

RHNA 4TH REVISION

SAN FRANCISCO BAY AREA ASSOCIATION OF BAY AREA GOVERNMENTS

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INTRODUCTION

This is a working document compiled by the planning and research staffs of, and Legal Counsel to, the Association of Bay Area Governments (ABAG). ABAG is the council of governments responsible for conducting the Regional Housing Need Allocation process (“RHNA”). This document is the current staff interpretation of the statute that governs RHNA and of a September 29, 2005 letter from the California Department of Housing and Community Development (HCD). The letter grants ABAG an extension of time to perform RHNA under certain conditions and timelines.

RHNA is a process triggered by HCD’s determination of the number of housing units which must be provided to meet the regional need. ABAG’s role is to allocate the regional need among local governments in the region. Before HCD’s release of the housing need number, ABAG is required to survey local governments for data. ABAG will use this data to develop and adopt a “methodology” for allocating the regional need. The methodology will be developed and adopted before HCD releases the housing need number.

Once HCD releases the housing need number, ABAG applies the adopted methodology and generates initial draft allocations to local governments. Local governments may request revisions to the initial draft allocation. After consideration of these requests, ABAG will issue final draft allocations. Local governments can then appeal these final draft allocations. After consideration of the appeals, ABAG will issue the final allocations for public comment and submission to HCD to review for compliance with the RHNA law.

In this fourth revision of RHNA, there is an opportunity for local governments to form subregions. The subregions will devise their own methodology. ABAG will assign a subregional share of the regional housing need to each subregion. Each subregion will apply its methodology to the subregional share to produce an initial draft allocation of this share to each local government in the subregion. Each subregion will undertake the revision, appeal and final allocation process described above, except that it will submit the final allocation to ABAG for submission to HCD. ABAG will be required to allocate the subregional share to local governments in the subregion if the subregion does not successfully negotiate a critical step or fails to complete the process.



This document was created using the following techniques and rules:

- Create a narrative guide describing RHNA
- Use text extracted from sections of the statute that governs RHNA and from the HCD extension letter
- Modify grammar, rearrange text and add connectors only as necessary to clarify meaning
- Identify source of language in sidebar text
- Identify and describe where and how the document interprets the source material in sidebar text
- Identify unresolved ambiguities in sidebar text
- Insert “real time” information about the process to improve clarity and utility

The document is a reference tool for ABAG staff, the Housing Methodology Committee (HMC) and interested members of the public. It will be revised or updated based on feedback and use experience. Please provide feedback to rhntalk@abag.ca.gov

RHNA 4TH REVISION – SF BAY AREA (ABAG)

I. DATA COLLECTION/SURVEY

No earlier than June 30, 2006, [ABAG begins to survey each of its member jurisdictions to request, at a minimum, information regarding the factors (Factors) that will allow the development of a methodology based upon the Factors] (to the extent that sufficient data is available from local governments or other sources):

- Each member jurisdiction's existing and projected jobs and housing relationship.
- The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) 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.

(B) 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. The subregion 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.

(C) 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.

(D) County policies to preserve prime agricultural land, as defined pursuant to Government Code Section 56064, within an unincorporated area.

- 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.
- The market demand for housing.
- Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.
- The loss of units contained in assisted housing developments, as defined in Government Code Section 65583(a)(8), that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

Comment: All alphanumeric sequences appearing in a "Comment" are references to the CA Govt. Code (2006). Mere listing of the section means the associated passage is a near verbatim reproduction of the referenced section.

Comment: From HCD Schedule. Otherwise, per 65584.04(b)(1) it's "No more than six months prior to the development of a proposed methodology"

Comment: 65584.04(b)(1) obligates the COG to perform the data survey described in this, and subsequent, passages.

•ABAG will use other data in developing a methodology – see last bulleted item.

•65584.04(b)(3) states that "The information [developed under 65584.04] . . . shall be used [by the subregion]."

•Does this obligate the subregions to use the data developed by ABAG?

•Does this obligation extend to "any other factors" developed by ABAG under 65584.04(d)(9)?

•Can subregions develop alternative data collection process and additional factors?

Comment: 65584.04(d)(1)

Comment: 65584.04(d)(2)

Comment: 65584.04(d)(3)

Comment: 65584.04(d)(4)

Comment: 65584.04(d)(5)

Comment: 65584.04(d)(6)

• High housing costs burdens. Comment: 65584.04(d)(7)

• The housing needs of farm workers. Comment: 65584.04(d)(8)

• Any other factors adopted by ABAG. Comment: 65584.04(d)(9)

ABAG shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible. Comment: 65588.04(b)(2)

The information provided by a local government shall be used, to the extent possible, by ABAG as source information for the methodology. Comment: 65584.04(b)(3)

If ABAG fails to conduct a survey, a city, county, or city and county may submit information related to Factors prior to the public comment period.

