

City of Sausalito

Regional Housing Needs Allocation Appeal

Association of Bay Area Governments
Administrative Committee

October 15, 2021



A – ABAG did Not Address Opportunities and Constraints to Development of Housing in Each Member Jurisdiction

- Government Code Section 65584.04(e) identifies specific factors that each council of governments must include to develop the RHNA methodology. Paragraph (2) of subsection (e) requires ABAG to address opportunities and constraints to development of housing in each member jurisdiction, including:
 - Lack of capacity for sewer or water service
 - 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.
 - Lands preserved or protected from urban development
- ABAG did not identify opportunities and constraints to development **at the member jurisdiction level**
- ABAG is not restricted to the use of the Local Jurisdiction Survey – State law explicitly references use of other sources of information
- In its response to Sausalito's appeal, ABAG staff did not identify any resources where the required analysis had been conducted at the member jurisdiction level.



A – Water and Sewer Capacity

Gov. Code 65584.04(e)(2)(A)

- ABAG did not address whether there was adequate capacity for sewer or water service to accommodate the RHNA at the member jurisdiction level
- Service provider data is readily available:
 - Urban Water Management Plans, master plans, and other documented sources data of water and sewer capacity



A – Availability of Land Suitable for Urban Development or for Conversion to Residential Use

Gov. Code 65584.04(e)(2)(B)

- Data sources are readily available to ABAG to address the availability of land **suitable for urban development and conversion to residential use** for each member jurisdiction
 - ABAG is not limited to consideration of the Local Jurisdiction Survey
 - ABAG did not review readily available assessor data to identify existing uses, parcel sizes, or parcel locations to determine sites appropriate for urban development or conversion to residential use
 - To determine if a site is suitable for residential development, constraints must be addressed
 - ABAG did not consider data regarding wildfire hazards, evacuation routes, steep slopes, and geotechnical conditions, including the potential for subsidence and liquefaction, to determine suitable sites for urban development, conversion to residential use
- Despite the requirement of State law, ABAG did not perform any review of Sausalito's capacity for residential growth based on the availability of land **suitable** for urban development or conversion to residential use, including underutilized land

