill Valley does not provide evidence it is unable to consider underutilization of existing sites, increased densities, and other planning tools to accommodate its assigned need.

- *Regarding Issue #2: Plan Bay Area 2050 Final Blueprint Growth Geographies* – Strategy H3 only applies to Growth Geographies, which encompass a small area of Mill Valley. The City's argument about use of Growth Geographies in the Final Blueprint challenges the Final RHNA Methodology adopted by ABAG and approved by HCD, which falls outside scope of appeals process. Housing Element Law requires RHNA to be consistent with Plan Bay Area 2050, but does not specify how to determine consistency, giving ABAG discretion to define 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 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 Mill Valley is located.
- *Regarding Issue #3: Error in RHNA Calculation* – There is no error in the calculation of Mill Valley's allocation. The City's results were different because the calculations did not include step to adjust 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 #4: RHNA Methodology Factors* – This argument by the City again 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.

- *Regarding Issue #6: Concerns That Are Not A Valid Basis For An Appeal — Increased Fire Risk* – The example policies in the draft 2020 Fire Hazard Planning Technical Advisory related to minimizing risks to existing and new land uses are not in conflict with the RHNA methodology. 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. Mill Valley has authority to plan for housing in places with lower risk in its Housing Element and adopt policies to require risk reduction measures as recommended in the State’s Technical Advisory. Regarding appeals that identify increased wildfire risk as an issue HCD notes, *“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.”*
- *Regarding Issue #7: Concerns That Are Not A Valid Basis For An Appeal — Slowing Population Growth* – 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. Stable or declining population is not, by itself, evidence that there is not a need for additional. It may be a sign of an unhealthy housing market where those lacking affordable housing choices must leave the jurisdiction to find housing elsewhere. Mill Valley has not provided evidence to suggest 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.

## **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 Mill Valley’s appeal and finds that the City of Mill Valley’s RHNA allocation is consistent with the RHNA statute pursuant to Section 65584.05(e)(1).