

HOUSING SUBCOMMITTEE

REGIONAL PLANNING COMMITTEE

Wednesday, August 2, 2017, 10:30 AM - 12:30 PM

Tamalpais Conference Room #7102

MetroCenter

375 Beale Street, Suite 700

San Francisco, CA 94105

1. **Roll Call / Introductions (Chair, Julie Combs)** [10:30 / 5]
2. **Approval of agenda (Chair)**
3. **Approval of minutes from April 5th meeting (Chair)**
4. **Public comment on items not on the agenda (Chair)**
5. **Session overview & updates (G. Adams)** [10:35 / 5]
Gillian Adams, ABAG/MTC Principal Planner, will provide an overview of the meeting items and an update on recent Housing Program activities.
6. **Housing Accountability Act (D. Bay)** [10:40 / 30]
Duane Bay, ABAG/MTC Assistant Director, will provide an overview of the Housing Accountability Act and its potential for facilitating housing production.
7. **Update on State Housing Legislation (G. Gann Dohrmann)** [11:10 / 15]
Georgia Gann Dohrmann, ABAG/MTC Associate Manager, Government Relations, will provide an update on key housing-related legislation.
8. **Work Calendar for Fiscal Year 2017-2018 (Chair)** [11:25 / 60]
The committee will discuss priorities for action, such as:
 - Advancing the Three Wishes:
 - Streamline Development / Inclusionary Housing
 - Link Jobs and Housing
 - Increase Funding
 - Improving communication to RPC and L&GO to increase engagement and informed decisions.
 - Engaging in CASA effort
 - Exploring development of Regional Housing Trust Fund, and
 - Promoting multi-benefit retrofits (i.e., Safer, Smarter Homes)
9. **Evaluation (plus/delta exercise) (Chair)** [12:25 / 5]
10. **Adjourn** [12:30]

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



SUMMARY MINUTES (Draft)

ABAG Regional Planning Committee – Housing Subcommittee
Wednesday, April 5, 2017
375 Beale St. San Francisco, California

1. Call to Order

The meeting was called to order by Chair Julie Combs.

a. Members Present

Julie Combs, Councilmember, City of Santa Rosa (Chair)
Paul Campos, Building Industry Association of the Bay Area
Pat Eklund, Mayor, City of Novato
Matt Regan, Bay Area Council
Carlos Romero, Urban Ecology

b. Members Absent

c. Michael Lane, Non-Profit Housing Association of Northern California
Paul Penninger, AECOM

2. Approval of Agenda

The agenda was approved by acclamation.

3. Approval of March 1st Meeting Minutes

Member Regan made a motion to approve the minutes, seconded by **Member Romero**.
Member Eklund abstained. The committee approved the motion.

4. Public Comment

There were no public comments.

5. Session Overview and Updates

The session overview highlighted the topics that would be the focus of the meeting: discussion of the Draft Principles, MTC's joint housing principles regarding legislative advocacy, and preliminary permit data report.

6. Draft Principles for Building Housing Consistent with Local Plans

Duane Bay presented a draft table that distills the committee's ongoing "three wishes" discussion into a set of key principles for building housing consistent with local plans.

Chair Combs then suggested the committee begin to assess the draft principles and continue the discussion with the intent that the outcome is geared toward potentially influencing language in currently proposed legislation, such as Weiner's SB35.

The committee began by continuing the discussion of the first principle: permitting. This principle encompasses the discussion regarding by-right approval of proposed developments. The main points debated were: ways to improve the broad guidelines and issues of local control, timeframe for implementation, and specific locations to which the rules would apply. **Member Eklund** highlighted her desire to maintain local control through things such as design review. **Member Campos** suggested that as the draft list of principles becomes denser, it moves further away from the Building Industry Association's goals and perspective. He reiterated his point from previous conversations suggesting enforcement of the Housing Accountability Act is a stronger approach than adding language to any proposed legislation.

Member Regan added that he believes even if the committee is successful in influencing permitting issues, the cost of building housing may not necessarily be addressed because labor unions have influence at the state level and will only support legislation that supports prevailing wage. **Member Romero** disagreed and pointed out that prevailing wage may not affect the actual cost of projects in the Bay Area because of the market; however, the issue of prevailing wage does begin to have a bigger impact farther inland. **Member Campos** then suggested that there is plenty of existing state legislation that allows some level of streamlining and that, if it is just funding that is needed from the state, then perhaps a coalition of willing cities and stakeholders who like this approach could design an incentive-based program. **Chair Combs** pointed out that this discussion arose from the fact that Governor Brown would not allocate funding for housing because there was no attempt to streamline permitting processes.