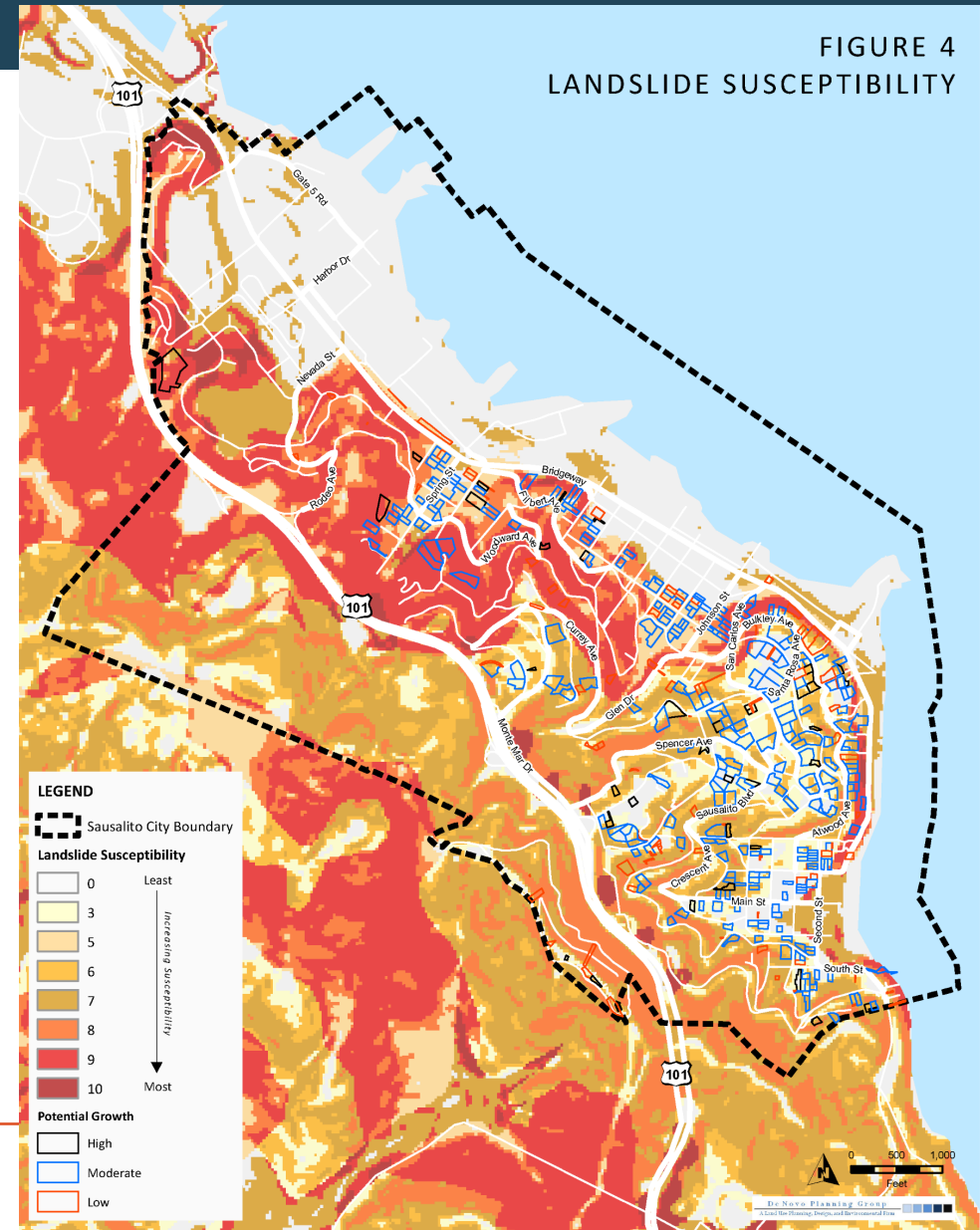


A – Suitability of Land for Urban and Residential Use

Gov. Code 65584.04(e)(2)(B)

- Much of the land in Sausalito is constrained:
 - Extremely steep slopes with **very high landslide** susceptibility (California Department of Conservation Map 58)

