

TO: ABAG Administrative Committee
FROM: Therese W. McMillan, Executive Director
DATE: September 29, 2021
SUBJECT: County of Contra Costa Appeal of Draft RHNA Allocation and Staff Response

OVERVIEW

Jurisdiction: County of Contra Costa

Summary: County of Contra Costa requests the decrease of its Draft RHNA Allocation by 1,818 units (24 percent) from 7,645 units to 5,827 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
 - Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
 - Lands protected from urban development under existing federal or state programs.
 - County policies to preserve prime agricultural land.
 - The region's greenhouse gas emissions targets to be met by Plan Bay Area 2050.
- 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.
- A significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted in the Local Jurisdiction Survey.

Staff Recommendation: Partially grant the appeal, based on an error in the Plan Bay Area 2050 Final Blueprint where an area annexed to Pittsburg in 2018 was included as part of unincorporated Contra Costa County when forecasting total 2050 households, which is used as the baseline allocation in the final RHNA methodology. Staff proposes that the County's allocation should be reduced by 35 units as a result of this error.

BACKGROUND

Draft RHNA Allocation

Following adoption of the Final RHNA Methodology on May 20, 2021, the County of Contra Costa received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
County of Contra Costa	2,082	1,199	1,217	3,147	7,645

Local Jurisdiction Survey

The County of Contra Costa submitted a Local Jurisdiction Survey. A [compilation of the surveys submitted](#) is available on the ABAG website.

Comments Received during 45-Day Comment Period

ABAG received nearly 450 comments during the 45-day public comment period described in Government Code section 65584.05(c). Some comments encompassed all of the appeals submitted, and there was one comment that specifically relates to the appeal filed by the County of Contra Costa. The comment opposes the County's appeal. [All comments received](#) are available on the ABAG website.

ANALYSIS

Issue 1: *Contra Costa County argues its draft allocation is too high relative to the allocations to other jurisdictions in Contra Costa County. Specifically, the County argues ABAG overestimated the amount of developable land in the County because the Plan Bay Area 2050 Final Blueprint identifies areas for growth outside of the Urban Limit Lines established by voters in 1990 to preserve land in the county for agriculture, open space, wetlands, parks, and other nonurban uses. Areas outside the Urban Limit Lines have limited sewer and water infrastructure and expansion of these utilities outside the Urban Limit Lines is prohibited.*

ABAG-MTC Staff Response: In support of its argument, the County references the "Urban boundary lines across alternatives" map from the *Plan Bay Area 2050 Draft Forecasting and Modeling Report*, one of the technical reports that is part of the Plan Bay Area 2050 Draft Environmental Impact Report (EIR). This map shows scenarios for where future growth could occur in the different EIR alternatives.¹ The Plan Bay Area 2050 Final Blueprint, which is used to develop the baseline allocation in the final RHNA methodology, forecasts potential future urbanized growth in some locations outside urbanized areas (shown in purple on the map), but within the County's voter identified Urban Limit Line.² The other areas shown on the map relate to other EIR alternatives for Plan Bay Area 2050 and are not part of the Final Blueprint that is used in the final RHNA methodology. In some cases, the purple expansion areas for growth are within city limits and sometimes in unincorporated areas.

It is also important to note that identification of land as being *eligible* for growth or included in a Growth Geography does not mean the Final Blueprint necessarily forecasts future growth in these areas; the acreage included in a potential growth area does not translate linearly to development. For example, parklands are protected in perpetuity, even if they are included inside the Urban Limit Line. The Final Blueprint also assumes that some unprotected lands within expansion areas remain undeveloped by 2050.

¹ [Plan Bay Area 2050 Draft Forecasting and Modeling Report](#), page 61.

² See http://64.166.146.245/docs/2016/BOS/20161220_831/27024_Attachment%20A%20-%20ULL%20Map.pdf.

Part of the reason the County's draft allocation is larger than other jurisdictions in Contra Costa County is because the County has the highest number of existing households (60,500) of any jurisdiction in the county.³ As noted previously, the RHNA must address both existing and future housing needs. The final RHNA methodology accomplishes this by using total households in 2050 as the baseline allocation because it incorporates both existing households and the forecasted growth in households from the Final Blueprint. Housing Element Law requires the RHNA allocation to affirmatively further fair housing, which means overcoming patterns of segregation and addressing disparities in access to opportunity. Incorporating existing housing patterns into the RHNA methodology ensures that the allocations further this objective in all communities, not just those expected to experience significant growth.

