



2023-2031 RHNA Cycle Appeals Procedures

Pursuant to [Government Code Section 65584.05](#), any local jurisdiction within the AMBAG 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 AMBAG 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 AMBAG, 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.”

This document contains a description of AMBAG’s appeals procedures, which derive from 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 Government Code provisions will prevail.

I. APPEALS PROCESS

A. DEADLINE TO FILE

The period to file appeals shall conclude on June 6, 2022, 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. PDT on June 6, 2022 to hadamson@ambag.org. AMBAG will not accept late appeals.

B. FORM OF APPEAL

The local jurisdiction or HCD shall state the basis and specific reasons for its appeal, including a statement as to why the revision is necessary to further the intent of the objectives listed in Government Code Section 65584(d). Appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation. (Gov. Code, § 65584.05(b).) Supporting documents may be submitted by the local jurisdiction as attachments, and all such attachments should be properly labeled and numbered. Applicants should ensure that their appeal satisfies the criteria in the applicable Government Code section.

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 circumstances listed below. Appeals based on the “change of circumstance” basis can only be filed by the jurisdiction or jurisdictions where

the change in circumstance occurred.

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

1. Jurisdictional Survey Information – That AMBAG failed to consider survey information submitted by jurisdictions relating to factors outlined in Government Code Section 65584.04(e) to develop the methodology for distributing the existing and projected regional housing need. The survey information guides the methodology’s development based upon the issues, strategies, and actions that are include in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the department that covers communities within the area served by AMBAG and in housing elements adopted pursuant to this article by cities and counties within the area served by AMBAG. (Gov. Code, § 65584.04(b)(2).)
 - 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. AMBAG 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.
- l. The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080, to be met by the Metropolitan

Transportation Plan/Sustainable Communities Strategy.

- m. Any other factors adopted by the council of governments, that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.
 - n. 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 AMBAG 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 AMBAG on April 13, 2022, and in a manner that furthers, and does not undermine, the intent of 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 and merits a revision of the survey 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. (Gov. Code, § 65584.05(b)(3).)

D. LIMITS ON SCOPE OF APPEAL

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

1. Any other circumstances other than those described 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), AMBAG 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., AMBAG 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. (Gov. Code, § 65584.05(c).) Members of the public who are interested in receiving notification about submitted appeals can sign up on the AMBAG website.¹ AMBAG will accept comments on submitted appeals from jurisdictions, HCD, and members of the public for 45 days following the end of the appeals filing period. All comments must be filed by 5:00 p.m. PDT on July 22, 2022. AMBAG will not accept late comments. AMBAG will notify jurisdictions, HCD, and members of the public who have signed up on the AMBAG website about comments received following the end of the comment period.

F. HEARING BODY

The AMBAG Board of Directors has the responsibility of considering appeals regarding Draft RHNA Allocations.

G. APPEAL HEARING

AMBAG shall conduct one public hearing to consider all appeals filed and comments received on the appeals no later than August 21, 2022. 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, HCD, and members of the public who have signed up on the AMBAG website in advance of the hearing. Consistent with the requirements of the Brown Act, members of the public may submit

¹ Interested parties may sign up for notifications here: <https://ambag.org/contact-us>.

written comments in advance of the meeting or provide oral comments at the meeting. Per Government Code Section 65584.05(i), AMBAG may extend the deadline to conduct the appeals hearing by up to thirty (30) days.

Each appeal shall be heard individually before the AMBAG Board of Directors. The AMBAG Board of Directors will take a vote determining the outcome for each appeal application. In the event an individual appeal involves a Board member or alternate's respective jurisdiction, the Board member or Board alternate may not participate in the discussion of or vote on that individual item by the AMBAG Board of Directors.

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. AMBAG 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 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 AMBAG Board of Directors.

2. Staff Response

After initial arguments are presented, AMBAG 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 Board of Directors President 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 President.

6. Board of Directors Discussion and Determination

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

The AMBAG Board of Directors shall generally administer appeal hearings according to these procedures. However, the President of the Board of Directors 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 AMBAG in support of its appeal, such data shall meet the following requirements:

1. The data shall be readily available for AMBAG'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 AMBAG Board of Directors shall: (1) make a final written determination that either accepts, rejects, or modifies each appeal; and (2) issue a proposed final allocation plan. (Gov. Code, § 65584.05(e).)

The AMBAG Board of Directors shall issue a written final determination that considers 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 Board of Directors 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. The final determination shall be in writing and include written findings as to how the determination is consistent with the Government Code. (Gov. Code, § 65584.05(e)(1).)

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 AMBAG Board of Directors following release of the written final determinations on all filed appeals. The decision of the Board of Directors shall be final, and local jurisdictions shall have no further right to appeal.

In accordance with Government Code Section 65584.05(g)(2), after the conclusion of the appeals process, AMBAG shall issue a proposed final allocation plan. AMBAG shall adjust allocations to local governments based upon the results of the appeals process and distribute the adjustments proportionally to all local jurisdictions, including those jurisdictions who's 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 Board of Director's final determination includes 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 AMBAG reallocates units to all local jurisdictions resulting from successful appeals, the Board of Directors shall review and consider adoption of the Final RHNA Plan for AMBAG's 2023-2031 RHNA. This is scheduled to occur in October 2022.