



## MEMORANDUM

**DATE:** August 22, 2011  
**TO:** Housing Element Task Force  
**FROM:** Lilly Schinsing, Associate Planner   
**SUBJECT:** April 8, 2010 ABAG Letter re: *Projections 2009*

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At the July 25, 2011 Housing Element Task Force meeting a member of the public, John Flavin, mentioned that an Association of Bay Area Governments (ABAG) letter exists that indicates that since the *Projections 2009* are advisory and not binding, there is an argument to be made that a Regional Housing Needs Allocation (RHNA) is also advisory. The Task Force directed Staff to research this issue.

The April 8, 2010 ABAG letter from Mark Green, ABAG President, to Susan Adams, Marin County Supervisor, was a result of a 2009 lawsuit by the Building Industry Association of the Bay Area against ABAG for adoption *Projections 2009* without conducting environmental review. See **Attachment 1** for the letter. The letter states that *Projections 2009* was used to present planning scenarios that were used as hypotheticals for modeling purposes. Furthermore, the letter states that *Projections 2009* is not binding and that local entities are not required to implement the planning scenarios in the document.

Planning Staff emailed ABAG Staff on July 26, 2011 to ascertain the ABAG opinion on if a RHNA associated with the projections is invalid due to the lack of environmental review. Staff received responses both an ABAG Senior Regional Planner and Legal Counsel (see **Attachment 2** for correspondence). The responses indicate that *Projections 2009* are "not used for any RHNA allocations" and the Mark Green letter has "no impact on ABAG's allocation of the regional housing need for the RHNA cycle of 2007-2014 or on the City of Sausalito's obligations under the Housing Element Law".

### Attachments

- 1- Mark Green Letter, dated April 8, 2010
  - 2- ABAG Correspondence, dated July 26, 2011
- I:\CDD\Boards & Committees\HETF\Memos\8-22-11 - ABAG and CEQA.docx

Item 6a

April 8, 2010

Susan Adams  
Supervisor  
County of Marin  
Civic Center  
3501 Civic Center Drive, #315  
San Rafael, CA 94903

Re: *Projections 2009*

Dear Supervisor Adams:

The Association of Bay Area Governments (ABAG) adopted *Projections 2009* on March 19, 2009. As part of the *Projections 2009* process of assessing alternative planning scenarios, on March 20, 2008, ABAG adopted a "Performance Target" that related to limiting "greenfield development" in the Bay Area to 900 acres per year region wide (PT).

In September 2009, the Building Industry Association of the Bay Area (BIABA) [formerly the Home Builders Association of Northern California] filed suit against ABAG for adopting *Projections 2009* without having conducted an environmental review. ABAG and BIABA held informal discussions with the aim of settling a potentially lengthy and costly lawsuit. As of this date, the lawsuit has been dismissed and this letter now follows.

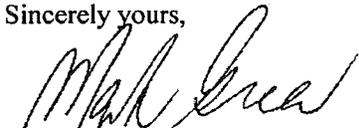
This letter clarifies the status, intent and effects of *Projections 2009* and the PT. First, *Projections 2009* is a planning document with no legislative effect locally, or regionally. No local, regional, state or federal public entity is required to implement or effectuate the PT or any of the scenarios in *Projections 2009*. It is not a binding document. Local jurisdictions should not, and will not, treat *Projections* or the PT as binding on local general plans. The power to make land use decisions remains with cities and counties.

Second, *Projections 2009* and the PT are not policy statements of ABAG on land use. Neither are they formal or informal land use goals, targets or policies. Instead, they present planning scenarios that were used as hypotheticals for modeling purposes.

ABAG staff looks forward to working collaboratively with BIABA and other stakeholders in our ongoing regional planning efforts – particularly the sustainable communities strategy that ABAG and the Metropolitan Transportation Commission (MTC) will be creating over the next few years.

This letter was approved and authorized by the Executive Board of ABAG at its March 18<sup>th</sup> meeting.