Issue 2: *The County argues ABAG did not adequately consider lands protected from urban development under existing federal or state programs. The appeal identifies specific sites that should not be considered for housing development, including Parks Reserve Forces Training Area (a U.S. Army Reserve facility), Byron Airport (permitted by the Federal Aviation Administration), and land designated with conservation easements as part of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.*

ABAG-MTC Staff Response: The Plan Bay Area 2050 Final Blueprint, which is used to develop the baseline allocation in the final RHNA methodology, does not forecast any households in 2050 on any of the sites identified above. As a result, none of these parcels contributed to the County's allocation.

Issue 3: *Contra Costa County asserts ABAG did not adequately consider county policies to preserve prime agricultural land because the Final Blueprint includes areas outside Urban Limit Lines.*

ABAG-MTC Staff Response: See response for Issue 1, above.

Issue 4: *The County argues ABAG failed to adequately consider the region's greenhouse gas emissions target and references the "Urban boundary lines across alternatives" map from the Plan Bay Area 2050 Draft Forecasting and Modeling Report as evidence that the growth pattern for Contra Costa County in the Final Blueprint will be sprawl and runs counter to the goal of reducing greenhouse gases.*

ABAG-MTC Staff Response: The final RHNA methodology adequately considers the region's greenhouse gas target by using the Plan Bay Area 2050 Final Blueprint as the baseline allocation, as the Final Blueprint was developed specifically to meet the greenhouse gas reduction target. The County's argument that the RHNA does not promote achieving the region's greenhouse gas

³ State of California, Department of Finance, *E-5 Population and Housing Estimates for Cities, Counties and the State — January 1, 2010-2020*. Sacramento, California, May 2020.

emissions target challenges the final RHNA methodology that was adopted by the ABAG Executive Board and approved by HCD. A valid appeal must show ABAG made an error in the application of the methodology in determining the jurisdiction's allocation; a critique of the adopted methodology itself falls outside the scope of the appeals process. Jurisdictions had multiple opportunities to comment as the methodology was developed and adopted between October 2019 and May 2021. Housing Element Law gives HCD the authority to determine whether the RHNA methodology furthers the statutory objectives described in Government Code Section 65584(d), and HCD made this determination.⁴ Regarding the RHNA objective related to achieving the region's greenhouse gas reduction target, HCD made the following findings:

"The draft ABAG methodology⁵ encourages a more efficient development pattern by allocating nearly twice as many RHNA units to jurisdictions with higher jobs access, on a per capita basis. Jurisdictions with higher jobs access via transit also receive more RHNA on a per capita basis.

Jurisdictions with the lowest vehicle miles traveled (VMT) per capita, relative to the region, receive more RHNA per capita than those with the highest per capita VMT. ABAG's largest individual allocations go to its major cities with low VMT per capita and better access to jobs. For example, San Francisco – which has the largest allocation – has the lowest per capita VMT and is observed as having the highest transit accessibility in the region. As a major employment center, San Jose receives a substantial RHNA allocation despite having a higher share of solo commuters and a lower share of transit use than San Francisco. However, to encourage lower VMT in job-rich areas that may not yet be seeing high transit ridership, ABAG's Plan Bay Area complements more housing in these employment centers (which will reduce commutes by allowing more people to afford to live near jobs centers) with strategies to reduce VMT by shifting mode share from driving to public transit."

As noted previously, the Plan Bay Area 2050 Final Blueprint forecasts nearly all new growth within the County's Urban Limit Line.

Issue 5a: *Contra Costa County argues the final RHNA methodology does not adequately consider constraints to development related to areas at risk of natural hazards.*

ABAG-MTC Staff Response: The final RHNA methodology adequately considers the potential development constraints described in the County of Contra Costa's appeal through use of data from the Plan Bay Area 2050 Final Blueprint as the baseline allocation. In developing the Plan

⁴ For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

⁵ Pursuant to Government Code Section 65584.04(i), HCD must review the Draft RHNA Methodology developed by the Council of Governments. On May 20, 2021, ABAG adopted the Draft RHNA Methodology without any modifications as the Final RHNA Methodology.

Bay Area 2050 Final Blueprint, ABAG-MTC staff worked with local governments to gather information about local plans, zoning, and physical characteristics that might affect development. A strength of the land use model used for Plan Bay Area 2050 forecasting is that it assesses feasibility and the cost of redeveloping a parcel, including the higher cost of building on parcels with physical development constraints, e.g., steep hillsides. These feasibility and cost assessments are used to forecast the County's share of the region's households in 2050, which is an input into its RHNA allocation.

