



RHNA Appeals Process Overview

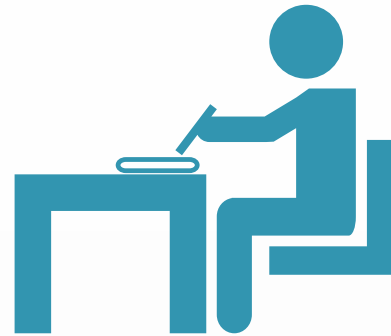
ABAG Regional
Planning Committee
May 13, 2021

Today's Presentation



Key Milestones and
Timing for RHNA
Appeals Process

1



Requirements for
Filing an Appeal

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Procedures for
Considering
Appeals

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Key Milestones & Timeline:

Where Are We in the RHNA Process?

January 2021	ABAG Executive Board approved Draft RHNA Methodology.
April 2021	HCD's review of Draft Methodology finds it furthers RHNA objectives.
 May 2021	RPC and Executive Board consider approval of Final RHNA Methodology and release of Draft Allocations.
May to July 2021	Period for jurisdictions/HCD to file appeals of Draft Allocations.
July to October 2021	ABAG considers appeals (includes public hearing).
November or December 2021	Executive Board conducts public hearing to adopt Final RHNA Plan.

Key Milestones & Timeline:

RHNA Appeals Process Overview

- **Who can file an appeal?** A jurisdiction or HCD can appeal a jurisdiction's Draft RHNA Allocation.
 - A jurisdiction can appeal its own allocation and/or another jurisdiction's allocation.
 - A jurisdiction that is the subject of an appeal filed by another jurisdiction/HCD will have the opportunity to challenge the appeal at the appeal public hearing.
- **What are the major steps in the appeals process?**



Key Milestones & Timeline:

What is the Anticipated Appeals Schedule?

Late May

Following action by ABAG Executive Board, ABAG notifies jurisdictions/HCD about adoption of Final RHNA Methodology and Draft Allocations.

Early July

Deadline for jurisdictions/HCD to submit appeals to ABAG; ABAG notifies jurisdictions/HCD about appeals submitted.

End of August

Deadline for jurisdictions/HCD to comment on appeals submitted; ABAG notifies jurisdictions/HCD about comments received.

September and/or
October

ABAG conducts public hearing to consider appeals and comments received; ABAG must notify jurisdictions at least 21 days prior to hearing.

October or
November

ABAG ratifies written final determination on each appeal and issues Final RHNA Allocations that include adjustments resulting from successful appeals.

November or
December

ABAG Executive Board conducts public hearing to adopt Final RHNA Plan.

Filing an Appeal:

What are the Allowable Reasons for an Appeal?

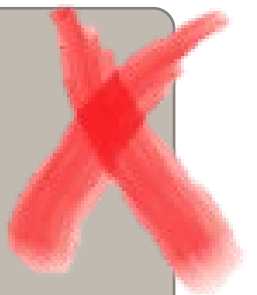


An appeal can be filed only if:

1. ABAG failed to adequately consider information submitted in the local jurisdiction survey.
2. ABAG did not determine the jurisdiction's allocation in accordance with its adopted methodology and in a manner that furthers, and does not undermine, the RHNA objectives.
3. A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits revision of information submitted as part of the local jurisdiction survey.
Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.





By law, appeals cannot be based on:

- Any local ordinance, policy, voter-approved measure or standard limiting residential development.
- Underproduction of housing from the last RHNA cycle.
- Stable population numbers in a jurisdiction.



Filing an Appeal:

What are the Requirements for an Appeal?

By statute, appeals shall:	
Be based on comparable data available for all affected jurisdictions and accepted planning methodology.	
Be supported by adequate documentation.	
Include a statement as to why the revision is necessary to further the RHNA objectives.	
Be consistent with, and not to the detriment of, the development pattern in Plan Bay Area.	

- ABAG-MTC staff have developed a form for jurisdictions to use to submit an appeal (see Attachment A of the *Draft ABAG 2023-2031 RHNA Appeals Procedures*)

Considering Appeals: What Have Other COGs Experienced?

SACOG — 2020

- Zero appeals

SANDAG — 2020

- 4 appeals
- 1 partially upheld (affecting 135 units)
- Public hearing conducted in one day

SCAG — 2021

- 48 appeals
- 2 partially upheld (affecting 3,132 units)
- 46 hours of hearings held on 8 days, plus final meeting for ratifying decisions

ABAG — 2013 (*prior cycle*)

- 8 appeals
- 3 upheld (affecting 674 units)
- Public hearing conducted in one day

Considering Appeals:

Staff Recommendation for the Hearing Body

- **Hearing Body:** ABAG Executive Board delegates authority to Administrative Committee to conduct public hearing and decide RHNA appeals.
 - Leverages one of ABAG's central committees with broad authority, while avoiding need for ABAG President to identify a brand-new slate of ABAG Board members to hear appeals via ad-hoc committee.
 - Delegating authority for final determinations on appeals avoids potential legal issues related to due process if an Administrative Committee was empowered only to issue recommendations that could be changed by Executive Board.

Considering Appeals: Staff Recommendations for Hearing Procedures

- Appeals Hearing Procedures:
 - Consider the appeal(s) for each jurisdiction sequentially and issue a preliminary determination. The committee would hold a final meeting after the close of the public hearing to review its decisions and ensure the committee used a uniform approach to decision-making before ratifying final determinations.
 - A committee member must recuse him/herself on an appeal affecting his/her jurisdiction.
 - Consistent with Housing Element Law, the Committee can make a determination on an appeal that adjusts the allocation for a jurisdiction that is not the subject of the appeal.

Considering Appeals:

Staff Recommendation for Hearing Structure

1. Applicant presentation. If multiple appeals for a jurisdiction, subject jurisdiction goes first if it filed an appeal. Can present jointly; 5 min per applicant.
2. Response by subject jurisdiction if it did not file appeal on its own behalf, (5 min if one appeal, 8 min if multiple).
3. Staff response (5 min).
4. Rebuttal by applicants and subject (if it did not file appeal). Limited to arguments/evidence presented by staff, (3 min for each applicant and subject).
5. Public comment (2 min per speaker, or as adjusted by the Chair).
6. Committee questions/discussion.
7. Committee motion for a final determination on appeal.
8. Committee vote.

Considering Appeals: Staff Recommendations for Redistributing Units from Successful Appeals

- Redistributing Units from Successful Appeals:
 - Statute requires units to be distributed proportionally to all local governments if the total is less than 7% of the Regional Housing Needs Determination (RHND) – 30,882 units – and allows ABAG to develop a methodology for redistributing units greater than 7% of RHND.
 - Staff recommends **using the same approach regardless of the total number of units, and units would be distributed in proportion to a jurisdiction’s share of the RHND after appeals are determined and prior to the required distribution.**
 - **Appellants whose appeals are upheld are not excluded from redistribution.**
 - If the final determination included adjustments to allocations of jurisdiction(s) that were not the subject of the appeal, **these adjustments may be excluded from the cumulative total to be reallocated proportionally to all jurisdictions in the region.**

Thank You

For more information contact

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