FIGURE 4
LANDSLIDE SUSCEPTIBILITY

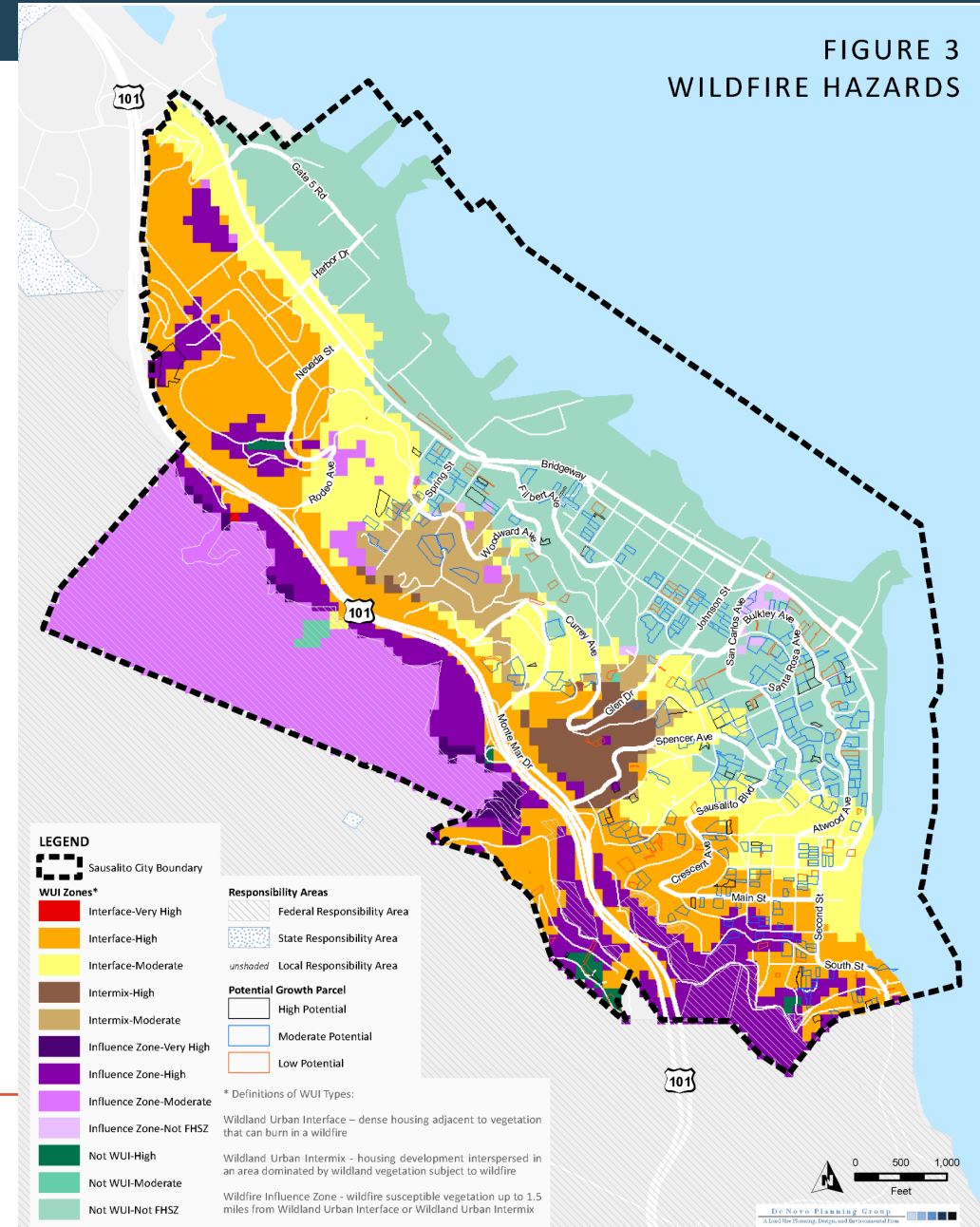


A – Suitability of Land for Urban and Residential Use

Gov. Code 65584.04(e)(2)(B)

- Much of the land in Sausalito is constrained:
 - Extremely steep slopes with **very high landslide** susceptibility (California Department of Conservation Map 58)
 - Limited street capacity in areas with steep slopes and high wildland fire potential – many streets do not meet the recently established standards by the California Code of Regulations Title 14 for **emergency access and egress**

