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Memorandum

March 18, 2021

From: Michael Becker, Director of Planning
To: Community Development Directors
Re: RHNA Appeals Process

In a culminating step of the RHNA process, SBCAG issues a draft allocation of housing need to each local jurisdiction. Within 45 days of receiving its draft allocation, each jurisdiction is afforded the opportunity to appeal their own, or another jurisdiction's allocation. If any appeals are received, other jurisdictions and the Department of Housing and Community Development (HCD) have 45 days to comment on appeals. Within 30 days of the end of the comment period SBCAG will conduct a public hearing to consider appeals. SBCAG then has 45 days to accept, modify or reject appeals and issue a final allocation that is then submitted to HCD.

Specific dates (assuming an appeal) are as follows:

The 45-day period to file appeals will commence on March 18, 2021, the day of the SBCAG Board meeting approving the methodology. Jurisdictions will receive notice of their draft RHNA allocation. In order to comply with Government Code section 65584.05(b) (See Attachment 1), a jurisdiction seeking to appeal a draft allocation of the regional housing need must file the appeal by 5:00 p.m. May 3, 2021. At the close of the appeals period SBCAG shall notify all jurisdictions and HCD of all appeals and shall make all materials submitted in support of each appeal available on its website.

Jurisdictions, HCD and others can comment on the appeals for a period running an additional 45 days to June 17, 2021.

Within 30 days after comment period the SBCAG Board is required to conduct a public hearing to consider appeals. The SBCAG Board meets on June 17, 2021 and July 15, 2021 and is expected to hear appeals at either of these meetings. There is a requirement for a 21-day public hearing notice that will occur no later than May 27, 2021 for a hearing during the June meeting, or June 24, 2021 for a hearing during the July meeting. (Gov. Code § 65584.05(d).) Per Government Code section 65584.05(i), SBCAG may extend the deadline to conduct the appeals hearing by up to thirty (30) days.

Within 45 days of the public hearing the SBCAG Board will make a determination either issuing the proposed RHNA Plan, or accepting, rejecting or modifying appeals if any. This may occur during the June 17, 2021 or July 15, 2021 SBCAG Board meeting concurrently with the public hearing.

Within 45 days of the issuance of the RHNA Plan, a public hearing is required prior to adoption. This will occur during the June 17, 2021 or July 15, 2021 SBCAG Board meeting.

Within 3 days (June 20, 2021 or July 18, 2021) of issuing the proposed plan it is to be provided to HCD for a 30-day review period ending July 21, 2021 or August 19, 2021.

Specific dates if no appeal is filed are as follows:

Barring any appeals by the May 3, 2021 deadline, the RHNA Plan can be adopted (within 30 days of appeal deadline) following a public hearing conducted during the May 20, 2021 SBCAG Board meeting.

Appeal criteria:

Local jurisdictions shall only file an appeal based upon the criteria listed below. Pursuant to Government Code section 65584.05, filed appeals must include a statement as to why the revision is necessary to further the intent of the objectives listed in Section 65584. Additionally, Government Code section 65584.05(b) requires that all filed appeals must be consistent with, and not to the detriment of, the development pattern in the Regional Transportation Plan Sustainable Communities Strategy, pursuant to Government Code section 65080(b)(2).

1. Methodology – That SBCAG failed to determine the jurisdiction’s share of the regional housing need in accordance with the information described in the Final RHNA Methodology and approved by SBCAG, and in a manner that furthers, and does not undermine the five objectives listed in Government Code section 65584(d) (See Attachment 2).
2. Local Planning Factors and Information Affirmatively Furthering Fair Housing (AFFH) – That SBCAG failed to consider information submitted by the local jurisdiction relating to certain local factors outlined in Government Code section 65584.04(e), (See Attachment 2), and information submitted by the local jurisdiction relating to affirmatively furthering fair housing pursuant to Government Code section 65584.04(b)(2) and 65584(d)(5).
3. Changed Circumstances – That a significant and unforeseen change in circumstance has occurred in the jurisdiction after planning factors information was submitted by the local jurisdiction and merits a revision. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

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

1. Any other criteria other than the criteria above.
2. A local jurisdiction’s existing zoning ordinance 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), SBCAG 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 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.

