



ABAG-MTC Staff Response to *County of Marin* RHNA Appeal

ABAG Administrative
Committee

October 22, 2021

Overview of **County of Marin** Appeal

Appeal Request:

- Reduce allocation by 1,288 units (36%) from 2,281 units to 2,281 units.

Staff Recommendation:

- Deny the appeal.

Appeal bases cited:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey.
- 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.

Issue #1 and #6: Existing Zoning and Land Use Regulations

Jurisdiction Argument: ABAG indicates appeals cannot identify limits on RHNA due to local zoning and other land use restrictions, but Local Jurisdiction Survey requested information about local policies and land use constraints to development. Government Code Section 65584.05(e)(2) implies statute does not entirely prohibit reliance on existing zoning for determining land suitable for urban development. Marin County staff have not seen evidence that ABAG conducted the analysis of alternative zoning schemes required by this statute.

ABAG-MTC Staff Response:

- ABAG conducted the Local Jurisdiction Survey consistent with the requirements identified in Government Code Section 65584.04(b), so this argument is not a valid basis for an appeal.
- Statute requires ABAG to request information about all factors identified in Government Code Section 65584.04(e), which includes opportunities and constraints to development as well as county policies to preserve prime agricultural land.
- HCD's comment letter on RHNA appeals reiterated 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."
- ABAG-MTC staff evaluated multiple alternative zoning schemes through the analyses that went into development of the Plan Bay Area 2050 Final Blueprint and Draft Environmental Impact Report.

Issue #2: Lack of Available Land

Jurisdiction Argument: ABAG did not adequately consider information submitted in the Local Jurisdiction Survey about development constraints. RHNA methodology departs from the goals of Plan Bay Area 2050 and the statutory RHNA objectives that emphasize housing near job centers, infill development, and resource protection.

ABAG-MTC Staff Response:

- Development constraints considered in Plan Bay Area 2050 Final Blueprint, the baseline allocation for RHNA.
- Final Blueprint also integrates strategies related to agricultural and open space preservation.
- Government Code Section 65584.04(e)(2)(B) states:
 - Jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.
- Marin County identifies the specific sites it will use to accommodate its RHNA. In doing so, it can choose locations and plan for densities that avoid developing on farmlands, grazing lands, conservation lands, and critical habitats.
- HCD has authority to determine if the RHNA methodology furthers the statutory objectives. HCD determined RHNA methodology achieves statutory objective to promote infill development and socio-economic equity through efficient development patterns that achieve GHG reduction targets. HCD noted that ABAG's methodology allocates more RHNA to jurisdictions with more job access and lower VMT.

Issue #3: Disproportionate RHNA Calculation

***Jurisdiction Argument:** Draft allocation is too large because Marin County received nearly 25% of the RHNA units allocated to Marin jurisdictions but it has only 15% of the total acres identified as Growth Geographies for Marin jurisdictions in the Plan Bay Area 2050 Final Blueprint.*

ABAG-MTC Staff Response:

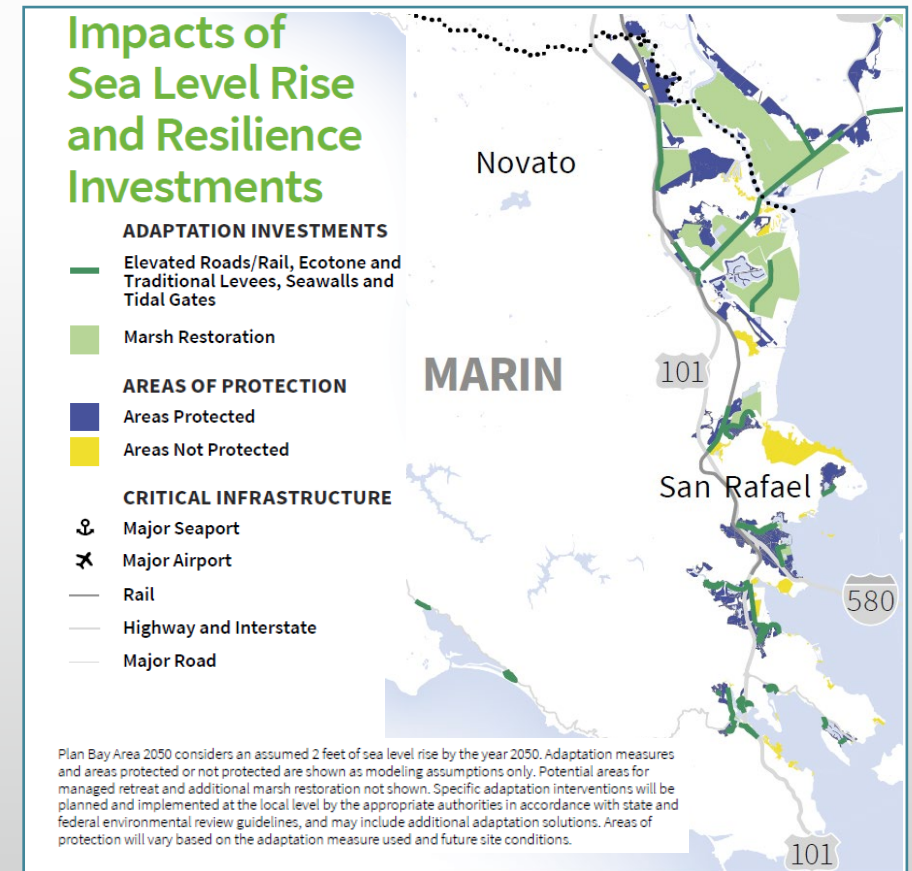
- This argument challenges the final RHNA methodology adopted by ABAG and approved by HCD, and thus falls outside the scope of the appeals process.
- A valid appeal must show ABAG made an error in the application of the methodology in determining the jurisdiction's allocation.
- If land is included in a Growth Geography in the Final Blueprint, it does not necessarily mean future growth is forecasted on that land. The acreage included in a Growth Geography does not translate linearly to development.
- RHNA must address both existing and future housing needs. The RHNA methodology accomplishes this by using total households in 2050 as the baseline allocation, incorporating both existing households and the forecasted growth in households from the Final Blueprint.
- The County's draft allocation is larger than other jurisdictions in Marin County because the unincorporated county has the highest number of existing households of any jurisdiction in the county.