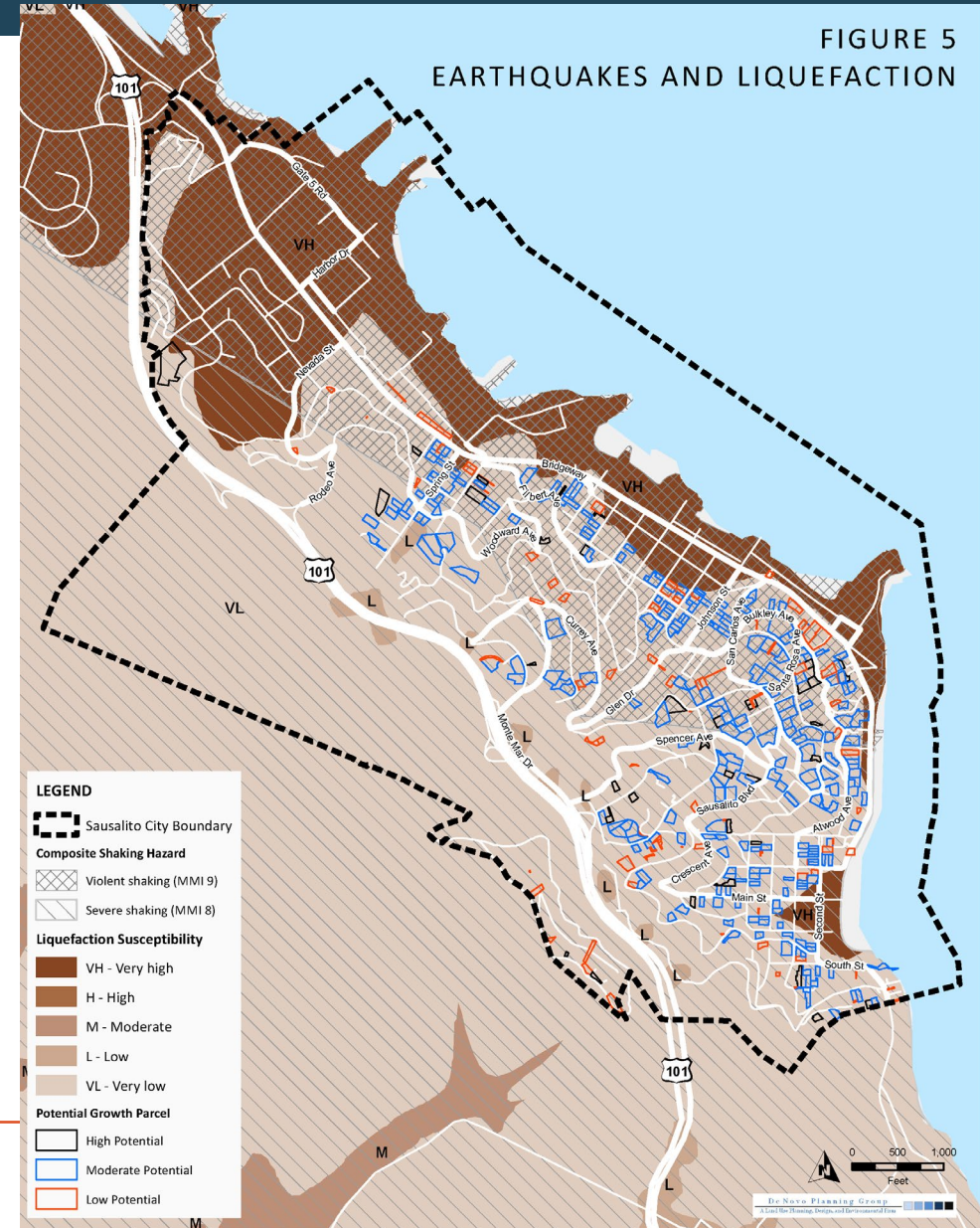
FIGURE 3
WILDFIRE HAZARDS



A – Suitability of Land for Urban and Residential Use

Gov. Code 65584.04(e)(2)(B)

- Much of the land in Sausalito is constrained:
 - Extremely steep slopes with **very high landslide susceptibility** (California Department of Conservation Map 58)
 - Limited street capacity in areas with steep slopes and high wildland fire potential – many streets do not meet the recently established standards by the California Code of Regulations Title 14 for **emergency access and egress**
 - Areas with **high liquefaction potential**

