June 22, 2021

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Regional Housing Needs Allocation for Unincorporated Marin County and Appeal Options

Dear Supervisors:

RECOMMENDATION: Provide direction to staff regarding whether to file an appeal of the Regional Housing Needs Allocation numbers to the Association of Bay Area Governments.

SUMMARY:

The Regional Housing Needs Allocation (RHNA) process is used to determine how many new homes, and the affordability of those homes, each local government must plan for in its Housing Element. Unlike other elements of the County’s general plan (Countywide Plan), the Housing Element is statutorily required to be updated every eight years. Marin County’s Housing Element for the 2023 to 2031 planning period is required to be complete by January 2023. On May 20, 2021, the Association of Bay Area Governments (ABAG) Executive Board approved the final RHNA methodology and draft RHNA allocations. This begins the next phase of the RHNA process which allows for jurisdictions to appeal the number of units they have been allocated, and/or appeal the number of units allocated to any other jurisdiction in the Bay Area. A total of 3,569 units have been allocated to the unincorporated Marin County. (Please see Attachment 1.) This represents approximately 25% of the 14,405 units allocated to the county and its 11 cities and towns. By comparison, during the previous housing element cycle, the County’s RHNA was 185 units. CDA staff met with the Board Subcommittee on Affordable Housing, comprised of Supervisors Connolly and Rodoni, and received direction to bring forward the request seeking the full Board’s direction to staff whether to file an appeal of the RHNA for unincorporated Marin County. The deadline to submit the appeal is July 9, 2021. Staff is requesting Board direction on whether to move forward to prepare an appeal of the RHNA, and if the Board chooses to move forward, to provide specific feedback on concerns to focus on for the appeal.

BACKGROUND:

California state law\(^1\) recognizes that local governments play a key role in developing housing and has mandated that local governments plan for the development of

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\(^1\) [https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1&title=7&part=&chapter=3&article=10.6](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1&title=7&part=&chapter=3&article=10.6)
housing at all income levels. This mandate is implemented in part through the state Housing Element requirements and assignment of housing unit production goals for each jurisdiction in a designated region. The California Department of Housing and Community Development (HCD) determines the number of new homes the Bay Area needs to build—and how affordable those homes need to be—in order to meet the housing needs of people at all income levels. For the Bay Area, HCD has determined that 441,176 housing units are needed between 2023-31. This number is known as the RHNA. ABAG is responsible for preparing a methodology to distribute the 441,176 housing units throughout the nine county Bay Area region. This methodology relies on future population projections documented in the final Plan Bay Area 2050 (PBA 2050) regional plan and includes equity adjustments to affirmatively further fair housing. ABAG’s RHNA methodology requires HCD approval, which was granted on April 12, 2021.

DISCUSSION:

The RHNA appeal procedures and process requires the preparation of an appeal based on evidentiary information that meets one of three statutory criteria for formulating an appeal, including:

1. ABAG failed to adequately consider the information submitted as part of the local jurisdiction survey (see Government Code Section 65584.04(b) for more details about the survey). ABAG conducted this survey in early 2020 and received responses from 72 jurisdictions.

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 identified in Government Code Section 65584(d).

3. A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the 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.

An appeal to ABAG is the County’s only option to seek to reduce the allocation. No judicial review is available. City of Irvine v. Southern California Association of Governments, 175 Cal.App.4th 506 (2009).

Based on a review of these criteria, staff notes that an appeal that meets the eligibility requirements of state law may be possible citing such factors as the following:

- The draft RHNA is inconsistent with strategies identified in PBA 2050 to limit risks to existing and future communities from exposure to natural hazards and climate impacts associated with fire hazards and flooding and did not factor in the amount of land in the unincorporated county that is vulnerable to these hazards.
- Information requested in the local jurisdiction survey regarding land use constraints or capacity (e.g. amount of agricultural land preserved) apparently was not taken into account in the methodology and the development of the RHNA numbers.
- ABAG appears to not have taken into consideration a significant and unforeseen change in circumstances associated with the current drought when there is uncertainty about whether water will be available to serve new housing in the foreseeable future.
However, while an appeal application could be pursued, based on the experience of jurisdictions in Southern California where two of the 48 appeals filed with the Southern California Association of Governments were partially upheld, the likelihood of success is uncertain. In addition, if an appeal were upheld, any reduction in the County's RHNA units would be redistributed amongst other Marin jurisdictions.

**EQUITY IMPACT:**

The County has a statutory obligation to address barriers to fair housing choice and identify sites and programs that provide housing opportunity for residents at all income levels through the Housing Element. RHNA identifies the number of units the County must plan to build. During this cycle, the County is allocated 3,569 units as compared to 185 units in the last cycle, a 19 times increase. The Board's action whether or not to file an appeal of the County's RHNA is an issue of scale and thoughtful planning. The County wants to plan for the number of units that is practical and attainable. The outcome of the RHNA appeal may result in an equity impact if it changes or reduces the county's RHNA (planned units), particularly at the low and very low-income categories. In any case, the number of required low and moderate income units will substantially exceed the number included in the County's previous RHNA goal.

**FISCAL/STAFFING IMPACT:**

The RHNA process is preparatory to the update of the Housing Element. There would not be any fiscal impact on the general fund because funds have been allocated and available in the CDA’s budget to update the Housing Element.

**REVIEWED BY:**  
(These boxes must be checked)

- County Administrator  
- Department of Finance  
- County Counsel  
- Human Resources

**SIGNATURE:**

Tom Lai  
Director

Attachment 1: Marin County Draft Regional Housing Needs Allocation 2023-2031