Attachments:

Attachment 1, Gov. Code § 65584.05

Attachment 2, Five Objectives Listed in Gov. Code § 65584(d)

Attachment 3, Local Planning Factors and Information Affirmatively Furthering Fair Housing

Attachment 4, RHNA Appeals FAQ

SBCAG's RHNA related meeting materials to date are archived on the SBCAG website at the following link: <http://www.sbcag.org/rhna.html>



State of California

GOVERNMENT CODE

Section 65584.05

65584.05. (a) At least one and one-half years before the scheduled revision required by Section 65588, each council of governments and delegate subregion, as applicable, shall distribute a draft allocation of regional housing needs to each local government in the region or subregion, where applicable, and the department, based on the methodology adopted pursuant to Section 65584.04 and shall publish the draft allocation on its internet website. The draft allocation shall include the underlying data and methodology on which the allocation is based, and a statement as to how it furthers the objectives listed in subdivision (d) of Section 65584. It is the intent of the Legislature that the draft allocation should be distributed before the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional housing need determined pursuant to Section 65584.01 or within subregions, as applicable, the subregion's entire share of the regional housing need determined pursuant to Section 65584.03.

(b) Within 45 days following receipt of the draft allocation, a local government within the region or the delegate subregion, as applicable, or the department may appeal to the council of governments or the delegate subregion for a revision of the share of the regional housing need proposed to be allocated to one or more local governments. 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 subdivision (d) of Section 65584. An appeal pursuant to this subdivision shall be consistent with, and not to the detriment of, the development pattern in an applicable sustainable communities strategy developed pursuant to paragraph (2) of subdivision (b) of Section 65080. Appeals shall be limited to any of the following circumstances:

(1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04.

(2) The council of governments or delegate subregion, as applicable, failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of Section 65584.

(3) A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant

to subdivision (b) of Section 65584.04. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

(c) At the close of the period for filing appeals pursuant to subdivision (b), the council of governments or delegate subregion, as applicable, shall notify all other local governments within the region or delegate subregion and the department of all appeals and shall make all materials submitted in support of each appeal available on a publicly available internet website. Local governments and the department may, within 45 days, comment on one or more appeals. If no appeals are filed, the draft allocation shall be issued as the proposed final allocation plan pursuant to paragraph (2) of subdivision (c).

(d) No later than 30 days after the close of the comment period, and after providing all local governments within the region or delegate subregion, as applicable, at least 21 days prior notice, the council of governments or delegate subregion shall conduct one public hearing to consider all appeals filed pursuant to subdivision (b) and all comments received pursuant to subdivision (c).

(e) No later than 45 days after the public hearing pursuant to subdivision (d), the council of governments or delegate subregion, as applicable, shall do both of the following:

(1) Make a final determination that either accepts, rejects, or modifies each appeal for a revised share filed pursuant to subdivision (b). Final determinations shall be based upon the information and methodology described in Section 65584.04 and whether the revision is necessary to further the objectives listed in subdivision (d) of Section 65584. The final determination shall be in writing and shall include written findings as to how the determination is consistent with this article. The final determination on an appeal may require the council of governments or delegate subregion, as applicable, to adjust the share of the regional housing need allocated to one or more local governments that are not the subject of an appeal.

(2) Issue a proposed final allocation plan.

(f) In the proposed final allocation plan, the council of governments or delegate subregion, as applicable, shall adjust allocations to local governments based upon the results of the appeals process. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, or, as applicable, total 7 percent or less of the subregion's share of the regional housing need as determined pursuant to Section 65584.03, then the council of governments or delegate subregion, as applicable, shall distribute the adjustments proportionally to all local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments or delegate subregion, as applicable, shall develop a methodology to distribute the amount greater than the 7 percent to local governments. The total distribution of housing need shall not equal less than the regional housing need, as determined pursuant to Section 65584.01, nor shall the subregional distribution of housing need equal less than its share of the regional housing need as determined pursuant to Section 65584.03.

(g) Within 45 days after the issuance of the proposed final allocation plan by the council of governments and each delegate subregion, as applicable, the council of

governments shall hold a public hearing to adopt a final allocation plan. To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to Section 65584.01 and has taken into account all appeals, the council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. The council of governments shall submit its final allocation plan to the department within three days of adoption. Within 30 days after the department's receipt of the final allocation plan adopted by the council of governments, the department shall determine if the final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(h) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(i) Any time period in subdivision (d) or (e) may be extended by a council of governments or delegate subregion, as applicable, for up to 30 days.

(j) The San Diego Association of Governments may follow the process in this section for the draft and final allocation plan for the sixth revision of the housing element notwithstanding such actions being carried out before the adoption of an updated regional transportation plan and sustainable communities strategy.