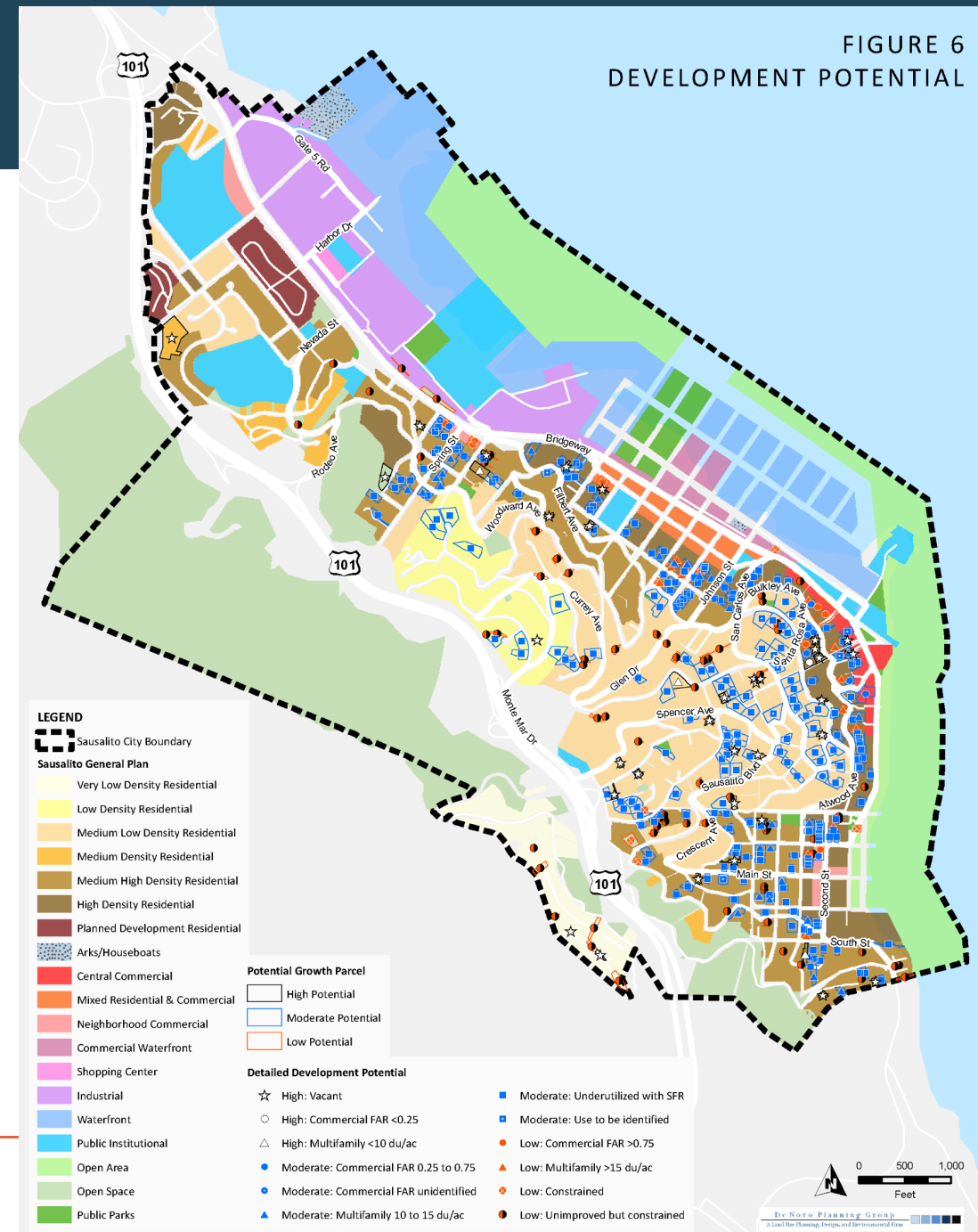


A – Suitable Land

Gov. Code 65584.04(e)(2)(B)

- Sausalito has considered the availability of land **suitable** for urban development, conversion to residential use, availability of underutilized land, opportunities for infill development, and opportunities for increased residential densities
 - Existing uses and likelihood of reuse
 - Site constraints

FIGURE 6
DEVELOPMENT POTENTIAL



A – Capacity for Residential Growth

Gov. Code 65584.04(e)(2)(B)

- 429 lots in the City with development potential:
 - Only 18 lots are larger than 0.5 acres and only 1 is vacant
 - The majority of lots are extremely small (0.10 acres or less) and developed with at least 1 residential unit
- To determine capacity, Sausalito made aggressive growth assumptions:

| | Capacity with Constraints | Existing Units | Net Capacity |
|---|---------------------------|----------------|--------------|
| All vacant sites and all underutilized sites suitable for residential uses that are vacant or likely to be incentivized to redevelop during the 6 th Cycle - Includes 25% increase in density on sites appropriate for development or redevelopment at higher intensities than the City's current General Plan or zoning | 204 | 59 | 145 |



B – Error in Plan Bay Area Factors

- Draft Plan Bay Area 2050 Growth Geographies (Map 1.1) designates a small portion of Sausalito in the Growth Geographies category – this area is subject to the highest level of earthquake-related groundshaking (MMI 9, violent shaking) mapped for the Bay Area, has areas rated at very high risk for landslides by the State, and is along the shoreline area that will be affected by sea level rise.
- Transit-Rich: A detailed review of Sausalito's bus and ferry service schedules reveals that Sausalito has limited transit service.
- The Growth Geography and Transit-Rich Areas categories have been mis-applied, which results in overallocation of growth that is inconsistent with the definitions and methodology identified in Plan Bay Area.



