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ABAG Regional Planning Committee Members  
Submitted Via Email To: [info@bayareametro.gov](mailto:info@bayareametro.gov)

**RE: Comments on Recommended RHNA Methodology Released for Public Comment by ABAG**

Dear ABAG Regional Planning Committee Members:

Thank you for the opportunity to provide comments on the recommended Regional Housing Needs Assessment (RHNA) methodology.

The City of Cupertino believes that the recommended RHNA methodology (Option 8A), without modifications, will result in a significant number of jurisdictions appealing both their own and others' draft RHNA allocations. However, if proactive steps are taken now then the number of appeals can be reduced.

The RHNA methodology 8A fails in several significant areas:

1. The methodology does not give sufficient weight to a city's jobs/housing balance. Cupertino's City Council has intentionally not approved large new commercial office projects despite the business tax revenue that such projects provide. As a result, Cupertino has maintained a relatively good jobs to housing ratio. Currently (rounded to the nearest thousand):
  - The City of Cupertino has 41,000 jobs and 22,000 housing units (jobs/housing ratio of 1.86).
  - The City of Santa Clara has 144,000 jobs and 71,000 housing units (jobs/housing ratio of 2.00).
  - The City of Palo Alto has 98,000 jobs and 28,000 housing units (jobs/housing ratio of 3.50).
  - The City of San Francisco has 760,000 jobs and 399,000 housing units (jobs/housing ratio of 1.90)
2. An intentional result of the approach to rein-in large office projects, is that Cupertino has maintained an excellent jobs to housing ratio, the second best of any jobs-rich city in Santa Clara County. The strategy of not approving new commercial office space was specifically to avoid receiving large RHNA requirements in future RHNA cycles. However, Cupertino has been assigned an extremely high RHNA for the 2023-2031 cycle, more than 5x the number received in the 2015-2023 cycle. If property owners actually built that many housing units, it would result in much more traffic congestion and

Greenhouse Gas Emissions (GHG) as new residents commute from Cupertino to jobs-rich areas with large amounts of commercial office growth.

3. The methodology does not consider past and future job growth. It is vital to consider a City's projected housing deficits that will result from large commercial office projects that have already been approved. For example, the Related project in Santa Clara has a housing deficit of 14,600 units, the Central SOMA project in San Francisco has a housing deficit of 5,300 units, and the Google project in San Jose has a housing deficit of 15,000 units (using a very conservative 250 square feet per office worker). These huge housing deficits are not sustainable and will result in increased traffic congestion and GHG emissions as workers commute from housing-rich cities. Cupertino's Vallco SB-35 project has a housing deficit of over 3,100 units but that project was ministerially approved and the City Council would never have approved a project with such a large housing deficit because it would result in future, larger, RHNA requirements.

By contrast, the Apple Park project in Cupertino had an increase of only about 2,000 jobs (versus the previous Hewlett-Packard campus on the same site) and Cupertino constructed sufficient new housing to accommodate that increase. Punishing cities that have behaved responsibly when it comes to balancing jobs and housing is not only unfair, it worsens GHG emissions as new residents must drive to work in other cities.

Cupertino believes that cities that have approved disproportionately high amounts of new commercial office construction, without commensurate amounts of new housing, need to be assigned higher RHNA numbers until their jobs to housing ratio improves to a sustainable level.

4. The methodology inadequately considers the availability, or lack of availability, of mass transit. Cupertino is not served by Caltrain, ACE, BART, or VTA light rail. Cupertino, while traversed by two major freeways: SR-85 and I-280, has no freeway Express Lanes. Furthermore, VTA has continued to reduce bus service to Cupertino and other West Santa Clara County Cities, by both eliminating existing bus routes and shortening other routes. VTA is also planning significant further reductions in service to address financial issues. In short, Cupertino has no high-quality transit service and further cuts in the existing low-quality transit are expected.
5. The methodology does not sufficiently consider the availability of land for new housing which has the net effect of reducing the potential jobs growth for the city, and future housing need. Cupertino is completely built-out, all sites zoned for office development have been developed and the General Plan has minimal potential for job growth. Sites which are currently commercial and industrial will likely need to be rezoned for residences which will drastically reduce their job potential. While it is possible that some commercial office building owners could replace their buildings with high-density housing, the glut of market-rate housing in Silicon Valley (even pre-Covid), falling rental rates, the lack of State or Federal funding for subsidized BMR (Below Market Rate) housing, and the lack of interest of private developers in constructing high-density housing (both BMR and market-rate) combine to make this methodology likely to fail to achieve its goal of creating additional affordable housing.
6. The methodology does not consider the long-term changes in housing, work, and transportation that were occurring even pre-pandemic. Experts agree that the exodus

from high-density, high-cost areas, that lack the type of housing desired by Bay Area residents, will continue long after the current pandemic is over; this will be aided by the ability to remote-work, businesses' desire to lower the cost of operations, the housing flexibility created by 2020's Proposition 19, the reduced need for super-commutes, and the much lower-risk of infectious disease transmission in lower-density housing.

7. The methodology does not consider the unwillingness of property owners to build large amounts of high-density housing given the market conditions that are likely to continue for most of the 2023-2031 period, and that existed even pre-Covid.

In the current, 2015-2023 RHNA cycle, Cupertino approved all the projects in its Housing Element, far exceeding our 1,064-unit RHNA requirement. Cupertino currently has 3,457 entitled units, however only a single project has been completed: a 19 unit, 100% affordable, apartment complex of eighteen, 350 square foot, studios plus one manager's apartment. This project cost nearly \$800,000 per unit to construct. The current RHNA affordable unit allocation would require funding for over 2,500 Very Low and Low Income units at a cost approaching \$2 Billion with no identified funding source.