(Amended by Stats. 2019, Ch. 634, Sec. 4. (AB 1730) Effective January 1, 2020.)

Attachment 2, Five Objectives Listed in Gov. Code §65584(d)

Development of the RHNA allocation methodology and the income group allocation methodology was focused on satisfying the five RHNA objectives (Govt. Code § 65584(d)(1-5).

1. Increase 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.

The methodology provides the largest shares of housing to the jurisdictions with the highest housing costs. To balance this, and to promote a mix of housing types, the methodology, by adjusting jurisdictions allocations by income levels, subsequently seeks to provide larger shares of very low- and low-income categories to these jurisdictions. Jurisdictions such as Guadalupe and Lompoc, which already contain a disproportionate share of very-low and low-income housing are provided higher proportions of moderate and above-moderate housing allocations, for example. In accordance with State law, each jurisdiction is allocated housing in all four income groups.

2. Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region's greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.

This methodology directly complements the region's sustainable communities' strategy (SCS) which seeks to reduce greenhouse gases emitted by light-duty vehicles. SBCAG's SCS achieves the required greenhouse gas emissions largely by addressing the region's jobs-housing imbalance. SBCAG's year 2035 GHG reduction target is -17 percent per capita. Scenarios tested in the development of the SCS found that correcting the jobs-housing imbalance is the only realistic means of meeting the required GHG reductions. In excess of 77 percent of the region's determination is allocated to incorporated cities, thereby advancing this objective by promoting infill development. In addition, the allocation provided to the unincorporated county could reasonable be assumed to be accommodated within currently developed areas. Much of the existing development in the unincorporated county is indistinguishable to the cities it abuts; therefore, it is not assumed to place demand on transportation inefficient parcels of land.

In its planning factors' survey response, the County noted that 81 percent of the unincorporated county is preserved or protected from urban development by means of the Williamson Act, being federal land, or land owned by conservation organizations. This condition largely constrains new development in the unincorporated county to areas already developed.

3. Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.

SBCAG's methodology directly addresses the imbalance between jobs and housing. Sub regionally, the allocation of housing units directly corresponds with jobs, 60 percent focused on existing jobs and 40 percent on forecasted job growth. In addition, the income group allocation methodology provides the greatest number

of very low- and low-income units to the jurisdictions hosting the largest shares of the region's jobs. The methodology expands opportunity for very low- and low-income populations to be better connected to employment opportunity. While there are low-wage jobs throughout the county, the South Coast has a prevalence of low-wage service and tourism related jobs and the regions highest housing costs which results in drawing commuters from outside the South Coast (Northern Santa Barbara County and Ventura County). A South Coast emphasis on an improved job housing balance, income parity, and affirmatively furthering fair housing focuses on the improvement of the jobs housing fit between low-wage jobs and the housing needs of low wage workers.

4. 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 American Community Survey.

Addressing the income-equity disparities of the region's jurisdictions was a key focus of the income group allocation methodology. Though it was found that the disparity could not be completely corrected within a single RHNA cycle, TPAC members recommended, and the SBCAG Board of Directors chose the alternative that achieves the maximum possible disparity reconciliation within a single RHNA cycle. Addressing this objective to a higher degree would have resulted in the inability to satisfy Objective 1.

5. Affirmatively furthering fair housing.

SBCAG reviewed the 2020 version of the California Tax Credit Allocation Committee Opportunity Map for Santa Barbara County as it was developing the methodology. Areas containing the highest resource and high resource areas are concentrated in southern Santa Barbara County, the Santa Ynez Valley, and the unincorporated community of Orcutt. Coincidentally, portions of the region with disproportionate shares of existing very low- and low-income households are also reflective of the lack of highest resource and high resource areas. Therefore, this objective could be addressed by satisfying Objectives 1 and 4, though SBCAG was prepared to further address fair housing if needed. Two options were considered, as described in the Income Group Allocation Methodology discussion provided earlier in this memorandum, and based on the second alternative, the alternative which employed a 1.5 times multiplier to amplify disparity, best addressing the affirmatively furthering fair housing objective it was selected. The result of this method allocates 76 percent of the region's combined very low- (76 percent) and low-income (77 percent) units to jurisdictions hosting the highest resource and high resource areas.

