



# CITY OF SAUSALITO

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October 27, 2021

***Via EMail***

Association of Bay Area Governments (ABAG) Executive Board  
Association of Bay Area Governments Administrative Committee  
C/O Fred Castro, ABAG Clerk of the Board  
375 Beal Street, Suite 700  
San Francisco, CA 94105-2066

**RE: ABAG Administrative Committee Regional Housing Needs Allocation Appeals Public Hearing – Comment Letter on All Appeal Deliberations and on City of Sausalito Appeal**

Dear Board, Administrative Committee Chair Arreguin, and Administrative Committee members,

Thank you for the difficult work to ensure the 6<sup>th</sup> Cycle RHNA is distributed in an equitable way that both seeks to provide opportunity to those in need of housing and ensures that our shared goals to put housing near services and jobs to address climate change are addressed. The City of Sausalito (Sausalito) would like to stress that we are an active partner in this process and are willing to take on our fair share of the region's housing needs.

Please consider this comment letter as it relates to the Administrative Committee's consideration of all RHNA appeals, including but not limited to, the City of Sausalito's appeal and final deliberations.

There is a significant misunderstanding on the part of ABAG staff and the Administrative Committee regarding what HCD reviewed and approved and the basis for an appeal of the RHNA.

## **ABAG RESPONSE TO APPEAL AND RELIANCE ON HCD FINDINGS**

ABAG's response to Sausalito's appeal included the following statements:

*"The final RHNA methodology adequately considers the potential development constraints described in Sausalito's appeal through use of data from the Plan Bay Area 2050 Final Blueprint as the baseline allocation."*

*"As stated previously, critiques of the RHNA methodology itself do not represent a valid basis for a RHNA appeal."*

Committee Member Mayor Romero commented on Sausalito's appeal, referring to the appeal as allegations within the rather lengthy report presented from Sausalito consistently arguing that the RHNA Methodology is inconsistent State law. Mayor Romero identified that the Committee has abundant correspondence from the State that indicates the document and process and methodology the Committee used passes muster with the State.

Committee Chair Mayor Arreguin followed Mayor Romero's comments with a statement that HCD (the Department of Housing and Community Development) approved the methodology and found that it met the statutory requirements.

## **HCD FINDINGS DO NOT APPROVE ABAG'S APPLICATION OF GOVERNMENT CODE SECTION 65584.04**

As shown above, ABAG staff and Administrative Committee members repeatedly identified that HCD has approved their methodology and that the City's appeal falls outside of the scope of the appeal process. ABAG staff and the members of the Administrative Committee are acting on the basis HCD has endorsed the methodology as being fully consistent with State law, including the factors prescribed Government Code Section 65584.04(e) that address opportunities and constraints, including suitable land for urban and residential development as well as a number of other factors, for each jurisdiction.

However, as described below, HCD has not approved the full methodology. *HCD's approval and findings have been limited to whether the methodology furthers the statutory objectives under Government Code Section 65584(d).* HCD's April 12, 2021 letter (Attachment 1) only addressed the consistency of the ABAG RHNA methodology with the RHNA statutory objectives under Government Code Section 65584(d) and does not address nor endorse the Draft RHNA Plan or methodology in terms of consistency with Government Code Section 65584.04(e).

Government Code Section 65584.04(e) requires ABAG to address specific factors for each jurisdiction (jobs/housing ratio, water/sewer service, suitability of sites for residential/urban development, etc.) in the development of its methodology. As stated in ABAG's response, ABAG relied on Plan Bay Area 2050 for this analysis and Plan Bay Area 2050 does not analyze or address each of these factors at the local jurisdiction level. The lack of this analysis is the cause for the disconnect between cities, particularly those that are mostly built out or significantly constrained, and the Draft RHNA Plan.

*Related to the methodology requirements established by Government Code Section 65584.04(e), HCD did not comment on whether ABAG's analysis under this section was adequate.* Rather HCD put the burden on ABAG to review appeals, and specifically identified in its August 30, 2021 letter (Attachment 2) that "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." However, ABAG did not consider whether appeals included documentation of land suitable for urban development, conversion to residential use, underutilized land, infill development and increased residential densities, but focused on the statement that communities that view themselves as built-out or limited due to natural constraints must plan for housing.



## LEGAL REQUIREMENTS FOR APPEALS

Government Code Section 65584.05(b) states that appeals shall be limited to any of the following circumstances:

*(1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04.*

*(2) The council of governments or delegate subregion, as applicable, failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of Section 65584.*

*(3) 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. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.*

Sausalito is appealing based on paragraph 2 above. ABAG has not reviewed the appeals to determine if the RHNA Plan distributed allocations based on the information described in 65584.04, which requires significant analysis at the member jurisdiction level, as described in the City's appeal letter dated July 9, 2021.

## REVIEW OF SAUSALITO APPEAL BASED ON GOVERNMENT CODE SECTION 65584.04

Sausalito is not stating that it does not need to plan for housing but is stating that the planning for housing should be based on the factors required by Government Code Section 65584.04, including factors identified by HCD in its August 30, 2021 letter. These factors are documented and analyzed in Sausalito's appeal letter and presentation. However, ABAG did not address whether there were actual opportunities to accommodate in housing through means such as rezoning commercial areas, such as mixed-use areas and upzoning non-vacant land, for each member jurisdiction that appealed its analysis based on ABAG's failure to demonstrate opportunities and constraints at the member jurisdiction level, as is required of ABAG by paragraphs 1 and 2 of Government Code Section 65584.04(e).

