

2023-2031 RHNA Cycle Appeals Procedures

Pursuant to [Government Code Section 65584.05](#), any local jurisdiction within the ABAG region may file an appeal to modify its Draft Regional Housing Needs Allocation (RHNA) Allocation or another jurisdiction's Draft RHNA Allocation included as part of ABAG's Draft RHNA Plan. The California Department of Housing and Community Development (HCD) may also file an appeal to the Draft RHNA Allocation for one or more jurisdictions. No appeal shall be allowed relating to post-appeal reallocation adjustments made by ABAG, as further described in Section I.I, below. For the purposes of these procedures, the entity filing an appeal is referred to as an "applicant."

Note: This document contains a description of the appeals procedures, which are designed to comply with applicable provisions of the Government Code. Applicants are encouraged to review the full content of relevant code sections. In any apparent conflict between these procedures and the Code, the Code provisions will prevail.

I. APPEALS PROCESS

A. DEADLINE TO FILE

The period to file appeals shall commence on May 25, 2021, which shall be deemed as the date of receipt by jurisdictions and HCD of the Draft RHNA Plan. To comply with Government Code Section 65584.05(b), a jurisdiction or HCD seeking to appeal a Draft RHNA Allocation must submit an appeal by 5:00 p.m. PST on July 9, 2021. ABAG will not accept late appeals.

B. FORM OF APPEAL

The local jurisdiction or HCD shall state the basis and specific reasons for its appeal on the RHNA Appeal Request Form prepared by ABAG (see Attachment A for an example of the information to be included in the form). Additional documents may be submitted by the local jurisdiction as attachments, and all such attachments should be properly labeled and numbered.

C. BASES FOR APPEAL

Per Government Code Section 65584.05, a local jurisdiction or HCD shall only be entitled to file an appeal based upon the three criteria listed below. Appeals based on "change of circumstance" can only be filed by the jurisdiction or jurisdictions where the change in circumstance occurred.

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). An appeal shall be consistent with, and not to the detriment of, [the development](#)

[pattern in the sustainable communities strategy \(Plan Bay Area 2050 Final Blueprint\)](#).

Applicants should ensure that their appeal satisfies the criteria in the applicable Government Code section.

Appeals may be brought on one of the following three grounds:

1. Information about Local Planning Factors and Affirmatively Furthering Fair Housing from the Local Jurisdiction Survey – That ABAG failed to consider information submitted relating to certain local factors outlined in [Government Code Section 65584.04\(e\)](#) and affirmatively furthering fair housing pursuant to Government Code Section 65584.04(b)(2) and [65584\(d\)\(5\)](#) including the following:
 - a. Each jurisdiction’s existing and projected jobs and housing relationship.
 - b. The opportunities and constraints to development of additional housing in each jurisdiction, including the following:
 - i. 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.
 - ii. The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. ABAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.
 - iii. Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to non-agricultural uses.

- iv. County policies to preserve prime agricultural land, as defined pursuant to Government Code Section 56064, within an unincorporated area and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to non-agricultural uses.
- c. The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.
- d. Agreements between a county and cities in a county to direct growth toward incorporated areas of the county and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.
- e. The loss of units contained in assisted housing developments, as defined in Government Code Section 65583(a)(9), that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- f. The percentage of existing households at each of the income levels listed in Government Code Section 65584(e) that are paying more than 30 percent and more than 50 percent of their income in rent.
- g. The rate of overcrowding.
- h. The housing needs of farmworkers.
- i. The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- j. The housing needs of individuals and families experiencing homelessness.
- k. The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis. For purposes of these guidelines, this applies to loss of units during a state of emergency occurring since January

31, 2015 and have not yet been rebuilt or replaced by February 5, 2020 (the deadline for jurisdictions to submit surveys to ABAG).