B – Inconsistency with Plan PBA 2050

- ABAG has applied its RHNA factors on top of the growth anticipated for each subregion.
 - This is inconsistent with State law, which requires ABAG to address the capacity of each jurisdiction for growth, as previously discussed, and not just allocate growth based on factors that do not consider the actual capacity for growth.
- The Draft RHNA Plan shows that Sausalito's share of the PBA 2050 future households is 0.125%, or 5,054 total households. Sausalito's existing 4,243 households would increase by 811 units in accordance with Plan Bay Area.
- The Draft RHNA Plan allocates 724 units – this is 89% of Sausalito's PBA 2050 growth. **It is unrealistic to assume that 89% of the growth assumed in Plan Bay Area for a 30-year period for Sausalito will occur during a short 8-year window. The Draft RHNA Plan over-projects growth for Sausalito by more than 300%.**
- PBA 2050 states *“the North Bay counties of Marin, Napa, Sonoma and Solano are expected to be home to less than 10% of new households and jobs, as relatively limited job centers and transit options coupled with wildfire risk make these counties less suited for growth. In fact, Marin County is projected to see a minor net loss in jobs as its population ages and exits the workforce.”* The Draft RHNA Plan and aggressive growth for Sausalito, and Marin County as a whole, is at odds with the growth and growth rates anticipated for these areas in PBA 2050.



CORRECTED ALLOCATION OF RHNA

| Income Level | A: RHNA Based on Sausalito's Share of 2050 Growth (See Table 9) | | B: RHNA Based on Sausalito's Capacity of Housing Growth during the 6 th Cycle (see Table 8) | |
|----------------|--|-------------------------------------|--|-------------------------------------|
| | Equity Adjustment Applied to Redistribute Capacity between Very Low and Low Income | Sausalito Requested RHNA (Option A) | Equity Adjustment Applied to Redistribute Capacity between Very Low and Low Income | Sausalito Requested RHNA (Option B) |
| Very Low | 123x 63.54% | 78 | 143 x 63.54% | 91 |
| Low | 123 x 36.46% | 45 | 143 x 36.46% | 52 |
| Moderate | - | 1 | - | 1 |
| Above Moderate | - | 1 | - | 1 |
| TOTAL | - | 125 | - | 145 |



Application of Government Code Sec. 65584.04

(e) To the extent that sufficient data is available from local governments pursuant to subdivision (b) **or other sources**, each council of governments, or delegate subregion as applicable, **shall include** the following factors to develop the methodology that allocates regional housing needs:

(1) **Each member jurisdiction's** existing and projected jobs and housing relationship. This shall include an estimate based on readily available data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to low-wage workers as well as an estimate based on readily available data, of projected job growth and projected household growth by income level within each member jurisdiction during the planning period.

(2) The **opportunities and constraints to development of additional housing in each member jurisdiction**, including all of the following:

(A) 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.

(B) 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. The council of governments 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.

Staff has mischaracterized Sausalito's appeal and has not provided any information that demonstrates that ABAG conducted the required analysis at the member jurisdiction level. The modeling and data referenced by staff does not provide the required local level analysis. Note that staff's response did not include any data or information specific to Sausalito, despite their claim that the information is available. All available analysis is at subregional/superdistrict levels that do not take into account unique characteristics of individual jurisdictions.

State law does not limit Sausalito to appealing on ABAG's use of the Local Jurisdiction Survey but rather extends the grounds for appeal to ABAG's application of Government Code Section 65584.04, which includes but is not limited to the survey. This section of the Government Code requires ABAG to identify:

- *Each member jurisdiction's existing and projected jobs:housing relationship, including an estimate based on low wage jobs and housing affordable to low wage workers within the jurisdiction. THIS WAS NOT COMPLETED.*
- *Opportunities and constraints to development of additional housing including:
Lack of capacity for water or sewer service for each member jurisdiction. NOT PROVIDED IN ANY OF THE STAFF-REFERENCED RESOURCES
Availability of land suitable for urban or residential development for each member jurisdiction. NOT PROVIDED IN ANY OF THE STAFF-REFERENCED RESOURCES.*



Overview of City of Sausalito Appeal

Appeal Request:

- Reduce allocation by 579-599 units (80-83%) from 724 units to 125-145 units.