However, RHNA is not just a reflection of projected future growth, as statute also requires RHNA to address the existing need for housing that results in overcrowding and housing cost burden throughout the region. Accordingly, the 2050 Households baseline allocation in the RHNA methodology represents both the housing needs of existing households and forecasted household growth from the Plan Bay Area 2050 Final Blueprint. Thus, the RHNA methodology adequately considers the development constraints raised in this appeal, but the allocation to this jurisdiction also reflects both existing and future housing demand in the Bay Area.

Importantly, as HCD notes in its comment letter on submitted appeals, Government Code Section 65584.04(e)(2)(B) states that ABAG:

*"may not limit its consideration of suitable housing sites to existing zoning and land use restrictions and must consider the potential for increased development under alternative zoning and land use restrictions. Any comparable data or documentation supporting this appeal should contain an analysis of not only land suitable for urban development, but land for conversion to residential use, the availability of underutilized land, and opportunity for infill development and increased residential densities. In simple terms, this means housing planning cannot be limited to vacant land, and even communities that view themselves as built out or limited due to other natural constraints such as fire and flood risk areas must plan for housing through means such as rezoning commercial areas as mixed-use areas and upzoning non-vacant land."*⁶

The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands the County of Contra Costa's concerns about the potential for future growth in areas at risk of natural hazards. However, with only a small exception, Housing Element Law does not identify areas at risk of natural hazards as a potential constraint to housing development."⁷ Given the significant natural hazard risks in the Bay Area, whether to

⁶ See [HCD's comment letter on appeals](#) for more details.

⁷ Government Code Section 65584.04(e)(2)(B) states "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."

incorporate information about hazard risks when allocating RHNA units was one of the topics most thoroughly discussed by the Housing Methodology Committee (HMC) during the methodology development process.⁸ Ultimately, HMC members came to consensus that though housing in high hazard areas is a concern, adding a specific hazard factor to the RHNA methodology may not be the best tool to address this issue. In large part, this is because the Plan Bay Area 2050 Final Blueprint, which forms the baseline of the final RHNA methodology, already addresses concerns about natural hazards, as the Final Blueprint excludes areas with unmitigated high hazard risk from Growth Geographies.

The Final Blueprint Growth Geographies exclude CAL FIRE designated “Very High” fire severity areas in incorporated jurisdictions, and “High” and “Very High” fire severity areas as well as county-designated wildland-urban interfaces (WUIs) where applicable in unincorporated areas. The only exception is for locally-nominated Priority Development Areas (PDAs), which does not apply to the County.⁹ While there may be areas at risk of flooding in the County, it has not provided evidence that it cannot accommodate its RHNA allocation due to a determination by FEMA or the Department of Water Resources that the flood management infrastructure is inadequate to avoid the risk of flooding, consistent with Government Code Section 65584.04(e)(2)(B).

Throughout the region, it is essentially impossible to avoid all hazards when siting new development, but jurisdictions can think critically about which areas in the community have the *highest* hazard risk. Notably, the residents of new development are likely to be safer from hazards than current residents living in older structures, as new construction is built to modern standards that more effectively address hazard risk. In developing its Housing Element, the County has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, the County can choose to take hazard risk into consideration with where and how it sites future development, either limiting growth in areas of higher hazard or by increasing building standards for sites within at-risk areas to cope with the hazard.

Per Government Code Section 65584.04(e)(2)(B), the County of Contra Costa must consider the availability of underutilized land, opportunities for infill development, and increased residential densities to accommodate its RHNA. The County does not provide evidence it is unable to consider underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.¹⁰

Issue 5b: *Contra Costa County argues the final RHNA methodology does not adequately consider constraints to development related to specific sites that have no potential for residential growth.*

⁸ See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

⁹ The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

¹⁰ See HCD’s [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

ABAG-MTC Staff Response: Plan Bay Area 2050 uses parcel-based data as an input into the land use model used to generate the forecasted development pattern for the region. However, the growth forecasted for a specific parcel is only a simulation of potential growth. In Plan Bay Area 2050, the forecasted totals for future households and jobs are adopted at the county and subcounty levels, as the scale most appropriate for representing the future development pattern for the region. The jurisdiction-level totals of households in 2050 produced by the Final Blueprint forecast were provided only for use as the baseline allocation for the RHNA Methodology.

Ultimately, the region has millions of parcels and identifying a potential issue on one or more specific parcels does not constitute a valid basis for a RHNA appeal, as the allocation is at the jurisdiction level and the jurisdiction could find one or more alternative parcels to accommodate that growth instead. The forecasted development for a parcel in Plan Bay Area 2050's land use modeling does not dictate where a local jurisdiction sites housing. In developing its Housing Element, the County of Contra Costa has the opportunity to identify the specific sites it will use to accommodate its RHNA.