Sincerely yours,



Mark Green  
Union City Mayor  
ABAG President

Attachment 1

**ASSOCIATION OF BAY AREA GOVERNMENTS  
EXECUTIVE BOARD**

**RESOLUTION NO. 04-10**

**WHEREAS**, on March 19, 2009 the Association of Bay Area Governments (ABAG) adopted Projections 2009, including a "Performance Target" that limited greenfield development in the region to 900 acres per year; and

**WHEREAS**, the Building Industry Association of the Bay Area (BIABA) [formerly the Home Builders Association of Northern California] filed suit alleging that ABAG violated the California Environmental Quality Act (CEQA) in adopting *Projections 2009* in the manner in which it did so; and

**WHEREAS**, ABAG and the Metropolitan Transportation Commission have been charged with, and will be undertaking, the task of creating a sustainable communities strategy that will require a collaborative effort from all stakeholders in regional land use and transportation issues; and

**WHEREAS**, policy makers from ABAG and BIABA have met to discuss a possible settlement of the suit and have agreed on a course of action that will end the controversy.

**ASSOCIATION OF BAY AREA GOVERNMENTS  
RESOLUTION NO. 04-10**

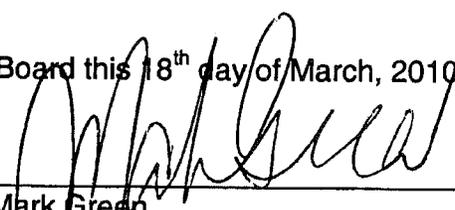
**NOW, THEREFORE BE IT RESOLVED**, that the Executive Board of the Association of Bay Area Governments hereby:

(a) directs the President of ABAG to sign the letter which is attached to this resolution; and

(b) directs the staff of ABAG to send copies of the letter to every city and town council, every Board of Supervisors within the ABAG region, and the Mayor of San Francisco immediately upon receipt of notice from the Superior Court of Alameda that Case No. RG09472724, Home Builders Association of Northern California v Association of Bay Area Governments, has been dismissed with prejudice, with each party bearing its own fees and costs; and

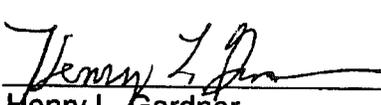
(c) makes the directions given in (a) and (b) above, irrevocable upon receipt of the notice described in (b) above.

The foregoing adopted by the Executive Board this 18<sup>th</sup> day of March, 2010.

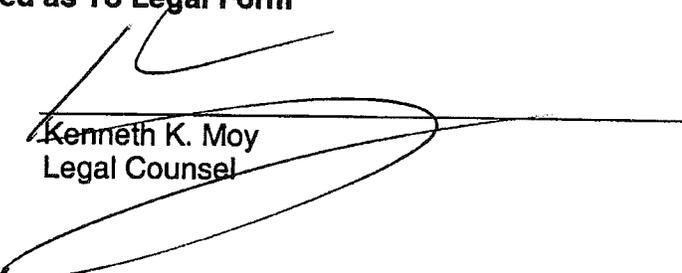
  
\_\_\_\_\_  
Mark Green  
President

**Certification of Executive Board Approval**

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 18<sup>th</sup> day of March, 2010.

  
\_\_\_\_\_  
Henry L. Gardner  
Secretary-Treasurer

**Approved as To Legal Form**

  
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Kenneth K. Moy  
Legal Counsel

**ASSOCIATION OF BAY AREA GOVERNMENTS  
RESOLUTION NO. 04-10**

[ABAG Letterhead]

Re: *Projections 2009*

Dear Colleagues:

The Association of Bay Area Governments (ABAG) adopted *Projections 2009* on March 19, 2009. As part of the *Projections 2009* process of assessing alternative planning scenarios, on March 20, 2008, ABAG adopted a "Performance Target" that related to limiting "greenfield development" in the Bay Area to 900 acres per year region wide (PT).

In September 2009, the Building Industry Association of the Bay Area (BIABA) [formerly the Home Builders Association of Northern California] filed suit against ABAG for adopting *Projections 2009* without having conducted an environmental review. ABAG and BIABA held informal discussions with the aim of settling a potentially lengthy and costly lawsuit. As of this date, the lawsuit has been dismissed and this letter now follows.