Attachment 3, Local Planning Factors and Information Affirmatively Furthering Fair Housing

- 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:
 - (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) County policies to preserve prime agricultural land, as defined pursuant to Government Code §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 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 §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 subdivision (e) of Section 65584 that are paying more than 30 percent and more than 50percent 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 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.

k. The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080, to be met by SBCAG's Regional Transportation Plan.

Attachment 4, RHNA Appeal's FAQ

1. *Where can I find my jurisdiction's draft RHNA allocation?*

The official draft RHNA allocation for each SBCAG jurisdiction is scheduled to be distributed in March 2021. An estimate of a jurisdiction's draft RHNA allocation based on the adopted final RHNA methodology can be found on the RHNA webpage: [Regional Housing Needs Assessment - SBCAG](#)

2. *Who can file an appeal?*

Any jurisdiction in the SBCAG region and the California Department of Housing and Community Development (HCD) may file an appeal on any jurisdiction's draft RHNA allocation within the SBCAG region. A jurisdiction may file an appeal on its own draft RHNA allocation and one or more appeals on the draft allocations of other jurisdictions.

3. *Can I file more than one appeal?*

Is there a limit to the number of appeals one jurisdiction can file?

Am I able to file an appeal of one jurisdiction's allocation on the basis that it is too high and at the same time file an appeal of another jurisdiction's allocation on the basis that it is too low?

Yes, every jurisdiction may file multiple appeals and there is no limit on the number of appeals filed by each jurisdiction. The filed appeals may request increases or decreases to draft RHNA allocations and do not have to be the same request.

4. *What can I base my appeal on?*

State Housing Element law allows three bases for appeals in the 6th RHNA cycle:

1. Local planning factors and information on affirmatively furthering fair housing (AFFH). (Please note these terms are defined in statute and the RHNA appeals form specifies what is considered to be a local planning factor for RHNA purposes.)

2. Application of final methodology (not the methodology itself)

3. Change in circumstance. Statutory changes enacted since the 5th cycle appeals process prohibit the use of local ordinances, underproduction of housing based on the last RHNA cycle, and stable population growth as bases for appeals. All appeals must include a statement arguing why the revision is necessary to further the objectives of RHNA law (see Government Code Section 65584).

5. *Do the guidelines allow for annexations as the basis for an appeal under Changed Circumstances?*

Yes, annexation would be a permissible basis for an appeal, and this would likely be considered a change in circumstance, per Question 4 above.

6. *Are you able to file an appeal to have an allocation be taken away from a jurisdiction and have that specific number be allocated to another specific jurisdiction?*

No, that will not be possible. All successful appeals must be reallocated back to the region. In accordance with Government Code Section 65584.05(g), if the successful appeals amount to 7% or less of the regional housing need, or 1,730 units (24,856 total), those appealed units will be reallocated proportionally to all jurisdictions.

For any amount above 7% region wide, SBCAG will need to develop a new methodology to distribute the units.

7. *When will we be notified that another jurisdiction has filed an appeal of our jurisdiction's allocation?*

SBCAG staff will notify jurisdictions on a periodic basis of filed appeals during the 45-day appeals period.

8. *Will there be an opportunity to challenge an appeal of my jurisdiction's allocation filed by another jurisdiction?*

A jurisdiction that is the subject of an appeal filed by another jurisdiction will have the opportunity to challenge the appeal and present their case at the appeal public hearing.

9. *Will the jurisdiction that made a successful appeal be exempt from receiving any of their appealed numbers through the redistribution process?*

The successful appellant will not be exempt from receiving any of their appealed numbers through the redistribution process. If more than 1,730 units are successfully appealed, SBCAG will apply a revised methodology.

10. *What is the filing deadline for appeals? When will SBCAG review appeals?*

The key dates for the appeals process have not yet been finalized by SBCAG, but SBCAG anticipates that the 45-day filing period for appeals will begin in mid-March after the SBCAG Board adopts the final RHNA methodology at its March 18th meeting. This starts the 45-day appeals period ending on May 2nd.

At the end of the 45-day appeals period on May 2nd, jurisdictions and HCD then have a 45-day appeals comment period leading up to June 16th.

A Public hearing within 30-days of the comment period ending June 16th by the SBCAG Board to review and determine appeals will occur most likely in June during SBCAG Board June 17th meeting.

11. *How do we submit attachments and supplementary files to an appeal?*

Supplementary attachments and files can be sent to Lauren Bianchi Klemann <LBianchiKlemann@sbcag.org>.