Despite the fact that this argument is not a valid basis for a RHNA appeal, ABAG-MTC staff did review each of the specific sites the County identified as having no potential for residential growth to see if any households is forecasted to exist on them in 2050. Nearly all of the sites were not forecasted to have households on them, but there were two exceptions. The first is Bethel Island, which is projected to have fewer than 20 additional households by 2050, many of which are assumed to be accessory dwelling units (ADUs). As the County of Contra Costa has tens of thousands of households now and in the future, the impact of 19 households on the County's share of the region's total households in 2050 and, as a result, its draft RHNA allocation, is deemed negligible.

The second area where the Final Blueprint forecasted household growth to occur is along State Route 4 east of Hercules on parcels nearby and adjacent to the Phillips 66 carbon plant, where more than 5,000 households were projected to exist in 2050. Projected growth in this location is within the County's Urban Limit Line and was driven by baseline zoning and land use assumptions shared with the County during the BASIS data review process. The County did not identify development constraints in this area, due to the proximity of the industrial facility, during the BASIS review or as part of their local jurisdiction survey. The potential for future housing in this area, as envisioned in the Final Blueprint, is possible as a result of Phillips 66's plans to close the carbon plant in 2023, as part of its Phillips 66 Rodeo Renewed Project.¹¹

¹¹ For more information about the Phillips 66 Rodeo Renewed Project, see https://www.contracosta.ca.gov/DocumentCenter/View/69279/LP20-2040_NOP?bidId= and <https://www.ogj.com/refining-processing/refining/construction/article/14201644/phillips-66-lets-contract-for-san-francisco-refineryintorenewables-conversion-project>

Issue 6a: Under the appeal basis “significant and unforeseen change in circumstances,” the County identifies several areas that were annexed or are in the process of being annexed that should not be considered when forecasting future growth in the County in the Final Blueprint.

ABAG-MTC Staff Response: The County cites four annexations for consideration in an adjustment to its RHNA allocation, one that relates to the City of San Ramon and three that relate to the City of Pittsburg:

- 1) LAFCO 20-05 is the annexation of 867 acres by San Ramon in the Dougherty Valley (Annexation DV18). This annexation was finalized by the San Ramon City Council in October 2020, which occurred after the September 2020 Commission and ABAG Executive Board action to initiate modeling of the Plan Bay Area 2050 Final Blueprint. Thus, this area was included as part of unincorporated Contra Costa County in the Final Blueprint. However, the Final Blueprint did not forecast any households in this area in 2050, so a shift of jurisdictional responsibility from the County to the City would have no impact on either jurisdiction’s RHNA allocation.
- 2) LAFCO 16-05 is an area annexed to Pittsburg in 2017 that was incorrectly included as part of the unincorporated Contra Costa County in the Plan Bay Area 2050 Final Blueprint. However, the Final Blueprint did not forecast any households in this area in 2050, so a shift of jurisdictional responsibility from the County to the City would have no impact on either jurisdiction’s RHNA allocation.
- 3) LAFCO 17-08 is an area annexed to Pittsburg in 2018 that was incorrectly included as part of the unincorporated Contra Costa County in the Plan Bay Area 2050 Final Blueprint. The Final Blueprint forecasted a total of 412 households in this area in 2050. ABAG-MTC staff recalculated the County’s RHNA allocation after reducing its baseline share (total households in 2050) by 412 households. This results in a reduction in the County’s total RHNA of 35 units, as shown below:

Very Low- Income Units	Low-Income Units	Moderate- Income Units	Above Moderate- Income Units	Total
10	5	6	14	35

Government Code Section 65584.05(e)(1) states that the determination on an appeal may require ABAG to adjust the share of the regional housing need allocated to a jurisdiction that is not the subject of the appeal.¹² In this case, staff is recommending that

¹² See ABAG’s adopted [2023-2031 RHNA Cycle Appeals Procedures](#) for more information.

the 35 units identified above be transferred to the City of Pittsburg, based on the fact that the forecasted households are within Pittsburg's boundaries and if the City's boundaries had been properly accounted for in the Final Blueprint, these households would have contributed to Pittsburg's draft RHNA allocation.

