

Association of Bay Area Governments

Regional Planning Committee

May 13, 2021

Agenda Item 7.a.

Regional Housing Needs Allocation (RHNA): Appeals Framework

Subject: Proposed framework for the Regional Housing Needs Allocation (RHNA) appeals phase, with the ABAG Administrative Committee playing a lead role in hearing appeals

Background: RHNA is the state-mandated¹ process to identify the number of housing units (by affordability) that each jurisdiction must accommodate in the Housing Element of its General Plan. ABAG convened the [Housing Methodology Committee](#) (HMC) to advise staff on the methodology for allocating a share of the region's total housing need to every Bay Area jurisdiction. The Executive Board approved the Draft RHNA Methodology in January 2021, which was submitted to HCD for its review. On April 12, 2021, HCD confirmed that the Draft RHNA Methodology furthers the RHNA objectives. In May, the Executive Board will consider approval of the Final RHNA Methodology and Draft RHNA Allocations.

Issues: **Overview of Appeals Process**

Release of Draft Allocations initiates the RHNA appeals phase. Housing Element Law allows a jurisdiction or HCD to appeal any Bay Area jurisdiction's Draft RHNA Allocation.² The key steps and anticipated schedule for the appeals process are shown below:

- **Late May:** Following action by Executive Board, ABAG notifies jurisdictions/HCD about adoption of Final RHNA Methodology and Draft Allocations.
- **Early July:** Deadline for jurisdictions/HCD to submit appeals; 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.

¹ See California [Government Code §65584](#).

² See [Government Code Section 65584.05](#) for an overview of the appeals process.

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- **October or November:** ABAG ratifies written final determination on each appeal and issues Final RHNA Allocations that adjust allocations as a result of successful appeals.
- **November or December:** ABAG Executive Board conducts public hearing to adopt Final RHNA Plan.

Statutory Bases for Appeal of a Jurisdiction's Draft Allocation

Housing Element Law prescribes a relatively limited and narrow set of circumstances where a jurisdiction can appeal an allocation:

1. ABAG failed to adequately consider information submitted as part of the local jurisdiction survey that ABAG conducted in early 2020 to gather information about the statutory factors that must be considered in the RHNA methodology and information about affirmatively furthering fair housing.
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.*

ABAG Appeals Hearing Procedures

ABAG/MTC staff is recommending that the Executive Board delegate authority to the Administrative Committee to conduct the public hearing for considering appeals and to make the final determinations on the appeals. Using the Administrative Committee leverages one of ABAG's central committees with broad authority and avoids the need to identify a brand-new slate of ABAG Board members to hear appeals. Granting authority to the Administrative Committee for final decisions would avoid potential legal issues related to due process if the Executive Board had the final authority and decided to change an Administrative Committee recommendation.

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Attachment A, the *Draft ABAG 2023-2031 RHNA Appeals Procedures*, includes additional staff recommendations for conducting the appeals process.

Next Steps:

In May, the Administrative Committee will be asked to recommend that the Executive Board delegate authority to the Administrative Committee to conduct the public hearing and make final determinations on RHNA appeals and that the Executive Board approve the *Draft ABAG 2023-2031 RHNA Appeals Procedures*.

Recommended Action:

Information

Attachments:

- A. Draft ABAG 2023-2031 RHNA Appeals Procedures
- B. Presentation

Reviewed:



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