At this point, dialogue led into issues related to local control, where streamlining requirements would be applied, and the need for housing production. **Member Eklund** maintained her desire to have local controls for reviewing development. The committee discussed the different controls local jurisdictions have such as General Plans, Specific Plans, Zoning Codes, Design Guidelines, Building Codes, and potentially alternatives like Form-Based Codes. **Mr. Bay** offered the Redwood City Downtown Plan as an example of one way a city has crafted standards that accelerate production of proposed projects that fit their guidelines. After further description of Redwood City's Downtown Plan, **Chair Combs** suggested the committee move on to discuss the production principle.

Regarding production, **Member Campos** made the point that market supply and demand in the Bay Area no longer applies. He suggested the Department of Finance (DOF) and Department of Housing and Community Development (HCD) methodology for RHNA is wrong and massively understates the need for housing. While the Bay Area underbuilds all types of housing, **Member Campos** added that, in order to stabilize prices and rents, there is a need for continued market-rate housing production. In acknowledging the challenges to

producing market-rate housing, it was also highlighted that more funding is necessary to subsidize affordable units overall.

Chair Combs pointed out that in previous discussions regarding the locations where by-right rules might be required, the committee did not designate Transit Priority Areas (TPAs) as one of the locations to focus on because they are not voluntarily designated. This is an edit the committee would like to make to the draft summary of principles. The concept of the location being a self-designated area is important to jurisdictions. PDA sites are voluntary and this self-nomination by cities was one reason the committee reached consensus on applying this process to PDAs. **Member Campos** asserted that there are some inherent tensions in the fact that PDAs are voluntary, since jurisdictions can opt out of designating high opportunity locations that are transit rich and have amenities as PDAs.

While **Chair Combs** was also supportive of applying by-right streamlining to Regional Housing Need Allocation (RHNA) sites, **Member Eklund** expressed reservations regarding RHNA sites because of density bonus law. RHNA sites have been kept in the category of locally identified priority sites because of their location within the Housing Element. The committee agreed that there needs to be further discussion on how to improve RHNA.

The committee then moved on to discussion of inclusivity. **Member Regan** expressed that one of the principal impediments to social mobility and economic mobility for low-income workers is their inability to live in opportunity neighborhoods. Citing Obama's Economic Advisor Jason Furman, **Member Regan** went on to explain the reason that is so is because of local zoning and controls that build regulatory walls for low-income residents to be able to live there. **Member Romero** suggested that issues of taxation and redistribution were beyond the committee's scope. **Member Regan** maintained that local control is the principal barrier to inclusivity and it is therefore important to consider it in the discussion of by-right versus local control. Even though the committee did not have sufficient time to discuss this principle more in-depth, there was consensus around its importance. The committee agreed to further consider and rearrange the order in which the draft principles are listed.

7. ABAG/MTC Housing Advocacy

Duane Bay introduced MTC staff, **Rebecca Long** and **Georgia Gann Dohrmann**, to discuss the draft housing principles developed jointly by ABAG and MTC staff to guide legislative advocacy. The goal of reviewing the draft was to begin obtaining feedback from the committee, not for approval. **Ms. Long** briefly reviewed the list of principles and gave examples of proposed legislation MTC has supported. **Member Regan** and **Member Campos** supported the principles as presented. **Chair Combs** and **Member Eklund** expressed differences around particular language and had follow-up questions for MTC staff to respond to at the next meeting. **Member Romero** also expressed he would like to discuss including more elements of equity and inclusivity.

8. Agenda Forecast

For the next agenda, **Chair Combs** requested that a discussion on the Housing Accountability Act be included. **Ms. Long** and **Ms. Gann Dohrmann** were furthermore invited back to the next meeting to continue the discussion of the MTC-ABAG joint housing principles.

9. Evaluation

At the request of **Chair Combs**, at the end of each meeting, committee members and staff provide feedback about positive aspects of the meeting as well as suggestions to improve future meetings. Positives noted were: having MTC and ABAG staff, **Member Eklund's** presence, as well as the notes and set up of the meeting. Suggestions for change included: improving time management.

10. Adjourn

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Memo

Date: June 7, 2017
To: RPC Housing Subcommittee
From: Ada Chan
Re: Brief Summary of Housing Accountability Act

Background:

The Housing Accountability Act (HAA) has been mentioned several times in the RPC Housing Subcommittee discussions related to strategies for increasing housing production in the Bay Area. The HAA is an existing statute that, as described in more detail below, seeks to limit the ability of local jurisdictions to deny proposed housing developments that comply with objective standards in local general plans and zoning ordinances. However, in practice, the statute has not had a significant impact, and ideas for strengthening the statute have been proposed as part of the statewide discussion of by-right development streamlining. To better inform the conversation, this memo provides a brief description and summary of the HAA.