- I. The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080, to be met by Plan Bay Area 2050.
 - m. Information based upon the issues, strategies, and actions that are included, as available in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the California Department of Housing and Community Development, and in housing elements.
2. Methodology – That ABAG failed to determine the jurisdiction's share of the regional housing needs in accordance with the information described in the Final RHNA Methodology approved by ABAG on May 20, 2021, and in a manner that furthers, and does not undermine the five objectives listed in Government Code Section 65584(d).
3. Changed Circumstances – That a significant and unforeseen change in circumstance has occurred in the jurisdiction after February 5, 2020 (the deadline for jurisdictions to submit surveys to ABAG) and merits a revision of the information previously submitted by the local jurisdiction. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

D. LIMITS ON SCOPE OF APPEAL

Existing law explicitly limits ABAG's scope of review of appeals. Specifically, ABAG shall not grant any appeal based upon the following:

1. Any other criteria other than the criteria in Section I.C above.
2. A local jurisdiction's existing zoning ordinances and land use restrictions, including but not limited to, the contents of the local jurisdiction's current general plan. Pursuant to Government Code Section 65584.04(e)(2)(B), ABAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.
3. Any local ordinance, policy, voter-approved measure or standard limiting residential development. Pursuant to Government Code Section 65584.04(g)(1), any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in a city's or county's share of regional housing need.
4. Prior underproduction of housing in a jurisdiction from the previous regional housing need allocation. Pursuant to Government Code Section 65584.04(g)(2), prior

underproduction of housing in a jurisdiction from the previous housing need allocation, as determined by each jurisdiction's annual production report submitted pursuant to Government Code Section 65400(a)(2)(H) cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

5. Stable population numbers in a jurisdiction. Pursuant to Government Code Section 65584.04(g)(3), stable population growth from the previous regional housing needs cycle cannot be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

E. COMMENTS ON APPEALS

At the close of the appeals period as set forth in I.A., ABAG shall notify all jurisdictions within the region and HCD of all appeals and shall make all materials submitted in support of each appeal available on its website after the close of the appeals filing period. Local jurisdictions and HCD may comment on one or more appeals within the 45 days following the end of the appeals filing period. All comments must be filed by 5:00 p.m. PST on August 30, 2021. ABAG will not accept late comments.

F. HEARING BODY

The ABAG Executive Board has delegated the responsibility of considering appeals regarding Draft RHNA Allocations to the ABAG Administrative Committee. All decisions on RHNA appeals made by the Administrative Committee are considered final and will not be reviewed by the ABAG Executive Board.

G. APPEAL HEARING

ABAG shall conduct one public hearing to consider all appeals filed and comments received on the appeals no later than September 26, 2021. This public hearing may be continued (over several days if necessary) until all appeals are heard. Notice shall be provided to the appealing jurisdictions, commenting jurisdictions, and HCD at least 21 days in advance of the hearing. Per Government Code Section 65584.05(i), ABAG may extend the deadline to conduct the appeals hearing by up to thirty (30) days.

Each appeal shall be heard individually before the Administrative Committee and a preliminary decision on the appeal may be reached by the Committee. At the conclusion of all the individual appeals, the Administrative Committee will take a final vote determining the outcome for each appeal application. In the event an individual appeal involves a Committee member's or alternate's respective jurisdiction, the member or alternate may not participate in the discussion of or vote on that individual item by the Administrative Committee. If the Committee decides to take one final vote ratifying prior preliminary decisions, a Committee member may participate in that vote and note for the record their abstention from the portion of the decision relating to their jurisdiction.

Due to the ongoing COVID-19 pandemic, RHNA appeals hearings may be conducted via teleconference per the Governor's executive orders or any amendments to the Brown Act.

ABAG-MTC staff will apprise the public of any updates to meeting procedures and will include information relevant to public participation in the public noticing of the appeal hearings.

Appeal Hearing Procedures

The hearing shall be conducted to provide applicants and jurisdictions that did not file appeals but are the subject of an appeal with the opportunity to make their case regarding a change in their Draft RHNA Allocation or another jurisdiction's Draft RHNA Allocation. The burden is on the applicants to prove that adjustment of the Allocation is appropriate under the statutory standards set forth in the Government Code. The appeals hearing will be organized by the specific jurisdiction subject to an appeal or appeals and will adhere to the following procedures:

1. Initial Arguments

Applicants who have filed an appeal for a particular jurisdiction will have an opportunity to present their request and reasons to grant the appeal. The information and arguments presented by the applicant shall be limited to what was presented in the written appeal filed by the applicant. In the event of multiple appeals filed for a single jurisdiction, the subject jurisdiction will present their argument first if it has filed an appeal on its own Draft RHNA Allocation. Applicants may present their cases either on their own, or in coordination with other applicants, but each applicant shall be allotted five (5) minutes each. If the subject jurisdiction did not file an appeal on its own Draft RHNA Allocation, it will be given an opportunity to present after all applicants have provided initial arguments on their filed appeals. Any presentation from the jurisdiction who did not appeal but is the subject of the appeal is limited to five (5) minutes unless it is responding to more than one appeal, in which case the jurisdiction is limited to eight (8) minutes.

