

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

DATE: October 8, 2021

OVERVIEW

Jurisdiction: Town of Fairfax

Summary: The Town of Fairfax requests the decrease of its Draft RHNA Allocation by 120 units (24 percent) from 490 units to 370 units based on the following issues:

- 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: Deny the appeal.

BACKGROUND

Draft RHNA Allocation

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

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
Town of Fairfax	149	86	71	184	490

Local Jurisdiction Survey

The Town of Fairfax did not submit a Local Jurisdiction Survey. A [compilation of the surveys submitted](#) is available on the ABAG website.

Summary of 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 Fairfax. All nine comments oppose the City's appeal. [All comments received](#) are available on the ABAG website.

ANALYSIS

Issue 1: *The Town claims that the Housing Element Site Selection (HESS) Tool developed by ABAG-MTC staff was used in the RHNA process. Additionally, the Town argues that the HESS Tool contains erroneous data and that this inaccurate data resulted in ABAG failing to determine the jurisdiction's Draft Allocation in accordance with the Final RHNA Methodology.*

ABAG-MTC Staff Response: The Town's argument is not a valid basis for an appeal. Contrary to the Town's claims, the HESS Tool was not used at any point in the RHNA process. In fact, ABAG-MTC began developing the HESS Tool in fall 2020 after the development of the RHNA Methodology had concluded. Therefore, the HESS Tool is not used as an input in the RHNA Methodology and played no role in determining Fairfax's RHNA.

The HESS Tool is a web-based mapping tool currently being developed by ABAG-MTC staff to assist Bay Area jurisdictions with preparing the sites inventory required for their Housing Element updates. The tool is still under development and further data collection, data quality control, and refinements to the HESS Tool's screening methodology are underway. When Fairfax activated its HESS account, the Town received an email noting that the tool was under active development and the data presented was preliminary. ABAG expects to have a final release of the data and an updated version of the HESS Tool available in fall 2021. Local jurisdictions will be able to review this data and submit corrections directly to ABAG.

Issue 2: *The Town asserts nearly all of Fairfax's parcels are in a CAL FIRE-designated High Fire Hazard Severity Zone, and thus the HESS Tool should label all sites in Fairfax as environmentally constrained. The Town argues that if these sites are environmentally constrained they "therefore are not suitable for higher-density, multifamily development," and thus the Town's RHNA should be reduced.*

ABAG-MTC Staff Response: As noted previously, the HESS Tool plays no role in determining a jurisdiction's RHNA. Therefore, whether sites in Fairfax are shown in the HESS Tool as "environmentally constrained" has no effect on the Town's allocation. Furthermore, the data in HESS is still under development (with an opportunity for future review by local jurisdictions). Fairfax was notified that this data was preliminary and under active development when it activated its HESS account.

The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands Fairfax'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."¹ As

¹ 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

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.”² It is important to note that the HESS Tool evaluates potential sites based on *existing* local development policies and that the sites identified in the HESS Tool as “environmentally constrained” may still be developable.

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.³ 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 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 Fairfax.⁴ While there may be areas at risk of flooding in the jurisdiction, Fairfax has not provided evidence that it cannot accommodate its RHNA allocation due to a determination by FEMA or the Department of Water Resources consistent with the requirements of 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 Fairfax has the opportunity to identify the specific sites it will use to accommodate its RHNA. In

Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.”

² See [HCD’s comment letter on appeals](#) for more details.

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

⁴ The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

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.

Staff concludes that the Town's claims about the HESS Tool do not represent a valid basis for a RHNA appeal, as the HESS Tool is not used to calculate a jurisdiction's RHNA. Furthermore, Fairfax's appeal has not demonstrated that the Town 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), the Town must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. Fairfax 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.⁵

Issue 3: *The Town argues that ABAG failed to determine Fairfax's Draft Allocation in accordance with the Final RHNA Methodology and in a manner that furthers the RHNA Objective related to promoting an improved intraregional relationship between jobs and housing.*

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.⁶ Regarding the RHNA 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,*" HCD made the following findings:

The draft ABAG methodology⁷ 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

⁵ See HCD's [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

⁶ For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

⁷ 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.

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 greenhouse gas (GHG) emissions. 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.

The 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 Central Marin superdistrict. However, regional transportation, environmental, and housing goals aim for a jobs-housing balance at the regional level, and Central 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 vehicle miles travelled and GHG.

Based on the information provided above, staff concludes that the Final RHNA Methodology effectively considers the jobs-housing relationship in Bay Area jurisdictions and successfully achieves the statutory requirement to improve the jobs-housing balance in the region. Furthermore, the arguments related to this topic in the Town's appeal do not represent a valid basis for appealing the Draft RHNA allocation.