Intent of the Housing Accountability Act:

The Housing Accountability Act (HAA), Government Code section 65589.5, was enacted in 1982 to assert the policy of the state is “that a local government not reject or make infeasible housing developments . . . without a thorough analysis of the economic, social, and environmental effects of the action.”

At its core the act limits the authority of jurisdictions to dramatically reduce the size and/or density of a project if the project complies with “ applicable, objective general plan and zoning standards and criteria, including design review standards” and requires a city or county to adopt findings justifying the denial or density reduction.

Section 65589.5(j) of the Act states:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

When first passed, the HAA consisted primarily of the language contained in section (j), referenced above. In the 1990s the HAA was amended to expand and strengthen the language related to affordable housing projects. In addition to an emphasis on affordable housing, the Act requires compliance with environmental statutes, including the Coastal Act, Congestion Management Plan, and CEQA.

Application of the Housing Accountability Act:

The HAA has proven ineffective for market-rate developers, and CEQA has proved to be a barrier even for affordable projects. The Act provides attorneys' fees only for successful litigation in support of affordable housing, and the courts have deferred to local jurisdictions' findings in interpreting conformance with an "objective standard," although there is currently litigation testing this provision. Projects must also comply with the Coastal Act, whose standards are not necessarily objective, and the California Environmental Quality Act (CEQA), which can greatly delay project approval. Without clear criteria defining conformance with an "objective" standard, the courts have deferred towards the local jurisdiction's interpretation of non-conformance, subjecting a development to the political process, not an objective evaluation.

The amendments in the 1990s expanding and strengthening the affordable housing language have led many jurisdictions to understand the HAA to apply *only* to affordable housing. In 2011 the California Court of Appeal, in *Honchariw v. County of Stanislaus*, ruled that paragraph (j) applies **to all housing projects**, not just affordable projects.

Early this year, the City of Berkeley was settled a lawsuit filed by an advocacy group, San Francisco Bay Area Renters' Federation (SFBARF) which asserted that the City Council violated the HAA when it revoked an approved zoning permit for a housing development after neighbors complained that the proposed project would not "fit into the character of their neighborhood." The City Council claimed that they were familiar with the HAA as it applied to affordable housing projects, but that they were not informed that it also applied to market-rate development. As a result of the lawsuit, Berkeley is required to conduct an HAA analysis as part of its project review for all housing development applications (see attachment for an example of a staff report to the Berkeley City Council on the Housing Accountability Act, and HAA analysis of project).

Increasing the Impact of Housing Accountability Act:

In practice, the statute has not had a significant impact, and ideas for strengthening the statute have been proposed as part of the statewide discussion of by-right development streamlining.

At the State level, there are two pieces of proposed legislation that would amend the HAA that are virtually the same. [AB678 Housing Accountability Act](#), Bocanegra (co-author Skinner) and [SB167, Skinner](#) (co-author Bocanegra). Both make technical and clarifying changes to HAA.

They would:

- Increase the burden on local jurisdictions from "substantial evidence" to "preponderance of the evidence" when courts are reviewing findings for the disapproval of a housing development project;
- Provide for compensation of legal fees to developers along with punitive charges should the city be found to be in violation of HAA; and
- Require the local jurisdiction to publish an analysis of the requirements of the HAA as part of its review of each application for a housing development project. Both pieces of legislation initially proposed a minimum fine of \$100,000 per housing unit in the project if a court finds a jurisdiction in violation of the HAA. That has now been reduced in SB167 to \$1,000 and in AB 678 to \$10,000 per unit.

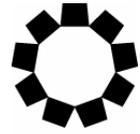
The ABAG Legislation and Governmental Organization Committee and Executive Board voted to oppose SB167 at its May meeting.

Opportunities for Impact:

ABAG is uniquely positioned to work with elected officials, city attorneys, planning staff, and developers to change their perceptions of policy options on a local level. ABAG can through education and technical assistance ensure that, at a minimum, jurisdictions are aware that the HAA applies to all residential development, and demonstrate to housing friendly cities how the HAA can support the need to approve housing projects as they implement policies that allow them to achieve their housing goals.

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ABAG

PROPOSED REGIONAL PLANNING COMMITTEE WORK PLAN 2017-2018

The Regional Planning Committee (RPC) has six regular bimonthly meetings per year, each of which covers two items in depth. We have scheduled additional special meetings in the past and extended the meeting time beyond the two hours as needed. We have also occasionally added a third or fourth item to the agenda. Experience indicates that an hour per item is the minimum time allocation for a productive presentation and discussion.