Staff Recommendation:

- Deny the appeal.

Appeal bases cited:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey.
- ABAG failed to determine the jurisdiction's Draft Allocation in accordance with the Final RHNA Methodology and in a manner that furthers, and does not undermine, the RHNA Objectives.

Note: The City of Sausalito did not submit a Local Jurisdiction Survey.

No – ABAG failed to use **other sources** to address the requirements of Section 65584.04 for each member jurisdiction:

- Each member jurisdiction's jobs/housing relationship, including an estimate of low-wage jobs and low-wage housing as well as an estimate based on readily available data
- Opportunities and constraints to residential development, including
- Water and sewer capacity and the suitability of land for urban development or conversion to residential use.

2



Issue #1: Lack of Available Land

Jurisdiction Argument: ABAG failed to adequately consider information about availability of land suitable for housing, and ABAG's Draft RHNA Plan does not provide sufficient information about each jurisdiction's land availability.

ABAG-MTC Staff Response:

- Development constraints considered in Plan Bay Area 2050 Final Blueprint, which is baseline allocation for RHNA methodology; jurisdictions had access to land use modeling inputs and results for Final Blueprint.
 - All data and calculations for RHNA Methodology available in [Draft RHNA Plan](#), including data for each step of the RHNA methodology for each jurisdiction. Public open-source RHNA calculations also posted on [GitHub](#).
 - HESS Tool plays no role in determining RHNA, and evaluates sites using **existing** local development policies.
- Government Code Section 65584.04(e)(2)(B) states:
- ABAG may not limit consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider potential for increased residential development under alternative zoning ordinances and land use restrictions.
 - Jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.

None of the constraints were identified and evaluated at the city level, as required by the Government Code. ABAG has not provided evidence of this. We have reviewed the materials referenced by ABAG and none of the materials demonstrate analysis of each factor identified by State law at the member jurisdiction level. In staff's response to Sausalito's appeal, none of this information was provided.

The HESS tool has incorrect site acreages (overestimated by an average of 50%) for every parcel in the City and incorrect existing uses – because the City has not been provided with any other analysis performed by ABAG at the member jurisdiction level and ignored Sausalito's two letters requesting information regarding ABAG's methodology, this is the City's best measure of ABAG's data for Sausalito.

See Sausalito's evaluation of its sites, which anticipates growth on lands designated for nonresidential development and sites with existing development. The City is not suggesting that ABAG limit consideration to only sites planned for residential growth.



Issues #4 and #5: Methodology Does Not Meet Statutory Requirements

Jurisdiction Argument #4: ABAG failed to provide a jurisdiction-level evaluation of existing and projected jobs and housing growth and to demonstrate that the RHNA does not result in a detrimental jobs-housing balance.

Jurisdiction Argument #5: The RHNA allocation does not meet the statutory requirement for consistency with development pattern in Plan Bay Area 2050.

ABAG-MTC Staff Response:

- These arguments challenge the Final RHNA Methodology adopted by ABAG and approved by HCD, and thus fall outside the scope of the appeals process.
- HCD has authority to determine if the RHNA methodology furthers the statutory objectives and HCD found that ABAG's methodology does further the objectives.
- Housing Element Law requires RHNA be consistent with Plan Bay Area 2050 development pattern, but does not specify how to determine consistency, giving ABAG discretion to define its own approach.
- Approach to determine consistency used throughout RHNA methodology development process compares RHNA allocations to Final Blueprint growth forecasts adopted at the county and subcounty (i.e., superdistrict) levels. RHNA is consistent if 8-year growth from RHNA does not exceed Plan's 35-year housing growth at county or subcounty levels.
- Evaluation shows RHNA consistent with Plan Bay Area 2050, including Central Marin superdistrict where Sausalito is located.

While ABAG has the discretion to determine consistency, it is absurd to consider 35 years of growth crammed into an 8-year time span as consistent.