Issue 4: *The Town asserts that a lack of water supply represents 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.*

ABAG-MTC Staff Response: The Town has submitted an appeal based on Government Code Section 65584.05(b)(3), that a "significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant to subdivision (b) of Section 65584.04." Government Code Section 65584.04(b) refers to the Local Jurisdiction Survey that ABAG conducted in January and February of 2020. However, the jurisdiction does not meet the statutory criteria for submitting an appeal, as described in Government Code Section 65584.05(b)(1), because the Town did not submit a survey response to ABAG. A [compilation of the surveys submitted](#) is available on the ABAG website.

Though the jurisdiction lacks a valid basis appealing its Draft Allocation, staff explored the issues raised in the jurisdiction's appeal. Government Code Section 65584.04(e)(2)(A) states that ABAG must consider the opportunities and constraints to development of additional housing in each member jurisdiction due to "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."

The Town has not demonstrated that it is precluded from accommodating its RHNA allocation because of a decision by Marin Water. While Marin Water has discussed a potential moratorium on new water connections in response to the drought, this action has not yet been implemented. Even if a moratorium is implemented in the future, there is no indication that it would extend for the next ten years until the end of the RHNA planning period in 2031. Furthermore, future population growth does not necessarily mean a similar increase in water consumption: while the region's population grew by approximately 23 percent between 1986 and 2007, total water use increased by less than one percent.

A review by ABAG-MTC staff of 54 UWMPs from 2015 and 2020 produced by water retailers that cover 94 percent of the Bay Area's population illustrate a further reduction in per capita water use over the past decade. Between 2010 and 2015 per capita water use fell from 162 gallons per person per day to 105, reflecting significant conservation during the last major drought. In the 2020 non-drought year, conservation held, with the regional daily use at 114 gallons per person

per day, a 30 percent reduction since 2010. In addition to having an impressive aggregate reduction in water use, only one water retailer out of the 54 reviewed plans did not meet state per capita water conservation goals. In other words, per capita water use has substantially declined in the region over the last quarter century.

The Plan Bay Area 2050 Final Blueprint, which is used as the baseline allocation in the RHNA methodology, has the potential to lessen water supply issues in the region. The Final Blueprint concentrates future growth within already developed areas to take advantage of existing water supply infrastructure and reduce the need for new water infrastructure to be developed to serve new areas. Per capita water use is likely to be less due to a greater share of multifamily housing and modern water efficiency standards for new construction and development. The continued urban densification promoted by the Final Blueprint – in addition to the continued implementation of water conservation, reuse and recycling programs by local water agencies and municipalities – will help to continue the downward trajectory of per capita water consumption within the region. One of Plan Bay Area 2050's strategies to reduce risks from hazards is to provide financial support for retrofits to existing residential buildings to increase water efficiency. ABAG and MTC are working with partner agencies to secure additional resources to improve water conservation in the Bay Area over the long term.

It is true that the current drought poses significant challenges to Bay Area communities, and that the incidence of droughts is likely to increase because of climate change. All jurisdictions in the Bay Area, State of California, and much of the western United States must contend with impacts from drought and all 441,176 new homes that must be planned for in the region need sufficient water. However, as HCD notes in its comment letter on appeals that identified drought as an issue, "these issues do not affect one city, county, or region in isolation. ABAG's allocation methodology encourages more efficient land-use patterns which are key to adapting to more intense drought cycles and wildfire seasons. The methodology directs growth toward infill in existing communities that have more resources to promote climate resilience and conservation efforts."⁸

Action can be taken to efficiently meet the region's future water demand, even in the face of additional periods of drought. Eight of the region's largest water districts in the region worked together to produce the Drought Contingency Plan to cooperatively address water supply reliability concerns and drought preparedness on a mutually beneficial and regional focused basis.⁹ The Drought Contingency Plan identifies 15 projects of a regional nature to further increase water supply reliability during droughts and other emergencies.

⁸ See [HCD's comment letter on appeals](#) for more details.

⁹ See the [Drought Contingency Plan](#) for more information.

Importantly, the existence of the drought does not change the need to add more housing to address the Bay Area's lack of housing affordability. Part of the reason the Regional Housing Needs Determination (RHND) assigned by HCD for this RHNA cycle is significantly higher than in past cycles is because it incorporates factors related to overcrowding and housing cost burden as a way of accounting for existing housing need. ABAG encourages jurisdictions to take steps to accommodate growth in a water-wise manner, such as supporting new development primarily through infill and focusing on dense housing types that use resources more efficiently. We also support efforts like the Bay Area Regional Reliability partnership between many of the major water agencies in the region. The measures identified in the Drought Contingency Plan will improve regional reliability for all, especially water districts with a small or singular water supply portfolio.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by The Town of Fairfax to reduce its Draft RHNA Allocation by 120 units (from 490 units to 370 units).