The agendas for the RPC are developed by staff in consultation with Chair Pradeep Gupta and Vice-Chair Julie Combs. For the upcoming meetings, the coordination and agendas will be developed by Duane Bay, current Assistant Planning Director, in coordination with Ken Kirkey, MTC Planning Director.

In order to inform the RPC work plan, Chair Pradeep Gupta, Vice-Chair Julie Combs, and ABAG President Julie Pierce discussed the overarching considerations for this upcoming fiscal year:

- Given the upcoming completion of Plan Bay Area, this coming year needs a special focus on implementation actions, debriefing of the plan and growth allocation models, and effective local engagement.
- The RPC sessions will support the Action Plan, including identifying priorities, deliverables, and schedule.
- Presentations to the RPC will include a review of related legislative initiatives.
- This is a prime time to reassess the tools, data, and methodology that should be considered for the next Plan Bay Area and Regional Housing Need Allocation (RHNA).
- RPC will address the retention and enhancement of local engagement. In particular, the committee will pursue closer collaboration with planning directors, including sharing meeting packets, reviewing corridors' tasks, and coordinating with the Bay Area Planning Directors' Association (BAPDA).

Proposed tasks for Fall 2017

- Action Plan: Deliverables and Schedule
- Debriefing of Plan Bay Area and Growth Allocation

- Local Collaboration: Current Tasks/Projects and Staff Responsibilities
- East Bay Corridor Strategies
- Water Trail Designations
- Housing Strategies – CASA Overview
- New Finance Authority Overview (new name to come)
- Earthquake Impacts Scenario

Proposed tasks for Spring 2018

- Bay Trail Key Challenges and Accomplishments
- Priority Development Area (PDA) and Priority Conservation Area (PCA) Accomplishments and Challenges
- Regional Construction Pipeline Database
- Review and Approval of New PDAs
- Review and Approval of New PCAs
- Review of PDA Place Types
- Soft Story Strategies
- Regional Resilience Assessment
- Criteria and Designation of Priority Production Areas
- Regional Public Health Initiatives
- Collaboration Among Community Colleges and Businesses

Housing Subcommittee Work Plan 2017-2018

The Housing Subcommittee has focused its discussions over the past year on identifying priority policies to address the Bay Area's housing challenges that are impactful, actionable, and could garner ABAG support and commitment to action. In the coming year, the subcommittee will work to define and pursue the actions necessary to advance these priority policies. Potential actions include pursuing legislative changes, promoting adoption of key policies at the regional and local levels, and identifying key information and technical resources needed to support local actions to increase housing supply and affordability. The subcommittee will also provide input into the CASA effort.

Infrastructure Subcommittee Work Plan 2017-2018

The RPC Infrastructure Subcommittee convened in the second half of 2016 to connect with federal agency research initiatives that are exploring the reliability and resilience of Bay Area infrastructure systems. In 2016, ABAG and CalOES were awarded a Regional Resilience Assessment Project by the Department of Homeland Security Office of Infrastructure Protection. The project, led by DHS-IP and Idaho National Labs has provided technical research into the vulnerability and interdependencies of Bay Area water and

energy systems. Simultaneously, the US Geological Survey is working with over 40 partners in the Bay Area to produce an in-depth Hayward Fault earthquake scenario as part of their Science Application for Risk Reduction initiative. ABAG is a research partner in the initiative as well as a key partner in the dissemination of the findings with Bay Area cities and counties.

Both these initiatives will be brought to the RPC Infrastructure Committee in 2017 to share findings from the research and offer opportunities to request deliverables from ongoing initiatives. Both efforts will have final products completed in 2018 and will be powerful tools to visualize and understand hazard impacts to Bay Area infrastructure. The RPC Infrastructure Committee offers a space for findings from infrastructure sectors to be shared more broadly with ABAGs local government members.

Economic and Workforce Subcommittee Work Plan 2017-2018

This committee is addressing the multiple challenges related to regional economic health and workforce. The two core tasks for the next fiscal year are the designation of the Economic Development District and the Priority Production Areas. The Economic Development District is a federal designation. It provides a platform for collaboration and cooperation to identify and solve regional economic challenges that no single entity can address alone. The Priority Production Areas will support the retention and expansion of key clusters and facilities that are an essential part of our economic ecosystem. Like the PDAs and PCAs, the program will be designed with the flexibility to meet the needs of all jurisdictions.