Issue #4: Areas at Risk of Natural Hazards

Jurisdiction Argument: ABAG did not adequately consider the effects of climate change and the housing development constraints for areas within the county at risk of flooding, sea level rise, and wildfire.

ABAG-MTC Staff Response:

- Hazard risk is generally not identified in Housing Element Law as a constraint to housing development.
- County has not provided evidence that FEMA or Department of Water Resources has determined County's flood management infrastructure is inadequate to avoid risk of flooding.
- Final Blueprint, which is RHNA methodology baseline allocation, excludes areas with unmitigated high hazard risk from Growth Geographies.
- Given variety of natural hazard risks in Bay Area, it is not possible to address region's housing needs and avoid planning for new homes in places at risk. Marin County has authority to plan for housing in places with lower risk.
- Marin County does not provide evidence it is unable to consider underutilization of existing sites, increased densities, ADUs, and other planning tools to accommodate its assigned need.



Issue #5: Affirmatively Furthering Fair Housing

Jurisdiction Argument: ABAG did not adequately consider Local Jurisdiction Survey information about affirmatively furthering fair housing (AFFH). RHNA methodology does not meet statutory objective to promote AFFH. The County requests a reduction in its allocation of moderate- and above moderate-income units because it has met and exceeded its allocations for these units in previous RHNA cycles.

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 concluded ABAG's RHNA methodology achieves statutory objective to promote AFFH. HCD commended methodology's allocation of more RHNA to jurisdictions with higher access to resources.
- Moderate- and above moderate-income units represent nearly 60% of the housing needs assigned to the Bay Area by HCD. Allocating units at all income levels to high-resource communities helps ensure all communities do their "fair share" to provide more housing, which advances several key RHNA objectives.

Issue #7: Impacts of COVID-19

Jurisdiction Argument: COVID-19 represents a significant and unforeseen change in circumstances that merits a reduction of Marin County's RHNA. ABAG did not adequately account for changes to population, job growth, and housing from the pandemic.

ABAG-MTC Staff Response:

- HCD comment letter on appeals indicates RHNA appeals based on changes caused by COVID-19 do not fall within the appeal criteria defined by statute.
 - HCD states: *“The COVID-19 pandemic has only increased the importance of ensuring that each community is planning for sufficient affordable housing as essential workers, particularly lower income ones, continue to commute to their places of business.”*
- Potential impacts of COVID-19, including accelerated shift toward telecommuting and associated economic boom/bust cycle, incorporated into RHNA Methodology through integration of Plan Bay Area 2050 Final Blueprint.
- Impacts from COVID-19 are not unique to any single jurisdiction. Appeal does not indicate Marin County's housing need has been disproportionately impacted relative to the rest of the Bay Area. The pandemic is not cause for a reduction in RHNA for any particular jurisdiction.

Issue #8: Drought

Jurisdiction Argument: ABAG did not consider the unprecedented drought and potential limits placed on water supply for new development when it finalized the methodology and distributed the draft RHNA.

ABAG-MTC Staff Response:

- 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.”
- Marin County has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider.
- HCD’s comments on Bay Area appeals note that “ABAG’s allocation methodology encourages more efficient land-use patterns which are key to adapting to more intense drought cycles and wildfire seasons.”
- Drought poses significant challenges to Bay Area communities, but these issues do not affect one city or county in isolation. Action can be taken to efficiently meet the region’s future water demand, even in the face of additional periods of drought.

Recommended Action for County of Marin Appeal

Deny the appeal filed by the County of Marin to reduce its Draft RHNA Allocation by 1,288 units.

- ABAG considered information submitted in the local Jurisdiction Survey consistent with how the methodology factors are defined in Government Code Section 65584.04(e).
- 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.