

TO: ABAG Administrative Committee
FROM: Therese W. McMillan, Executive Director
SUBJECT: County of Marin 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 Marin requests the reduction of its Draft RHNA Allocation by 1,288 units. The County of Marin's appeal was heard by the ABAG Administrative Committee on October 22, 2021, at a noticed public hearing. The County of Marin, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the County of Marin'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=5189246&GUID=312F10E7-9C02-4B55-9BA7-563FB5703C4F&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=AO&ID=106683&GUID=11d21ca8-c7fe-42b2-b6d2-bf4125769321&N=SXRIbSA2LCBIYW5kb3V0IFB1YmxpYyBDb21tZW50>
- <https://mtc.legistar.com/View.ashx?M=F&ID=9904746&GUID=7A0A5776-AB7C-414C-9A9C-3B52A5C0426C>

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, the County of Marin had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The County of Marin 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 Marin's appeal. The Administrative Committee considered the documents submitted by the County of Marin, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by County of Marin 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=9611. A certified transcript of the proceedings from this day of the public hearing is available at: <https://abag.ca.gov/tools-resources/digital-library/10-22-21-rhna-appeals-day-5-morning-session-certifiedpdf> (morning session) and <https://abag.ca.gov/tools-resources/digital-library/10-22-21-rhna-appeals-hearing-day-5-afternoon-session-certifiedpdf> (afternoon session).

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 Marin, 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 #6: Existing Zoning and Land Use Regulations* – ABAG conducted the Local Jurisdiction Survey consistent with the requirements identified in Government Code Section 65584.04(b), so this argument is not a valid basis for an appeal. Statute requires ABAG to request information about all factors identified in Government Code Section 65584.04(e), which includes opportunities and constraints to development as well as county policies to preserve prime agricultural land. HCD’s comment letter on Bay Area jurisdictions’ RHNA appeals reiterated that ABAG “may not limit its consideration of suitable housing sites to existing zoning and land use restrictions and must consider the potential for increased development under alternative zoning and land use restrictions.” ABAG-MTC staff evaluated multiple alternative zoning schemes through the analyses that went into development of the Plan Bay Area 2050 Final Blueprint and Draft Environmental Impact Report.
- Regarding Issue #2: Lack of Available Land* – The development constraints named in this appeal are considered in the Plan Bay Area 2050 Final Blueprint, the baseline allocation for RHNA. The Final Blueprint also integrates strategies related to agricultural and open space preservation. Additionally, Government Code Section 65584.04(e)(2)(B) states that jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing. Furthermore, Marin County identifies the specific sites it will use to accommodate its RHNA. In doing so, it can choose locations and plan for densities that avoid developing on farmlands, grazing lands, conservation lands, and critical habitats. Importantly, HCD has the authority to determine if the RHNA methodology furthers the statutory objectives. HCD determined the RHNA methodology achieves the statutory objective to promote infill development and socio-economic equity through efficient development patterns that achieve greenhouse gas reduction targets. HCD noted that ABAG’s methodology allocates more RHNA to jurisdictions with more job access and lower vehicle miles traveled.
- Regarding Issue #3: Disproportionate RHNA Calculation* – This argument challenges the final RHNA methodology adopted by ABAG and approved by HCD, and thus falls outside the scope of the appeals process. A valid appeal must show ABAG made an error in the application of the methodology in determining the jurisdiction’s allocation. Additionally, if land is included in a Growth Geography in the Final Blueprint, it does not necessarily mean future growth is forecasted on that land. The acreage included in a Growth Geography does not translate linearly to development. Importantly, RHNA must address both existing and future housing needs. The RHNA methodology accomplishes this by using total households in 2050 as the baseline allocation, incorporating both existing households and the forecasted growth in households from the Final Blueprint. The County’s draft allocation is larger than other jurisdictions in Marin County because the

unincorporated county has the highest number of existing households of any jurisdiction in the county.

- *Regarding Issue #4: Areas at Risk of Natural Hazards* – Hazard risk is generally not identified in Housing Element Law as a constraint to housing development. The County has not provided evidence that FEMA or the Department of Water Resources has determined the County's flood management infrastructure is inadequate to avoid the risk of flooding. The Final Blueprint, which is the RHNA methodology's baseline allocation, excludes areas with unmitigated high hazard risk from Growth Geographies. Given the variety of natural hazard risks in the Bay Area, it is not possible to address the region's housing needs and avoid planning for new homes in places at risk. Marin County has the authority to plan for housing in places with lower risk. Marin County does not provide evidence it is unable to consider underutilization of existing sites, increased densities, ADUs, and other planning tools to accommodate its assigned need.
- *Regarding Issue #5: Affirmatively Furthering Fair Housing* – 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 the authority to determine if the RHNA methodology furthers the statutory objectives, and HCD concluded ABAG's RHNA methodology achieves the statutory objective to affirmatively further fair housing. HCD commended the methodology's allocation of more RHNA to jurisdictions with higher access to resources. Importantly, moderate-and above moderate-income units represent nearly 60% of the housing needs assigned to the Bay Area by HCD. Allocating units at all income levels to high-resource communities helps ensure all communities do their "fair share" to provide more housing, which advances several key RHNA objectives.
- *Regarding Issue #7: Impacts of COVID-19* – HCD's comment letter on Bay Area jurisdictions' RHNA appeals indicates RHNA appeals based on changes caused by COVID-19 do not fall within the appeal criteria defined by statute. HCD states, "The COVID-19 pandemic has only increased the importance of ensuring that each community is planning for sufficient affordable housing as essential workers, particularly lower income ones, continue to commute to their places of business." Additionally, the potential impacts of COVID-19, including the accelerated shift toward telecommuting and associated economic boom/bust cycle, are incorporated into the RHNA methodology through the integration of the Plan Bay Area 2050 Final Blueprint. Furthermore, impacts from COVID-19 are not unique to any single jurisdiction. The County's appeal does not indicate Marin County's housing need has been disproportionately impacted relative to the rest of the Bay Area. The pandemic is not cause for a reduction in RHNA for any particular jurisdiction.
- *Regarding Issue #8: Drought* – Government Code Section 65584.04(e)(2)(A) states that ABAG must consider opportunities and constraints to the development of housing due

to a "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." Marin County has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider. HCD's comments on Bay Area jurisdictions' RHNA appeals note that "ABAG's allocation methodology encourages more efficient land-use patterns which are key to adapting to more intense drought cycles and wildfire seasons." Drought poses significant challenges to Bay Area communities, but these issues do not affect one city or county in isolation. Action can be taken to efficiently meet the region's future water demand, even in the face of additional periods of drought.

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