

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

DATE: October 15, 2021

## OVERVIEW

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**Jurisdiction:** Town of Ross

**Summary:** Town of Ross requests the decrease of its Draft RHNA Allocation by 59 units (53 percent) from 111 units to 52 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
  - Existing and projected jobs and housing relationship.
  - Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
  - Availability of land suitable for urban development or for conversion to residential use.
  - Distribution of household growth assumed for Plan Bay Area 2050.
  - 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:** Deny the appeal.

## BACKGROUND

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### Draft RHNA Allocation

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

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
Town of Ross	34	20	16	41	111

## Local Jurisdiction Survey

The Town of Ross 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 Ross. 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 that while the Local Jurisdiction Survey included questions about constraints to housing due to land suitability, there is no indication that the Plan Bay Area 2050 Final Blueprint, the baseline allocation for the RHNA methodology, took specific issues like FEMA floodplain, fire severity zones, slope stability, or availability of vacant land with public services and utilities into consideration when considering "developable land."*

**ABAG-MTC Staff Response:** The final RHNA methodology adequately considers the potential development constraints described in Ross's appeal through use of data from the Plan Bay Area 2050 Final Blueprint as the baseline allocation. In developing the Plan 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 Town'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 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."*<sup>1</sup>

The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands the Town'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>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 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 Ross.<sup>4</sup> While there may be areas at risk of flooding in Ross, the Town 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).

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<sup>1</sup> See [HCD's comment letter on appeals](#) for more details.

<sup>2</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>3</sup> See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

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

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, Ross 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 by choosing strategies related to the availability of underutilized land, opportunities for infill development and increased residential densities, or alternative zoning and density 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 Town of Ross 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>5</sup>

***Issue 2:*** *The Town of Ross argues ABAG failed to adequately consider the Town's jobs-housing relationship, because there is no indication that modeling of households and jobs observed discrete jurisdictional boundaries. The Town also notes that Ross has 0.44 jobs per housing unit and argues that adding units to areas with few jobs and limited transit will increase vehicle miles traveled and greenhouse gas emissions.*

***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.<sup>6</sup> 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:

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<sup>5</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<sup>7</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, and when exporting data about total households in 2050 for the RHNA baseline, appropriate jurisdiction boundaries were used. 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 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.

The factors in the RHNA methodology 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

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<sup>7</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.

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. 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.

Notably, state law also requires the RHNA methodology to consider the balance between the number of low-wage jobs and the number of affordable housing units in each jurisdiction, as described in Government Code Section 65584.04(e)(2)(B). Data from the Census Bureau indicates that Ross has an imbalanced ratio between low-wage jobs and affordable housing units, with 89 low-wage jobs in the jurisdiction and no rental units that are affordable to low-wage workers and their families.<sup>8</sup> Accordingly, the allocation of 54 units of lower-income RHNA assigned to the Town of Ross could enable many of the low-wage workers in the town to live closer to their jobs, helping to improve the jobs-housing balance, reduce commute times, and lower GHG.

**Issue 3:** *Ross asserts that a significant and unforeseen change in circumstances has occurred in the Town because the Marin Municipal Water District (MMWD) has declared drought conditions. If drought conditions persist, a mitigating step that MMWD could take would be to place a moratorium on new or expanded water service until such time that adequate supply is available. Ross argues that the uncertainty regarding municipal water supply has the potential to dramatically affect the feasibility of new housing development in the Town of Ross.*

**ABAG-MTC Staff Response:** 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.”

However, the arguments put forward by the Town of Ross do not meet the requirements for a valid RHNA appeal. 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. Thus, at this time, there is no evidence that the Town is precluded from accommodating its RHNA allocation.

Importantly, 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

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<sup>8</sup> For more information, see this data source created by ABAG for the Local Jurisdiction Survey: <https://rhna.mtcanalytics.org/jobshousingratio.html?city=Ross>.

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.

Also, 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 as a result 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."<sup>9</sup>

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

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<sup>9</sup> See [HCD's comment letter on appeals](#) for more details.

reliability concerns and drought preparedness on a mutually beneficial and regional focused basis.<sup>10</sup> The Drought Contingency Plan identifies 15 projects of a regional nature to further increase water supply reliability during droughts and other emergencies.

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 for water districts with a small or singular water supply portfolio.

## **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 Ross to reduce its Draft RHNA Allocation by 59 units (from 111 units to 52 units).

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<sup>10</sup> See the [Drought Contingency Plan](#) for more information.