ABAG's statements related to growth at the County, subcounty, and superdistrict levels confirm that ABAG has not conducted analysis of local jurisdiction capacity and underscore ABAG's dereliction of duty in addressing the jobs/housing growth relationship and consistency with Plan Bay Area at the member jurisdiction level.

The City is not requesting that ABAG limit its analysis to lands currently zoned or designated for growth but rather is requesting that ABAG provide the analysis for each member jurisdiction – not for subareas and superdistricts which do not reflect the unique characteristics of each jurisdiction.

ABAG's stated grounds for an appeal are not consistent with State law. The Government Code section governing appeals provides for an appeal on three separate grounds, including that the allocation is inconsistent with Government Code 65584.04(e) (**not** solely that the analysis is inconsistent with the Final RHNA Methodology).

"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."

ABAG's statement is incorrect and is being used to ignore the State mandate that ABAG analyze water/sewer capacity, suitable residential and urban growth opportunities, and jobs-housing balance at the member jurisdiction level.



Issue #2: Areas at Risk of Natural Hazards

Jurisdiction Argument: ABAG failed to consider the availability of land suitable for urban development or for conversion to residential use in Sausalito because the RHNA methodology fails to exclude land at risk of wildfires and flooding.

ABAG-MTC Staff Response:

- Areas at risk of natural hazards are not identified in Housing Element Law as a constraint to housing development.
- Sausalito not protected by Plan Bay Area 2050 sea level rise adaptations because only one housing unit at risk; no additional households forecasted in inundation areas, so RHNA baseline allocation lower than if land was protected.
- Sausalito has not provided evidence that FEMA or the Department of Water Resources has determined Sausalito's flood management infrastructure is inadequate to avoid the risk of flooding.
- Given variety of natural hazard risks the Bay Area faces, it is not possible to address the region's housing needs and avoid planning for new homes in places at risk. Sausalito has authority to plan for housing in places with lower risk.
- Government Code Section 65584.04(e)(2)(B) states:
 - ABAG may not limit consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider potential for increased residential development under alternative zoning ordinances and land use restrictions.
 - Jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.

- GC Sec. 655804(e)(2)(B) requires ABAG to identify suitable lands for urban and residential development – ABAG has discretion in determining suitability.
- State law does not limit hazards to consideration of flooding, but rather directs that flooding be included as a consideration.
- Not all sites and areas within the larger Bay Area have significant amount of land identified as very high and high hazards for wildfire, landslide, liquefaction, and evacuation. Claiming that areas at risks of hazards are not identified as a constraint is a misrepresentation of ABAG's mandated requirement to analyze sites suitable for residential development at the member jurisdiction level.



Issue #12: Maximum Growth Potential

***Jurisdiction Argument:** City provides calculations that indicate maximum growth potential in Sausalito during the 6th RHNA Cycle is 145 units, and argues its allocation should not exceed this amount.*

ABAG-MTC Staff Response:

- Statute forbids ABAG from calculating RHNA using the same constraints Sausalito included in its calculation of near-term development capacity.
- Government Code Section 65584.04(e)(2)(B) states:
 - ABAG may not limit consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider potential for increased residential development under alternative zoning ordinances and land use restrictions.
 - Jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.
- Sausalito's recalculation of its RHNA does not identify mistakes in application of adopted RHNA methodology. This recalculation represents a critique of the adopted methodology, and such critiques are not a valid basis for a RHNA appeal.

9

- State law does not forbid ABAG from using the same constraints that Sausalito has identified. State law requires ABAG to address the capacity of suitable land for urban and residential growth. ABAG can use its discretion in determining suitability. As previously stated, State law mandates that flooding constraints be included but does not preclude consideration of other constraints.
- Intentionally disregarding the very real constraints that have caused significant damage in the region and that would put residents, including populations with special housing needs, at risk of being located in a high risk area with significant evacuation limitations is irresponsible.
- Sausalito has recommended developing sites not currently planned for residential growth and increasing densities to meet its RHNA. This is consistent with the section of Government Code Section 65584.04 repeatedly referenced by ABAG staff.