The committee will also provide oversight over the broader research agenda, including data, analysis, and modeling tools. This committee includes a broad representation of business organizations, labor, education, cities, and public health.



DRAFT INTEGRATED REGIONAL PLANNING PROGRAM: 2017-18

This list of anticipated planning program tasks under the 2017-2018 Budget & Work Plan was compiled by ABAG senior planning staff in consultation with their counterparts at MTC. The work, however, will be carried out by the new Integrated Regional Planning Program staff that will result from the consolidation of MTC's and ABAG's separate planning and research teams on July 1, 2017.

The items listed below represent the best thinking of staff today as we look ahead to the coming fiscal year. As was the case with past Budget & Work Plans, individual tasks listed here could be delayed or altered, and new tasks may be added based on new information and opportunities that present themselves in 2017-2018.

HOUSING

KEY TASK	TASK DETAILS
1. Compilation of Housing Permit Data	1a. Survey all Bay Area jurisdictions to collect data about location and affordability for all permits issued. Vet data and work with jurisdictions to gather missing data and resolve data inconsistencies. 1b. Compile permit data into a uniform region-wide database. 1c. Geocode all permits and analyze data to understand trends about permit location (relative to PDAs, TPAs, Housing Element sites, etc.), affordability, and unit types. Identify engaging ways to share analysis results. 1d. Publish RHNA Progress Report and GIS files based on compiled data.
2. Improve Permit Data Accuracy, Scope, and Ease of Collection	2a. Refine ABAG/MTC internal building data collection processes to improve data timeliness, consistency, and accuracy. 2b. Continue to work with HCD to improve data required from jurisdictions and/or transfer of data collected through APRs. 2c. Continue partnership with OpenSMC and jurisdictions to develop technical tools to improve the quality of housing data collected from local governments and the ease of reporting that data. 2d. Pursue legislative changes as needed to improve data collection processes, accuracy and scope.
3. Online Policy Directory	3a. Compile results of local jurisdiction survey about adopted policies and programs into region-wide database. Gather missing data, such as links to ordinances. 3b. Expand the display/search functionality of online directory and make information more visual. Create infographics depicting the Bay Area policy landscape. 3c. Develop online database of existing affordable housing of all types.
4. Housing Policy Toolkit	4a. Compile examples of best policies, programs, practices, model ordinances, etc. for all policies in the toolkit; display online. 4b. Develop FAQ related to Bay Area housing issues and oft-requested metrics. Identify existing policy papers and, if needed, conduct research to answer questions. Develop format for presenting information online.



DRAFT INTEGRATED REGIONAL PLANNING PROGRAM: 2017-18

HOUSING

KEY TASK	TASK DETAILS
5. Technical Assistance	<p>5a. Help jurisdictions implement State-mandated plans: SCS, Housing elements, Climate Action Plan, Local Hazard Mitigation Plan etc.</p> <p>5b. Support ABAG/MTC housing initiatives, such as CASA, TOAH, NOAH, OBAG, JumpStart, etc.</p> <p>5c. Continue to support sub-regional initiatives, including East Bay Corridors Initiative, Grand Boulevard Initiative, and existing and potential RHNA subregions.</p> <p>5d. Work with East Bay Corridors Initiative to provide technical assistance to promote and facilitate soft-story assessments, soft-story ordinance adoption, and soft-story retrofit financing as well as the creation of local programs for permitting and financing integrated retrofits that address seismic, water, and energy upgrades and promote housing affordability.</p> <p>5e. Expand consultative services to planning/housing staff and policy leaders in cities, counties and institutions who are working to advance specific ABAG-endorsed land use policies and practices.</p>
6. Collaboration and Engagement	<p>6a. Pro-actively engage jurisdictions' elected officials and staff, practitioners and advocates to advance conversations that promote housing production, preservation, affordability and neighborhood stabilization.</p> <p>6b. Support the efforts of the Housing Subcommittee of the Regional Planning Committee to strengthen the linkage between staff-level and policy-level actions, and between ABAG and key implementation partners, to advance regional housing goals and related legislation.</p> <p>6c. With the guidance of the Regional Planning Committee Housing Subcommittee, explore incubation of a Regional Housing Trust Fund to increase resources available for housing production and preservation.</p>
7. Legislation	<p>7a. Support legislation and regulatory reforms that enable cities and counties to advance specific ABAG-endorsed local land-use policies and practices.</p>
Plan for Major Future Tasks	<p>Convene a Housing Methodology Committee (HMC) to assist ABAG in fulfilling its mandate to conduct the RHNA process.</p> <p>Work with the HMC to implement the requirements of the RHNA process, per State statutes.</p>