

TO: ABAG Administrative Committee  
FROM: Therese W. McMillan, Executive Director  
SUBJECT: Town of Corte Madera Appeal of Draft RHNA Allocation and Staff Response

## OVERVIEW

**Jurisdiction:** Town of Corte Madera

**Summary:** Town of Corte Madera requests the decrease of its Draft RHNA Allocation by 325 units (45 percent) from 725 units to 400 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
  - Availability of land suitable for urban development or for conversion to residential use.
- 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.

**Staff Recommendation:** Deny the appeal.

## BACKGROUND

### Draft RHNA Allocation

Following adoption of the Final RHNA Methodology on May 20, 2021, the Town of Corte Madera received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
Town of Corte Madera	213	123	108	281	725

### Local Jurisdiction Survey

The Town of Corte Madera 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 were nine that specifically relate to the appeal filed by the Town of Corte Madera. All nine comments oppose the Town's appeal. [All comments received](#) are available on the ABAG website.

## ANALYSIS

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**Issue 1:** *The Town argues ABAG failed to adequately consider information from the Local Jurisdiction Survey related to land suitability, the impact of climate change and natural hazards, and the availability of vacant land. The Town's appeal states that 33.68% of parcels are in the FEMA 100-year flood zone on land that FEMA has determined is not adequately protected by flood management infrastructure, which Government Code Section 65584.04(e)(2)(B) states may make this land considered not suitable for development. The appeal also notes that 50% of parcels are in the Wildland Urban Interface (WUI), which the Town believes makes them unsuitable for additional urban development. Additionally, the Town claims its remaining parcels are all occupied with existing uses, with 97% of these parcels having existing residential uses. The Town believes its current RHNA allocation will require it to build the majority of its housing within the 100-year flood zone, which is most susceptible to risks associated with sea level rise.*

**ABAG-MTC Staff Response:** The Town's argument centers on lacking land suitable for urban development as a result of natural hazard risks. The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands Corte Madera'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."<sup>1</sup> 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....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."<sup>2</sup>

Given the significant natural hazard risks in the Bay Area, whether to 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.<sup>3</sup> Ultimately, HMC members took a vote and 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

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<sup>1</sup> 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."

<sup>2</sup> See [HCD's comment letter on appeals](#) for more details.

<sup>3</sup> See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

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 Corte Madera.<sup>4</sup> Plan Bay Area 2050 assumes one foot of sea level rise by 2035 and two feet of rise in 2050. The adaptation solutions that are imagined are targeted along portions of shoreline that have inundation with just two feet of rise, including locations in Corte Madera. While Plan Bay Area 2050 focuses on the segments of shoreline that flood with two feet of rise, the strategies are costed out to provide significantly greater levels of protection.

Regarding flood risks, Housing Element Law identifies a flood zone as a constraint to housing if “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.”<sup>5</sup> The Town states in its appeal that 33.68% of all parcels and 40% of gross lot area is located in the FEMA 100-year flood zone. The Town also claims this is “land that FEMA has determined is not adequately protected by flood management infrastructure to avoid the risk of flooding.” While ABAG recognizes that a portion of Corte Madera is in a FEMA-designated Special Flood Hazard Area (SFHA), the Town does not provide any evidence that FEMA has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding, which is required in Government Code Section 65584.04(e)(2)(B) for the land to be excluded from consideration as part of land suitable for urban development.

In fact, Corte Madera’s own flood protection website states, “The National Flood Insurance Program (NIFP) requires that the town examine the construction of all new structures, and the improvement, modification, or repair of existing structures that are located within the SFHA. Any new development or additions/renovations to an existing structure within the SFHA will require a ‘Floodplain Development Permit.’”<sup>6</sup> So while new development in Corte Madera’s floodplain is subject to additional regulations, there is no indication FEMA prohibits construction of new housing.

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

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<sup>4</sup> The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

<sup>5</sup> Government Code Section 65584.04(e)(2)(B).

<sup>6</sup> For more information, see Corte Madera’s website here: <https://townofcortemadera.org/192/Flood-Protection>

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, Corte Madera has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, the Town 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.

While the Town asserts that it will be forced to build in areas of high hazard risk, it has not provided evidence that it cannot accommodate its RHNA in locations within the jurisdiction that are subject to lower risk of natural hazards. Per Government Code Section 65584.04(e)(2)(B), Corte Madera must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. The Town 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.<sup>7</sup>

**Issue 2:** *The Town of Corte Madera argues ABAG failed to determine its share of the regional housing needs in a manner that furthers the statutory objective to promote “infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions target,” as described in Government Code Section 65584(d)(2). Specifically, the Town argues the large allocation of lower-income units to Corte Madera will force the town to site these units in areas at risk of flooding and sea level rise. Additionally, the Town claims the RHNA Methodology fails to promote efficient development patterns because it assigns too many housing units to communities like Corte Madera that lack adequate transportation infrastructure, are away from existing and future job centers, and face high natural hazard risks.*

**ABAG-MTC Staff Response:** This argument by the Town 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. Regarding the RHNA objective described in in Government Code Section 65584(d)(2), HCD confirmed the RHNA methodology encourages efficient development patterns and made the following findings:

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<sup>7</sup> See HCD’s [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

*The draft ABAG methodology 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.*

The Town asserts the allocation of 336 units of lower-income RHNA to Corte Madera “undermines the promotion of socioeconomic equity in Corte Madera.” However, ABAG is mandated by statute to affirmatively further fair housing, and assigning fewer lower-income units to well-resourced communities like Corte Madera would limit progress toward regional equity goals. Additionally, HCD commended the equitable outcomes of the RHNA Methodology: “HCD applauds the significant weighting of Access to High Opportunity Areas as an adjustment factor and including an equity adjustment in the draft methodology. ABAG’s methodology allocates more RHNA to jurisdictions with higher access to resources on a per capita basis. Additionally, those higher-resourced jurisdictions receive even larger lower income RHNA on a per capita basis.”