An appealing jurisdiction may choose to have technical staff present its case at the hearing. At a minimum, technical staff should be available at the hearing to answer any questions from the Administrative Committee.

2. Staff Response

After initial arguments are presented, ABAG-MTC staff will present their recommendation to approve or deny the appeal(s) filed for the subject jurisdiction. The staff response is limited to five (5) minutes.

3. Rebuttal

Applicants and the jurisdiction who did not file an appeal but is the subject of the appeal may elect to provide a rebuttal but are limited to the arguments and evidence presented in the staff response. Each applicant and the subject jurisdiction that did not file an appeal on its own Draft RHNA Allocation will be allotted three (3) minutes each for a rebuttal.

4. **Extension of Time Allotment**

The Chair of the Administrative Committee may elect to grant additional time for any presentation, staff response, or rebuttal in the interest of due process and equity.

5. **Public Comment**

Members of the public will have an opportunity to comment on the arguments presented related to the appeal(s) for the subject jurisdiction under consideration. Each speaker will be allotted two (2) minutes to speak, or as adjusted at the discretion of the Chair.

6. **Administrative Committee Discussion and Determination**

After arguments and rebuttals are presented, the Administrative Committee may ask questions of applicants, the subject jurisdiction (if present), and ABAG-MTC staff. The Chair of the Administrative Committee may request that questions from the Administrative Committee be asked prior to a discussion among Administrative Committee members. Any voting Committee member may make a motion regarding the appeal(s) for the subject jurisdiction. The Committee will take a preliminary vote on the appeal(s) for a subject jurisdiction. The Administrative Committee is encouraged to make a single determination on the subject jurisdiction after hearing all arguments and presentations on each subject jurisdiction.

The Administrative Committee shall generally administer appeal hearings according to these procedures. However, the Chair of the Committee has the discretion to adjust the procedures as deemed necessary and formal rules of evidence and procedure do not apply. Further, any alleged failure to adhere to these procedures shall not be grounds for overturning a decision.

H. DATA REQUIREMENTS

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology and supported by adequate documentation. To the extent a local jurisdiction submits evidentiary documentation to ABAG in support of its appeal, such data shall meet the following requirements:

1. The data shall be readily available for ABAG’s review and verification. Data should not be constrained for use by proprietary conditions or other conditions rendering them difficult to obtain or process.
2. The data shall be accurate, current, and reasonably free from defect.
3. The data shall be relevant and germane to the local jurisdiction’s basis of appeal.
4. The data shall be used to support a logical analysis relating to the local jurisdiction’s request for a change to its or another jurisdiction’s Draft RHNA Allocation.

I. DETERMINATION OF APPEAL AND POST-APPEAL REALLOCATION OF REGIONAL HOUSING NEEDS

The Administrative Committee shall issue a written final determination on all filed appeals after the conclusion of the public hearing. The written final determination shall consider arguments and comments presented on revising the Draft RHNA Allocation of the subject jurisdiction and make a determination that either accepts, rejects, or modifies the appeal for each subject jurisdiction. Per Government Code Section 65584.05(e)(1), the Administrative Committee has the discretion in its final determination on an appeal to require the adjustment of the allocation of a local jurisdiction that is not the subject of an appeal, if the adjustment(s) are supported by evidence and the Administrative Committee makes specific findings in its determination on the appeal.

The final determinations shall be based upon the information and methodology set forth in Government Code Section 65584.04 and whether the revision is necessary to further the objectives listed in Government Code Section 65584(d). The final determination shall include written findings as to how the determination is consistent with Government Code Section 65584.05. The final determinations for all appeals will be ratified by the Administrative Committee following release of the written final determinations on all filed appeals. The decision of the Administrative Committee shall be final, and local jurisdictions shall have no further right to appeal.

