

Marin County Appeal of Draft RHNA Allocation (July 9, 2021)

To Whom It May Concern:

Pursuant to Government Code Section 65584.05, the Marin County Board of Supervisors has authorized the Community Development Agency to submit the following appeal to the Association of Bay Area Governments (ABAG) for a revision of the share of the regional housing need proposed to be allocated to the County under the Regional Housing Needs Allocation (RHNA) methodology adopted for the 6th cycle for the period of 2023 - 2031. A revision to the draft allocation is necessary to bring the County's RHNA into full compliance with the intent of the objectives set out in Government Code Section 65584(d) while maintaining consistency with the Plan Bay Area Final Blueprint 2050 developed pursuant to Government Code Section 65080(b)(2).

Marin County is committed to addressing housing as an issue of equity and understands that housing policies, laws, and regulations can play an important role in promoting neighborhood conditions that positively shape the health and well-being of all. We understand that our share of the RHNA will increase and are committed to increasing our housing production, especially of homes affordable to lower income households. Our unincorporated communities have fewer services, infrastructure, and jobs to accommodate the 3,569 units in the draft RHNA than cities and towns. By comparison, the County's largest cities of San Rafael and Novato were assigned 10 and 41 percent fewer units, respectively. (San Rafael – 3,220 units, Novato – 2,090 units) Thus, the RHNA inexplicably departs from the Plan Bay Area 2050 blueprint by focusing more growth in unincorporated areas rather than cities and towns with larger employment bases, public transportation opportunities, infrastructure, and public service amenities.

Also, the RHNA methodology apparently overlooks the new era of remote work that signals a major shift in the way a large segment of the population in Marin and elsewhere will work in the future. These changes may alter the supply and demand for housing. By way of example, it's foreseeable that higher paid workers in coastal urban areas who become untethered to their current commutes will move to smaller interior communities where their income has higher spending value. While the long-range impacts of teleworking have yet to be seen, it will likely reorient the way we work and live, in ways the current RHNA methodology and related modeling have not taken into account.

The County of Marin's basis of this appeal are as follows:

ABAG failed to adequately consider information submitted as part of the local jurisdiction survey. ABAG conducted this survey in early 2020 and, as required by law, requested information related to the factors identified in Housing Element Law that must be considered in the RHNA methodology and information about affirmatively furthering fair housing.

1. ABAG indicates that appeals cannot identify limits on RHNA due to local zoning and other land use restrictions; however, the local survey included a request for information regarding

land use constraints and does not exclude zoning and land use plan considerations (by way of example, Survey Question 7 requests information pertaining to policies for preserving agricultural land; Question 9 requests information on greatest constraints among those listed in Question 7 [i.e., proportion of land zoned for agriculture]).

2. The proposed RHNA allocation for unincorporated Marin County fails to conform to the core principals provided in Government Code Section 65584 which emphasize housing near job centers, infill development, and environmental resource protection. As indicated in Marin’s survey, despite its proximity to San Francisco and Oakland, unincorporated Marin is largely agricultural (70+% of land area is zoned for agriculture, and together with permanently protected public lands¹, over 82% of the land in Marin County is protected as agricultural land, Federal, State and local parks, and open space). These lands lack infrastructure to accommodate urban development. Development of agricultural land would also be contrary to the infill development objective of Plan Bay Area 2050 Final Blueprint, the RHNA methodology and statutory criteria, and the County’s general plan or Countywide Plan (CWP) with its focused growth framework in the City Centered Corridor, near transit and services. One of ABAG’s core strategies is “focused growth in communities along existing transportation networks near homes and jobs... This strategy aims to minimize development in our green fields and maximize growth in transit-rich communities, which will help lower vehicle miles traveled and greenhouse gases”. Furthermore, Plan Bay Area 2050 Principle EN4 includes the environmental strategy to “maintain urban growth boundaries”, which describes “using urban growth boundaries and other existing environmental protections [to] focus new development within the existing urban footprint or areas otherwise suitable for growth, as established by local jurisdictions”².

