



ABAG-MTC Staff Response to *Town of Fairfax* RHNA Appeal

ABAG Administrative
Committee

October 8, 2021

Overview of Town of Fairfax Appeal

Appeal Request:

- Reduce allocation by 120 units (24%) from 490 units to 370 units.

Staff Recommendation:

- Deny the appeal.

Appeal bases cited:

- 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.

Note: The Town of Fairfax did not submit a Local Jurisdiction Survey.

Issue #1: Error in RHNA Calculation

Jurisdiction Argument: Fairfax claims Housing Element Site Selection (HESS) Tool developed by ABAG-MTC staff was used in the RHNA process and contains erroneous data. 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 HESS tool was not used at any point in the RHNA process. ABAG-MTC staff began developing HESS tool in fall of 2020, after RHNA methodology development had concluded.
- This argument is not a valid basis for appeal.

Issue #2: Lack of Available Land

Jurisdiction Argument: Nearly all Fairfax parcels are in CAL FIRE-designated High Fire Hazard Severity Zone, and thus all sites should be labeled as environmentally constrained in HESS tool. 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:

- The HESS Tool plays no role in determining a jurisdiction’s RHNA, and it evaluates sites based on **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.
- Given variety of natural hazard risks Bay Area faces, it is not possible to address the region’s housing needs and avoid planning for new homes in places at risk. Fairfax has authority to plan for housing in places with lower risk.
- Fairfax does not provide evidence it is unable to consider underutilization of sites, increased densities, and other planning tools to accommodate its assigned need.

Issue #3: Jobs-Housing Relationship

Jurisdiction Argument: ABAG failed to determine Fairfax’s Draft Allocation in accordance with Final RHNA Methodology and in manner that furthers RHNA Objective related to promoting improved intraregional relationship between jobs and housing.

ABAG-MTC Staff Response:

- This argument challenges the final RHNA methodology adopted by ABAG and approved by HCD, and thus falls 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.
- RHNA methodology uses data about each jurisdiction’s jobs-housing relationship in the Plan Bay Area 2050 Final Blueprint and in factors related to Job Proximity, which measure job access based on commute shed to better capture lived experience of accessing jobs irrespective of jurisdiction boundaries.
- Housing Element Law requires RHNA methodology to improve *intraregional* relationship between jobs and housing—not jobs-housing balance in any particular jurisdiction. South Marin is near many of the region’s jobs, so adding housing can lead to shorter commutes, helping to reduce VMT and GHG.

Issue #4: Drought

Jurisdiction Argument: Lack of water supply represents a significant and unforeseen change in circumstances that merits a revision of the information submitted in the Local Jurisdiction Survey.

ABAG-MTC Staff Response:

- Fairfax did not submit a Local Jurisdiction Survey, so an appeal on this basis is not valid.
- Government Code Section 65584.04(e)(2)(A) states:
 - ABAG must consider opportunities and constraints to development of housing 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.”
- Fairfax has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider. Even if a moratorium on new water connections is implemented in the future, there is no indication it would extend until the end of the RHNA planning period in 2031.

Recommended Action for **Town of Fairfax** Appeal

Deny the appeal filed by the City of Larkspur to reduce its Draft RHNA Allocation by 120 units.

- The jurisdiction's Draft RHNA Allocation is in accordance with the Final RHNA Methodology adopted by the ABAG Executive Board and approved by HCD and furthers the RHNA Objectives identified in Government Code Section 65584(d).
- Fairfax did not submit a Local Jurisdiction Survey, so an appeal on this basis is not valid. Further, no 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.