Corte Madera argues it cannot accommodate its lower-income RHNA because it will need to build these units in areas at high risk of flooding and sea level rise. Unless the Town is planning to adopt a strategy of retreat, Corte Madera can plan to accommodate new lower-income residents in these existing neighborhoods that the Town is actively working to protect from hazards. Furthermore, the Town does not conclusively show that it cannot use alternative zoning, increased density, and other planning tools to accommodate some of its lower-income RHNA in areas at less risk of flooding and other hazards.

HCD has determined that the RHNA Methodology successfully achieves the statutory objective described in Government Code Section 65584(d)(2), as the RHNA allocation promotes socioeconomic equity, efficient development patterns, and GHG reduction. While the information above discusses how the RHNA Methodology furthers equity by providing greater access to opportunity for all, the response to Issue 3 below provides additional details regarding

how the 2023-2031 RHNA allocations encourage efficient development patterns that can reduce VMT and GHG across the region.

**Issue 3:** *The Town claims the RHNA Methodology fails to further the objective related to “promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction,” as described in Government Code Section 65584(d)(3). Specifically, the Town argues the RHNA Methodology represents an even larger reduction to the jobs-housing ratio in Corte Madera than is forecasted in Plan Bay Area 2050, which projects the Central and South Marin “superdistricts” will lose jobs while gaining households.*

**ABAG-MTC Staff Response:** Similar to Issue 2, this argument by the Town 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. In its findings that the RHNA methodology furthers the statutory objective described in Government Code Section 65584(d)(3), HCD stated:

*The draft ABAG methodology<sup>8</sup> allocates more RHNA units to jurisdictions with more jobs. Jurisdictions with a higher jobs/housing imbalance receive higher RHNA allocations on a per capita basis. For example, jurisdictions within the healthy range of 1.0 to 1.5 jobs for every housing unit receive, on average, a RHNA allocation that is 61% of their current share of households. Jurisdictions with the highest imbalances – 6.2 and higher – receive an average allocation 1.21 times their current share of households. Lastly, higher income jurisdictions receive larger lower income allocations relative to their existing lower income job shares.*

The RHNA methodology incorporates each jurisdiction’s jobs-housing relationship through use of the Plan Bay Area 2050 Final Blueprint as the baseline allocation. The Final Blueprint incorporates information about each jurisdiction’s existing and projected jobs and households. The Final Blueprint emphasizes growth near job centers and in locations near transit, including in high-resource areas, with the intent of reducing GHG. It includes strategies related to increased housing densities and office development subsidies to address jobs-housing imbalances in the region. This land use pattern is developed with complementary transportation investments in an effort to ensure past and future transportation investments are maximized. The strategies incorporated into the Final Blueprint help improve the region’s jobs-housing balance, leading to shorter commutes—especially for low-income workers. The Draft RHNA Allocation was also found to be consistent with Plan Bay Area 2050, which meets the statutory GHG reduction target.

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<sup>8</sup> 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.

The final RHNA methodology amplifies the Plan Bay Area 2050 Final Blueprint’s emphasis on improving jobs-housing balance by using factors related to job proximity to allocate nearly half of the Regional Housing Needs Determination (RHND). It is important to note that Housing Element Law requires that the RHNA methodology improve the *intraregional* relationship between jobs and housing—not the jobs-housing balance in any particular jurisdiction. The job proximity factors direct housing units to those jurisdictions with the most jobs that can be accessed with a 30-minute commute by automobile and/or a 45-minute commute by transit. The inclusion of the Job Proximity – Transit factor encourages growth that capitalizes on the Bay Area’s existing transit infrastructure, while the Job Proximity – Auto factor recognizes that most people in the region commute by automobile.

These factors measure job access based on a commute shed to better capture the lived experience of accessing jobs irrespective of jurisdiction boundaries. Housing and job markets extend beyond jurisdiction boundaries—in most cities, a majority of workers work outside their jurisdiction of residence, and demand for housing in a particular jurisdiction is substantially influenced by its proximity and accessibility to jobs in another community. As the Town notes in its appeal, Plan Bay Area 2050 forecasts a decline in the number of jobs in the South Marin superdistrict where Corte Madera is located. However, regional transportation, environmental, and housing goals aim for a jobs-housing balance at the regional level, and South Marin remains in close proximity to many of the region’s jobs. Even in jurisdictions that lack robust transit service or where most residents commute by automobile, adding more housing in areas with easy access to jobs can lead to shorter commutes, helping to reduce VMT and GHG.

Notably, state law also requires the RHNA to improve the balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction, as described in Government Code Section 65584(d)(2). Data from the Census Bureau indicates that Corte Madera has an imbalanced ratio between low-wage jobs and affordable housing units, with 1,615 low-wage jobs and few units of rental housing affordable to low-wage workers and their families.<sup>9</sup> Accordingly, the allocation of 336 units of lower-income RHNA assigned to Corte Madera could enable many of the low-wage workers in Corte Madera to live closer to their jobs, helping to improve the jobs-housing balance, reduce commute times, and lower GHG.

## RECOMMENDED ACTION

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ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by Town of Corte Madera to reduce its Draft RHNA Allocation by 325 units (from 725 units to 400 units).

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<sup>9</sup> For more information, see this data source created by ABAG for the Local Jurisdiction Survey: <https://rhna.mtcanalytics.org/jobshousingratio.html?city=Corte%20Madera>.