HCD's approval of the methodology only as it relates to Government Code Section 65584(d), but not Government Code Section 65584.04(e) is an extremely important distinction to make. The lack of adequate analysis for each member jurisdiction as required by Government Code Section 65584.04(e) is the primary cause of the disconnect between the allocations to local jurisdictions versus their capacity to accommodate the RHNA.

While Sausalito did not have additional opportunity to address this inconsistency during the Administrative Committee's deliberations, which identified HCD's approval of the methodology as a basis for rejecting Sausalito's appeal, it is important to identify that HCD did not approve the methodology as it relates to Government Code Section 65584.04. ABAG is responsible for reviewing the methodology and appeals associated with the application of Government Code Section 65584.04. Any appeal determinations that are based on HCD's approval of the

methodology as it relates to the opportunities and constraints at the member jurisdiction level are not valid. While ABAG's message was that Sausalito was making unfounded allegations, it is clear that the appeal was not reviewed by ABAG based on the requirements of the Government Code.

Sausalito's appeal focused on ABAG's application of GC 65584.04(e) - HCD did not make any findings related to this. It is up to local jurisdictions and interested members of the public to review and comment on ABAG's application of Government Code 65584.04(e) through the appeal process. It is ABAG's responsibility to consider whether the RHNA Plan adequately addresses Government Code Section 65584.04(e) and ABAG is not considering comments on this basis.

## **HCD GUIDANCE RELATED TO IDENTIFICATION OF HOUSING SITES**

ABAG's response to the City's appeal and statements by ABAG staff indicate that HCD prohibits their excluding sites on the basis of hazards, except flooding. However, State law identifies that ABAG may include flooding in its review of sites, but does not define or describe how ABAG should determine suitability and does not restrict ABAG from reducing potential capacity for development on sites subject to hazards. HCD's guidance related to the inventory of sites demonstrates the high bar HCD has set for acceptance of sites in each jurisdiction's inventory of residential sites (see Attachment 3) and specifically requires jurisdictions to address limitations associated with hazards. P. 3 of HCD's Housing Element Site Inventory Guidebook describes characteristics to consider when evaluating the appropriateness of sites and specifically lists slope instability, erosion, and other factors to be considered. P. 20 of HCD's Housing Element Site Inventory Guidebook indicates that the capacity of a site should be adjusted for areas that cannot be developed due to environmental factor such as hazards, wetlands, or topography that cannot be mitigated. HCD's guidance demonstrates that hazards should be a factor in determining each jurisdiction's capacity for growth.

## **CONCLUSION**

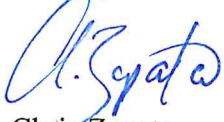
Sausalito does not agree with the Administrative Committee. The Administrative Subcommittee did not consider the details of Sausalito's proposal and did not demonstrate that the RHNA Plan methodology met the requirements of Government Code Section 65584.04. The City's detailed analysis of our capacity, which included an analysis of land suitable for urban development, sites suitable for conversion to residential use, opportunities for underutilized sites and infill sites, and opportunities to increase residential densities, was not considered. Sausalito did not limit our capacity to available land, but considered many sites developed with residential, commercial, public/quasi-public, and other uses. Although Sausalito provided abundant evidence of our capacity, the committee opted to not review whether the Draft RHNA Plan methodology met the stringent requirements of Government Code Section 65584.04 to analyze specific factors at the member jurisdiction level.

In closing, Sausalito reiterates our commitment to accommodating our fair share of the region's housing needs, based on an evaluation of Sausalito's growth potential considering opportunities and constraints at the member jurisdiction level.

We would be happy to meet with ABAG to discuss our data, including readily available data sources, and recommended approaches to accommodate housing needs while addressing local constraints.



Thank you,



Chris Zapata  
City Manager

Cc: Mayor Jill James Hoffman  
Vice-Mayor Kellman  
Councilmember Susan Cleveland-Knowles  
Councilmember Melissa Blaustein  
Councilmember Ian Sobieski  
Mary Wagner, City Attorney  
Heidi Scoble, Interim Community Development Director  
Serge Avila, Acting City Clerk  
Mayor Pat Eklund, ABAG Administrative Committee/City of Novato  
Irene Borba, City of Belvedere Director of Planning and Building  
Adam Wolff, Town of Corte Madera Director of Planning and Building  
Ben Berto, Town of Fairfax Director of Planning and Building Services  
Neal Toft, City of Larkspur Director of Planning and Building  
Patrick Kelly, City of Mill Valley Director of Planning and Building  
Patrick Streeter, Town of Ross Planning and Building Director  
Elise Semonian, Town of San Anselmo Planning Director  
Dina Tasini, Town of Tiburon Director of Community Development  
Thomas Lai, Marin County Community Development Agency Director  
Jillian Zeiger, Marin County Planner