Most of the remaining urban area of unincorporated Marin (the City Centered Corridor) is zoned for, and developed with, single family residential uses. These neighborhoods present a substantial opportunity to advance the County’s goal of increasing the supply of Accessory Dwelling Units (ADUs) and perhaps other creative means of expanding housing at scale with single family development. To the contrary, however, it is highly unlikely historic single-family subdivisions will accommodate larger multi-family and mixed-use projects because they lack lot areas and have limited road and infrastructure capacity.

3. Plan Bay Area 2050 Growth Geographies identify growth in three areas: Priority Development Areas (PDA), Transit Priority Areas (TPA), and High Resource Areas (HRA). However, Marin County’s RHNA disproportionately assigns housing units to the unincorporated areas which have a lower share of these areas compared with the percentage of incorporated areas that are mapped in the Growth Geographies. The 3,569 total RHNA units allocated to the unincorporated county represent 24.8% of the 14,405 RHNA units allocated to Marin County as a whole, yet the unincorporated area’s PDA, TPA, and HRA represent only 14.5% (961 out of 6,641 acres) of the total acreage in these designations (please refer to Table 1). Reducing

¹ Marin County GIS data

² Plan Bay Area 2050 Guiding Principles

the RHNA will result in the unincorporated area's share of the county's total RHNA to be more proportional to the unincorporated area's share of the total amount of land designated in the Growth Geographies. A requested reduction to the unincorporated area's RHNA to 2,281 units, as discussed further in Point #5 below, will result in the unincorporated area's RHNA representing 15.8% of the 14,405 RHNA units allocated to the entire county and more proportional to the amount of land designated in the Growth Geographies for the unincorporated area in comparison to the total amount of land designated in the Growth Geographies.

In addition, it is contrary to the county's policies that have been in place for decades which support housing near transit, services and jobs which is typically in cities and towns. These policies will assist in reducing greenhouse gas emissions and create livable communities with access to services and transit. In fact, disproportionately allocating housing units for the unincorporated areas could create the unintended effect of encouraging sprawl and inefficient service delivery by having development located outside of cities and towns at a higher density than what may be allowed under the cities and towns' general plans.

**Table 1: Plan Bay Area Growth Geographies
Disproportionately Affect Unincorporated Areas**

PBA 2050 Growth Geographies	Marin County	Unincorporated Area	Unincorporated Percentage of Total
High Resource Area	1,396 acres	193 acres	13.8%
Transit Rich Area	1,351 acres	7 acres	0.5%
Transit Rich – High Resource Area	2,041 acres	351 acres	17%
Priority Development Area	1,846 acres	410 acres	22.2%
TOTAL	6,641 acres	961 acres	14.5%

- Marin County is a leader in planning to adapt for climate change and one of the first counties to develop a Climate Action Plan. In its RHNA distribution, ABAG did not adequately address the effects of climate change as a constraint on the county's ability to plan for 3,569 housing units. The proposed allocation should be reconsidered in light of the significant, intensifying, ongoing changes in the environment, including the record-setting drought in Marin County featuring the third-lowest rainfall total in the County's 140-year historical record. These unprecedented conditions place a significant strain on water supplies and may result in

limitations on new water connections placed by local water providers, which do not fall under the purview of the County.

Global warming will also increase the potential for not only flooding but permanent inundation of low-lying areas as a result of sea level rise (SLR). State guidance calls for planning for 1.1 to 1.9 feet of SLR by 2050 and even Plan Bay Area 2050 assumes 2 feet of permanent inundation and 3 feet of temporary inundation during storm and king tide events by 2050. The Countywide Plan focuses growth along the City Centered Corridor, avoiding development of protected agricultural land, Federal, State and local parks, and open space. This Corridor is where most of the existing development in the unincorporated area and the County's 11 cities and towns are located, with vacant and largely underdeveloped unincorporated parcels occupying low-lying areas that have historically flooded or are subject to future SLR. It would appear that potential development of some of the County's RHNA units in areas subject to SLR and flooding hazards would conflict with one of Plan Bay Area 2050's main strategies to protect communities and infrastructure from the effects of SLR flooding.