- 4) LAFCO 21-05 is the Faria Southwest Hills Boundary Organization affecting Pittsburg. According to Contra Costa LAFCO, this annexation is currently incomplete (**Attachment 1**). As a result, this area should still be considered part of the unincorporated county. For 90 days following the date of annexation, Government Code Section 65584.07(d) allows a transfer of a portion of the county's allocation to a city. Upon request by the County of Contra Costa and the City of Pittsburg, ABAG-MTC staff is prepared to facilitate this type of transfer of RHNA responsibility.

Issue 6b: *Under the appeal basis "significant and unforeseen change in circumstances," the County cites the changes that occurred between the Plan Bay Area 2050 Draft Blueprint and the Final Blueprint as a significant and unforeseen change in circumstances. As part of this argument, the County specifically cites a lack of consideration of areas at risk from natural hazards and asserts that the RHNA factor related to Access to High Opportunity Areas was incorrectly applied to the entire population of the county, even though there are many areas defined as Disadvantaged Communities per SB 1000.*

ABAG-MTC Staff Response: Government Code Section 65584.05(b)(3) states that a jurisdiction can appeal its allocation if there has been a significant and unforeseen change in circumstances that merits a revision of the information submitted in the Local Jurisdiction Survey. The County's argument about the impact of the Final Blueprint on the draft allocations is not consistent with the statutory language for a change in circumstances and challenges the final RHNA methodology that was adopted by the ABAG Executive Board and approved by HCD, and thus is not a valid basis for an appeal.

The County's argument about how the Access to High Opportunity Areas (AHOA) factor was used in the methodology challenges the final RHNA methodology that was adopted by the ABAG Executive Board and approved by HCD, and thus falls outside the scope of the appeals process. Importantly, the impact of the AHOA factor is to *reduce* the County's allocation.

The AHOA factor and how it was used in the RHNA methodology is explained in detail on pages 16 to 19 in the Draft RHNA Plan.¹³ The factors in the RHNA methodology adjust a jurisdiction's baseline allocation (total households in 2050 from the Plan Bay Area 2050 Final Blueprint) either up or down, depending on how the jurisdiction scores on each factor compared to other jurisdictions in the region. The AHOA factor is based on the percentage of a jurisdiction's

¹³ See https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_Draft_RHNA_Plan.pdf.

households that are living in census tracts that are labelled High Resource or Highest Resource on the 2020 Opportunity Map produced by HCD and the California Tax Credit Allocation Committee (TCAC).¹⁴ Using a jurisdiction's share of total households in these higher resource areas ensures that the factor excludes households living in lower resource areas. As shown in Appendix 4 of the Draft RHNA Plan, 35.9 percent of households in Contra Costa County are in High Resource or Highest Resource census tracts. Since the County scores relatively low on this factor compared to other jurisdictions in the region, this factor reduces the County's baseline allocation, leading to a lower RHNA allocation.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **partially grant** the appeal filed by County of Contra Costa to reduce its Draft RHNA Allocation by 35 units (from 7,645 units to 7,610 units).

Based on the explanation provided in response to Issue 6 above, staff recommends that 35 units, distributed across income categories as shown below, be transferred to the City of Pittsburg:

Very Low-Income Units	Low-Income Units	Moderate-Income Units	Above Moderate-Income Units	Total
10	5	6	14	35

Although ABAG-MTC staff is not recommending a further reduction in the County of Contra Costa's draft RHNA allocation beyond what is stated above, we understand the County's concerns about accommodating its RHNA in a way that fosters efficient infill and protection of agricultural and environmental resources. Housing Element Law recognizes some of the specific challenges unincorporated areas face by including provisions available only to counties that allow for a transfer of RHNA units to incorporated cities and towns in the county following adoption of the final RHNA allocation.¹⁵ One option allowed by the statute is for the County and one or more jurisdictions to voluntarily agree on a transfer of units from the County to the city or town. A second option is for a County to transfer units following annexation of unincorporated land to a city (as noted above for the City of Pittsburg annexation that remains incomplete).

By statute, voluntary transfers can be completed following ABAG's adoption of the final RHNA plan and prior to the Housing Element due date (January 2023) and transfers related to annexations can occur at any point during the RHNA cycle, as long as the request is submitted

¹⁴ See <https://www.treasurer.ca.gov/ctcac/opportunity/2020.asp>.

¹⁵ See [Government Code Section 65584.07](#) for more details.

to ABAG within 90 days of the annexation. ABAG-MTC staff is prepared to work with jurisdictions in Contra Costa County to come to agreement on a voluntary transfer as a way to advance the County's goals for city-centered growth, and to move forward with approval of the transfer expediently following adoption of the final RHNA in December 2021.

ATTACHMENT(S):

Attachment 1: Email from Contra Costa County LAFCO