This letter clarifies the status, intent and effects of *Projections 2009* and the PT. First, *Projections 2009* is a planning document with no legislative effect locally, or regionally. No local, regional, state or federal public entity is required to implement or effectuate the PT or any of the scenarios in *Projections 2009*. It is not a binding document. Local jurisdictions should not, and will not, treat *Projections* or the PT as binding on local general plans. The power to make land use decisions remains with cities and counties.

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ABAG staff looks forward to working collaboratively with BIABA and other stakeholders in our ongoing regional planning efforts – particularly the sustainable communities strategy that ABAG and the Metropolitan Transportation Commission (MTC) will be creating over the next few years.

This letter was approved and authorized by the Executive Board of ABAG at its March 18<sup>th</sup> meeting.

/S/

Mark Green  
President

Attachment

Lilly Schinsing

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**From:** Kenneth Moy [Kennethm@abag.ca.gov]  
**Sent:** Tuesday, July 26, 2011 4:42 PM  
**To:** Lilly Schinsing  
**Cc:** Hing Wong; Jackie Reinhart  
**Subject:** Re: Fwd: Projections 2009 and Mark Green's letter

Ms Shinsing:

In response to your inquiry, please know that the lawsuit filed by BIA of Norther California against ABAG has been dismissed. The letter you reference was issued as part of the settlement. The letter has no impact on ABAG's allocation of the regional housing need for the RHNA cycle of 2007-2014 or on the City of Sausalito's obligations under the Housing Element Law.

Regards,

Ken Moy  
Legal Counsel  
ABAG

>>> On 7/26/2011 at 2:21 PM, in message <[4E2ECD62.0623.0024.1@abag.ca.gov](mailto:4E2ECD62.0623.0024.1@abag.ca.gov)>, Hing Wong wrote:

Lilly -

I've copied Ken Moy, our legal counsel, who may have comments regarding the lawsuit. Please note that the current RHNA cycle (2007-2014) uses *Projections 2007* (not *Projections 2009*) since it was adopted in 2007. The next RHNA cycle (2015-2022) will use the upcoming forecast. *Projections 2009* is not used for any RHNA allocations.

Hing Wong, AICP

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Senior Regional Planner, Association of Bay Area Governments (ABAG)  
National Policy and Legislation Representative, APA California

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P.O. Box 2050, Oakland, CA 94604-2050

☎ 510.464.7966 | 📠 510.433.5566 | ✉ [hingw@abag.ca.gov](mailto:hingw@abag.ca.gov)

>>> "Lilly Schinsing" <[LSchinsing@ci.sausalito.ca.us](mailto:LSchinsing@ci.sausalito.ca.us)> 7/26/2011 12:55 PM >>>

Hi Jackie,

I hope this note finds you well.

The City of Sausalito is working on updating our Housing Element and have been having monthly meetings with a Task Force appointed by the City Council to create a draft Housing Element. Last night at one of our meetings a member of the public mentioned the attached letter from Mark Green indicates that since the *Projections 2009* are not binding, a RHNA associated with the projections is invalid.

We would like to put together a response that addresses this issue. Our understanding is that *Projections 2009* is a forecasting document that helps to inform the RHNA. From our reading of Mr. Green's letter it does not appear that future (or prior) RHNA allocations are invalidated from the

lack of environmental review done on *Projections 2009*. How does this comport with your understanding of the Building Industry Association of the Bay Area's lawsuit against ABAG? Additionally, it is our understanding that the lawsuit was dismissed—is this true?

If you are not the right person with ABAG to address these questions it would be much appreciated if you could forward them on to the appropriate person.

Sincerely,

**Lilly Schinsing**

Associate Planner

Planning Division | Community Development Department

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phone: 415.289.4134 | fax: 415.339.2256

[lschinsing@ci.sausalito.ca.us](mailto:lschinsing@ci.sausalito.ca.us)