All four of the other Housing Element Sites from our 2015-2023 Housing Element, remain unbuilt despite having approved projects; the property owners have not yet pulled permits or begun construction even though we are five years into the current RHNA Cycle.

Cities have no means to force property owners to construct approved projects. The current glut of unaffordable market-rate housing, the glut of unleased Class A commercial office space, falling rents (both for housing and office space), and the desire of residents for different types of housing than is included in the approved projects will provide, has resulted in property owners not moving forward with construction.

### **RHNA Requirements for Affordable Housing vs. Limits on Cities' Inclusionary Housing Requirements**

Both the current cycle, and future cycle RHNA requirements have created a Catch-22 for many cities. In Cupertino, we require 15% Inclusionary BMR for rental housing and 20% Inclusionary BMR in for-sale housing, yet Cupertino's 2023-2031 affordable requirement is 57% of 6,223 units. What this means is that over 10,000 more market rate units would need to be built in order to reach the 15% or 20% BMR requirements. Property owners already are not constructing their 2015-2023 RHNA Cycle projects, with one allegation being that Cupertino's requirement for Inclusionary BMR housing now makes the approved projects financially infeasible because of the falling rents of the market-rate component of the projects.

Even if SB 35 kicks in, after a city fails to produce the affordable housing specified in its Housing Element, it does not remotely solve the problem. The appeal of SB 35 was that a project could include one-third commercial office space and the revenue from the office space would subsidize the BMR housing. But because the market for Class A commercial office space currently is so poor, property owners can no longer use Class A office space to subsidize large amounts of affordable housing. Our one current SB 35 project, at the former Vallco Shopping Mall, was submitted by the property owner as a threat. They wanted General Plan Amendments so they could gain approval for a more lucrative project than the SB 35 project. If they do build the SB 35 project, it would worsen our City's jobs/housing ratio since the number of jobs generated by the office space would far exceed the number of housing units that are part of the project; this is one

of several fundamental flaws of SB 35, it dramatically worsens the jobs to housing balance because it allows far too much commercial office space.

To build the mandated 57% of our RHNA as affordable housing would require subsidies of approximately \$1.8 billion, using a conservative cost estimate of \$500,000 per unit (a 19-unit, 100% affordable project in Cupertino, completed in 2018 cost approximately \$760,000 per unit). Building very large quantities of subsidized affordable housing in areas with both extremely high construction and land costs is not practical. Even our current, modest 15%-20% requirement is opposed by property owners in one of the most lucrative areas to build in the area.

Cupertino believes that regional tensions in the RHNA process can be relieved by ABAG updating the recommended RHNA methodology. ABAG and MTC staff need to analyze the comments received and prepare adjusted RHNA methodology options for consideration in November and December 2020.

ABAG and MTC staff need to analyze and describe any shift in baseline-related outcomes for the recommended RHNA methodology resulting from incorporation of the Plan Bay Area 2050 Final Blueprint modeling results.

The 2050 Baseline Allocation is inappropriate for an eight-year RHNA Cycle. It is unreasonable to apply long range, aspirational, housing goals to a single eight-year RHNA Cycle. There will be three additional eight-year RHNA Cycles prior to 2050. The 2023-2031 RHNA Cycle needs to set realistic housing goals.

The affordable housing goals, both in the 2023-2031 RHNA Cycle and in Plan Bay Area 2050, rely on funding sources that are not available and that have no likelihood of becoming available. When the State of California eliminated Redevelopment Agencies, the primary source of funding for affordable housing went away. Attempts in 2019 and 2020 to pass legislation that would restore some funding for affordable housing have either been vetoed by the Governor, or never even made it the Governor's desk.

Furthermore, the required funding for the necessary infrastructure required by large amounts of new housing has never been considered. Water, sewage, roads, mass transit, parks, libraries, public schools, and public safety services all require infrastructure funding that is ignored by the RNHD and the RHNA methodology. Mitigation fees that are charged by cities are far too low to fund the necessary new infrastructure, yet cities are unable to raise these fees to adequate levels even when a Nexus study clearly justifies higher fees.

The proper method to determine RHNA allocations is to use the existing 2019 Households baseline as a starting point, consider a City's plans for increased commercial office space and new jobs (using a 250 square feet per job formula), as well as considering the availability of land for new housing development. Especially important is to increase the allocations to a) Cities which have poor jobs to housing ratios, b) cities with sufficient land for the type of housing desired by Bay Area residents, and c) cities with current or planned high-quality mass transit.

Cupertino supports the application of a reasonable cap to limit how much housing a community is expected to build over the RHNA cycle. Housing units that exceed the cap should then be redistributed to other jurisdictions. This addresses development feasibility, especially under current recessionary and Covid-19 conditions that will affect the remainder of the current RHNA Cycle as well as the 2023-31 RHNA cycle.

Cupertino appreciates that ABAG is required to respond to the RHND as assigned. However, the City would like ABAG to send a request for a response to the assertions in the Embarcadero Institute report and the Freddie Mac report alongside any officially submitted proposed RHNA methodology.

Finally, the unworkable RHNA numbers are a direct result of errors by HCD in determining the RHND for each region. Two different organizations have pointed out the errors by HCD. The Embarcadero Institute is a non-profit organization in the Bay Area that publishes analysis on local policy matters. A recent Embarcadero Institute report asserts methodological difficulties with the Regional Housing Needs Determination (RHND) released by the Department of Housing and Community Development (HCD) on June 9, 2020. Freddie Mac has also pointed out that the need for additional housing units is far lower than what HCD has claimed.

Thank you for your continued consideration.



Steven Scharf, Mayor

cc: City of Cupertino Councilmembers  
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