II. DEVELOPMENT OF METHODOLOGY

By March 2007, ABAG shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the subregion. The methodology shall be consistent with these objectives (**Objectives**). Comment: From HCD Schedule. Otherwise, per 65584.04(a) it's "at least by [June 2007]"

Comment: 65584.04(a)

• Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low and very low income households. Comment: 65584(d)(1)

• Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns. Comment: 65584(d)(2)

• Promoting an improved intraregional relationship between jobs and housing. Comment: 65584(d)(3)

• Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census. Comment: 65584(d)(4)

Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Comment: RHNA Housing Methodology Committee (HMC) will hold meetings through November 2006.

Participation by organizations other than local jurisdictions and the region shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. Comment: See public hearing and appeals process required by 65584.05 and passages in section III and IV.

The region shall conduct at least one public hearing to receive oral and written comments during a 60 day comment period on the proposed methodology. Comment: HMC includes 6 seats for stakeholder groups. See also the public hearing and appeals process required by 65584.05 and passages in section III and IV.

The following shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology: Comment: 65584.04(h)

Comment: 65584.04(c)

- proposed methodology,
- any relevant underlying data and assumptions,
- explanation of how information about local government conditions has been used to develop the proposed methodology,
- explanation of how each of the Factors is incorporated into the methodology, and
- how the methodology is consistent with the Objectives.

Comment: 65584.04(c)

Comment: Finding is required under 65584.04(e). Distribution of this bullet item is not required under 65584.04(c) but is included here for completeness and because 65584.04(e) requires the finding be made in writing.

Comment: 65584.04(e)

The methodology may include numerical weighting.

Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

Comment: 65584.04(f)

In addition to the Factors, ABAG shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments.

Comment: 65584.04(g)

After making any revisions deemed appropriate by ABAG, as a result of comments received during the public comment period, ABAG shall adopt a final regional housing need allocation methodology and provide notice of the adoption of the methodology to member jurisdictions and to HCD.

Comment: 65584.04(h)

III. CIRCULATION OF DRAFT RHNA ALLOCATIONS FOR REVISION AND APPEALS

Before June 30, 2007, ABAG shall distribute a draft allocation of regional housing needs to each local government in the region. The draft allocation shall include the underlying data and methodology on which the allocation is based.

Comment: From HCD schedule. Otherwise, 65584.05(a) requires "at least one and one half years prior to the scheduled revision".

Comment: 65584.05(a)

It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan.

Comment: Note, this could include allocations of subregional shares from subregions that ABAG finds to be noncompliant under HCD extension letter.

Comment: 65584.05(a)

Within 60 days following receipt of the draft allocation but **no later than August 31, 2007**, a local government may request from ABAG a revision of its share of the regional housing need in accordance with the Factors, including any information submitted by the local government to ABAG.

Comment: 65584.05(b). HCD schedule sets August 31, 2007 deadline.

The request for a revised share shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation.

Comment: 65584.05(b)

Within 60 days after the request for a revised share but **no later than October 31 2007**, ABAG shall make a decision on the request for revision by accepting the proposed revision, modifying its earlier determination, or indicating, based on the information and methodology

described in 65584.04, why the proposed revision is inconsistent with the regional housing need.

Comment: 65584.05(c) HCD schedule sets October 31 2007 deadline.

If ABAG does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting the local government, it may appeal its draft allocation based upon either or both of the following criteria:

- ABAG failed to adequately consider the information submitted during the methodology survey or a significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to that survey.
- ABAG failed to determine the local government's share of the regional housing need in accordance with the information submitted during the methodology survey and the methodology.

Comment: 65584.05(d).

- Are local jurisdictions restricted to these reasons when filing an appeal?
- Arguments that support allowing a broader range of reasons for appeal are:
 - a local jurisdiction can ask for a revision under 65584.05(b) in which the local jurisdictions can raise a broader range of issues than are articulated by 65584.05(d)(1) or (2) (see above).
 - ABAG is required by 65584.05(e) to consider a broader range of criteria in deciding the appeal than could be raised by the local jurisdiction if it is limited by 65584.05(d)(1) and (2).

ABAG shall conduct public hearings to hear all appeals within 60 days of the date established to file appeals, but in any event in the **January to April 2008** timeframe.

Comment: 65584.05(d)(1) cross references to 65584.04(b)

Comment: 65584.05(d)(1)

Comment: 65584.05(d)(2)

The local government shall be notified within 10 days by certified mail, return receipt requested, of at least one public hearing on its appeal. The date of the hearing shall be at least 30 days and not more than 35 days from the date of the notification.

Comment: 65584.05(e). HCD schedule places this 60 day period in the January through April 2008 timeframe.

Comment: 65584.05(e)

Before taking action on an appeal, ABAG shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant.

The final action of ABAG on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with the RHNA law.

Comment: 65584.05(e)

The final action on an appeal may require ABAG to adjust the allocation of a local government that is not the subject of an appeal.

Comment: 65584.05(e)

IV. CIRCULATION OF FINAL RHNA ALLOCATIONS FOR REVIEW AND ALLOCATION

ABAG shall issue a proposed final allocation within 45 days of the completion of the 60-day period for hearing appeals, but **no later than April 30, 2008**. The proposed final allocation plan shall include responses to all comments received on the proposed draft allocation and reasons for any significant revisions included in the final allocation.

Comment: 65584.05(f). April 30 deadline from HCD schedule.