In accordance with Government Code Section 65584.05(g), after the conclusion of the appeals process, ABAG shall distribute the adjustments proportionally to all Bay Area jurisdictions, including those jurisdictions whose Draft RHNA Allocation was successfully appealed. For purposes of these procedures, proportional distribution shall be based on the share of regional housing needs after the appeals are determined and prior to the required redistribution. The redistribution of units successfully appealed could result in increases to the Draft RHNA Allocations for all jurisdictions.

If, consistent with Government Code Section 65584.05(e)(1), the Administrative Committee's final determination included adjustments to the allocations of a jurisdiction or jurisdictions that were not the subject of an appeal, these adjustments may be excluded from the cumulative total adjustments to be reallocated proportionally to all jurisdictions in the region.

J. FINAL RHNA PLAN

After ABAG reallocates units to all local jurisdictions resulting from successful appeals, the ABAG Executive Board shall review and consider adoption of the Final RHNA Plan for ABAG's 2023-2031 RHNA. This is scheduled to occur in either November or December 2021.

List of Attachments

- Attachment A: RHNA Appeal Request Form

2023-2031 Regional Housing Needs Assessment (RHNA) Appeal Request

Submit appeal requests and supporting documentation to rhna@bayareametro.gov
by 5:00 pm PST on July 9, 2021. **Late submissions will not be accepted.**

Jurisdiction Whose Allocation is Being Appealed: _____ Date: _____

_____ **APPEAL AUTHORIZED BY:**
Filing Party: _____ Name: _____
(Jurisdiction or HCD)

Contact Name: _____ **PLEASE SELECT BELOW:**
Title: _____ Mayor
Phone: _____ Chair, County Board of Supervisors
Email: _____ City Manager
 Chief Administrative Officer
 Other: _____

IDENTIFY ONE OR MORE BASES FOR APPEAL [Government Code Section 65584.5(b)]

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey regarding RHNA Factors (Government Code Section 65584.04(e)) and Affirmatively Furthering Fair Housing (See Government Code Section 65584.04(b)(2) and 65584(d)(5)):
 - Existing and projected jobs and housing relationship.
 - Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
 - Availability of land suitable for urban development or for conversion to residential use.
 - Lands protected from urban development under existing federal or state programs.
 - County policies to preserve prime agricultural land.
 - Distribution of household growth assumed for Plan Bay Area 2050.
 - County-city agreements to direct growth toward incorporated areas of county.
 - Loss of units contained in assisted housing developments.
 - Households paying more than 30% or 50% of their income in rent.
 - The rate of overcrowding.
 - Housing needs of farmworkers.
 - Housing needs generated by the presence of a university campus within a jurisdiction.
 - Housing needs of individuals and families experiencing homelessness.
 - Loss of units during a declared state of emergency from January 31, 2015 to February 5, 2020.
 - The region's greenhouse gas emissions targets to be met by Plan Bay Area 2050.
 - Affirmatively furthering fair housing.
- ABAG failed to determine the jurisdiction's Draft RHNA Allocation in accordance with the Final RHNA Methodology and in a manner that furthers, and does not undermine the RHNA Objectives (see Government Code Section 65584(d) for the RHNA Objectives).
- A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted in the Local Jurisdiction Survey (*appeals based on change of circumstance can only be made by the jurisdiction or jurisdictions where the change occurred*).

Pursuant to Government Code Section 65584.05, appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). An appeal shall be consistent with, and not to the detriment of, [the development pattern in the sustainable communities strategy \(Plan Bay Area 2050 Final Blueprint\)](#).

Number of units requested to be reduced or added to jurisdiction’s Draft RHNA Allocation:

Number of Units Reduced _____ Number of Units Added _____

Brief description of appeal request and statement on why this revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d) and how the revision is consistent with, and not to the detriment, of the development pattern in Plan Bay Area 2050. Please include supporting documentation for evidence as needed, and attach additional pages if you need more room.

SAMPLE

List of supporting documentation, by title and number of pages

(Numbers may be continued to accommodate additional supporting documentation):

1. _____
2. _____
3. _____