According to the RHNA Plan, areas of high fire risk have been excluded from focused growth areas. Plan Bay Area 2050 Additional Context on Resilience Integration (Attachment H) advocates for land use strategies to ensure that future development is restricted in the most fire-prone places. Notwithstanding that many of the developed unincorporated neighborhoods in the City Centered Corridor have substandard road access and are restricted by topography, over 45% of vacant parcels in the City Centered Corridor (approximately 2,135 acres) are also designated as High/Very High Fire Hazard and Wildland Urban Interface zones (See Attachment 1.) While Plan Bay Area 2050 contains strategies to address areas most at risk of wildfire, the number of units allocated to the unincorporated area (3,569 units) fails to account for existing site constraints and could potentially expose future residents to fire hazards.

5. ABAG is also required 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). The numbers assigned to unincorporated Marin in the moderate and above-moderate income categories make up more than half (51%) of the total number of unincorporated RHNA units. In previous cycles, unincorporated Marin has met and exceeded its RHNA in the above-moderate (and moderate) income categories and is currently on track to again exceed this goal (74% of the moderate-income goal and 284% of the above-moderate income goals have been reached to date for the current cycle).

Increasing the amount of additional above-moderate (market) rate units would be contrary to the goals of affirmatively furthering fair housing. Marin County recognizes that more effort needs to be made to increase the supply of affordable housing, and the County can rely on existing market forces, as it has in the past, to provide above-moderate income housing units.

Therefore, the appeal requests a reduction in Marin's RHNA in the above-moderate income units from 1,323 units to 230 units, which reflects the projected number of above-moderate income units expected to be built in the current cycle. The appeal also requests a reduction in Marin's RHNA in the moderate-income units to 50% of the 634 units in the low-income category (from 512 units to 317 units). Reducing Marin's RHNA in the above-moderate and moderate-income units as requested in this appeal will result in an overall reduction of the RHNA for the unincorporated areas by 1,288 units (from 3,569 units to 2,281 units).

6. Although the statutory criteria (Section 65584.04(e)(2)) indicate that ABAG *may* not consider existing zoning and other land use regulations in developing the RHNA methodology, an analysis of alternative zoning schemes is required, presumably to help determine the feasibility of the proposed RHNA adjustments from a regulatory standpoint, or at least to understand the implications of potential zoning changes. County staff has not seen evidence to date that ABAG conducted the alternative zoning analysis. Furthermore, the plain meaning of the language used in the statutory authority of "may" implies that the statute does not entirely exclude or prohibit reliance on existing zoning. Without analyzing existing zoning or alternative zoning schemes, the proposed RHNA fails to demonstrate consistency with the Section 65584 criteria.

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.

ABAG did not take into consideration a significant and unforeseen change in circumstances that has occurred in the local jurisdiction or jurisdictions that merits revision of information submitted as part of the local jurisdiction survey. The effects of the COVID-19 pandemic on land use, transportation, and jobs were not taken into account by ABAG when it finalized the methodology and distributed the draft RHNA. In particular, the reliance on telework as a viable and permanent alternative for part-or full-time employment in the foreseeable future may alter the job growth projections differently for suburban communities, like Marin County, as compared to urban centers, like San Francisco and Oakland. Changes in the growth and distribution of jobs due to the pandemic, and the "new normal" likely to occur going forward, will affect the distribution of population growth, and by extension housing growth. ABAG did not adequately calibrate the regional distribution of housing units to take into account changes to population, job growth, and housing as a result of the pandemic. In addition, the unprecedented drought, as mentioned in the Point #4 of the first basis of appeal above, and potential limits placed on water supply for new development, was not factored by ABAG when it finalized the methodology and distributed the draft RHNA.

Conclusion

Marin County recognizes that our RHNA is increasing; however, we respectfully request that you reconsider the RHNA assigned to the unincorporated area by reducing the numbers allocated to the moderate and above-moderate income categories by 1,288 units, and grant this appeal,

resulting in an overall reduction in the county's RHNA from 3,569 units to 2,281 units. Growth should be directed to communities where there are greater services, infrastructure, and jobs.

Sincerely,

Dennis Rodoni, President
Marin County Board of Supervisors

Attachment: Marin County City Centered Corridor Fire Constraints on Vacant Parcels