Two or more local governments may agree to an alternate distribution of appealed housing allocations between the affected local governments. If two or more local governments agree to an alternative distribution of appealed housing allocations that maintains the total housing need originally assigned to these communities, then ABAG shall include the alternative distribution in the final allocation plan.

Comment: Questions about the transfers under 65584.05(g) include:

- Is there a deadline for such agreements to be made?
- How is the agreement evidenced or documented?
- Are transfers of affordability based units only permitted?

If the adjustments total 7 percent or less of the housing need then ABAG shall distribute the adjustments proportionally to all jurisdictions in the region. If the adjustments total more

Comment: Statute does not define "adjustments". ABAG believes it refers to changes in final allocation resulting from appeals.

than 7 percent of the regional housing need, then ABAG shall develop a methodology to distribute the amount greater than the 7 percent to jurisdictions in the region.

Comment: 65584.05(g)

ABAG receives final subregional allocations [by April 30, 2008].

Comment: From HCD Schedule.
•Potential timing problem with HCD dates for
- appeals of regional and subregional draft allocations
- public hearings on appeals of draft allocations
- issuance of final regional and subregional allocations
- public hearings on final allocations.
•Problems can only be resolved through the delegation agreements with subregions, if they form.
•Additional issues are generated by ABAG's obligation to allocate a subregion's share among the members of the subregion if the subregion fails to allocate. Failure can occur at any time prior to the due date for the final subregional allocation.
- Should there be a special process or methodology for ABAG allocating a subregion's share?
- Does it make difference whether ABAG is allocating the subregion's share during the draft allocation phase (pursuant to the authority/obligation in the HCD Schedule) or afterwards?

In no event shall the total distribution of housing need equal less than the regional housing need.

To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to 65584.01, ABAG shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to 65584.01.

Within 60 days of adoption by ABAG, HCD shall determine whether or not the final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. HCD may revise the determination of ABAG if necessary to obtain this consistency.

V. INTERACTIONS BETWEEN SUBREGIONAL AND REGIONAL (ABAG) PROCESSES

Subregion(s) form no later than August 31, 2006.

Comment: 65584.05(g)

ABAG and subregion(s) enter into "delegation agreements" setting forth the process, timing and other terms and conditions of the delegation of responsibility by ABAG to the subregion(s).

Comment: More detailed narrative of subregional process is available in a companion document on subregions.

Comment: From HCD Schedule.
•Requires approval by ABAG in the form of a resolution. ABAG Executive Board meets in July and September. May need to involve Administrative Committee.

Comment: 65584.03(b)
•There is no due date for signing the delegation agreements.
•Ideally, agreements will be negotiated and signed prior to August 31, 2006. If necessary, parties could agree that ABAG's approval be conditioned on successful negotiation of a delegation agreement.

No later than May 1, 2007, ABAG shall determine the share of regional housing need assigned to each subregion. ABAG shall hold at least one public hearing to consider requests for revision of the proposed allocation to a subregion. If a proposed revision is rejected, ABAG shall respond with a written explanation.

Comment: ABAG intends to assign shares within 21 days after receiving regional housing need from HCD

Comment: May 1 deadline is from HCD Schedule. Otherwise, per 65584.03(c), "at least 25 months prior to the scheduled revision".

Note the ABAG 5/2/06 memo to the cities re creation of subregions states that ABAG intends to assign the subregional need within 21 days of receipt of the regional number from HCD which HCD has promised to deliver by March 1, 2007.

The share or shares allocated to the subregion(s) by ABAG shall be in a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan.

Before June 30, 2007, ABAG reviews draft allocations by each subregion for compliance with

- statutory requirements
- subregional delegation agreement and
- completeness of allocation.

Comment: 65584.03(c)

Comment: 65584.03(c)

Comment: Applies HCD schedule to subregions. Otherwise, language is "at least one and one half years prior to the scheduled revision".

Finding of noncompliance results in ABAG making the allocation.

Within 45 days of the issuance of the proposed final subregional allocation plan(s), and prior to ABAG's public hearing on the proposed final regional allocation plan (June 2008), **but no later than March 31, 2008**, each subregion shall hold a public hearing to adopt a final subregional allocation plan.

Comment: HCD Schedule requires ABAG to review draft subregional allocation for compliance with 65584.03(d) and complete allocation if noncompliant.

Comment: 65584.05(e) with addition from HCD schedule that requires either or both the public hearing and/or the final decisions on the subregional allocation occur before the regional allocation.

Before April 30, 2008, subregion(s) adopt, and submit to ABAG, final subregional allocation(s).

Each subregion shall fully allocate its share of the regional housing need to local governments within its subregion.

Comment: 65584.03(d) and 65584.05(a)

If a subregion fails to complete the regional housing need allocation process among its member jurisdictions in a manner consistent with the Housing Element law and with the delegation agreement between the subregion and ABAG, the allocations to member jurisdictions shall be made by ABAG.

Comment: This is the stage at which a subregion issues final allocations

Comment: 65584.03(d)
See comments in section IV.

Attachment A: Statutory References
Attachment B: HCD Extension Letter