

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

DATE: September 24, 2021

OVERVIEW

Jurisdiction: City of Alameda

Summary: The City of Alameda requests the reduction of its Draft RHNA Allocation by 2,703 units (50 percent) from 5,353 units to 2,650 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 City of Alameda received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Alameda	1,421	818	868	2,246	5,353

Local Jurisdiction Survey

The City of Alameda did not submit 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, but there were none that specifically relate to the appeal filed by the City of Alameda. [All comments received](#) are available on the ABAG website.

ANALYSIS

The City 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 City of Alameda does not meet the statutory criteria for submitting an appeal, as described in Government Code Section 65584.05(b)(3), because the City did not submit a survey response to ABAG. Though the jurisdiction lacks a valid basis for appealing its draft allocation according to Government Code Section 65584.05(b)(3), ABAG-MTC staff responded to the issues raised in the jurisdiction’s appeal. The City also appealed based on Government Code Section 65584.05(b)(2), claiming ABAG failed to determine the jurisdiction’s Draft RHNA Allocation in accordance with the Final RHNA Methodology and in a manner that furthers the RHNA Objectives. ABAG’s response below addresses these claims as well.

Issue 1: *The City argues that it has limited land for housing because of a voter-approved City Charter provision that prohibits construction of multifamily housing in Alameda. As a result, its RHNA allocation should be limited to 331 units per year for a total of 2,650 over the 8-year period.*

ABAG-MTC Staff Response: Government Code Section 65584.04(g) specifically states that any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in a city’s or county’s share of regional housing need. Thus, this is not a valid basis for a RHNA appeal.

Issue 2: *The City cites a constraint to development because the Navy has imposed a financial impact fee on every market rate unit constructed at Alameda Point, the city’s largest opportunity site, after the 1,506th unit. The impact fee makes any additional residential development beyond the initial 1,506 units infeasible at Alameda Point. By the start of the RHNA period, just over 500 units will be constructed leaving less than 1,000 units (without the fee) to accommodate RHNA. Under State Housing Law, the City of Alameda cannot accommodate its RHNA allocation on sites that are not economically feasible to develop. Additionally, development constraints imposed by external regulatory sources, such as the federal government, is a basis for RHNA reduction.*

ABAG-MTC Staff Response: 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.”¹

While Alameda Point may be the city’s largest opportunity site, the City has not demonstrated that it cannot accommodate its RHNA allocation elsewhere. Government Code Section 65584.04(e)(2) allows consideration of development constraints imposed by an external agency under certain narrow circumstances, but these do not include the imposition of an impact fee.

Issue 3: *Alameda argues it cannot accommodate its RHNA allocation in areas that are not at risk of natural hazards. Less than 50% of Alameda's urbanized area is outside a natural hazard zone. All of Alameda's potential housing sites are within future sea level rise inundation zones. A September 2020 report shows that shallow ground water rises with sea level rise and increases liquefaction risk and environmental and health hazards, and degrades infrastructure/utilities. Sea walls do not address rising groundwater, and the rising groundwater hazards in Alameda will occur ahead of the rising sea level hazards and will be more expensive and problematic to mitigate. Alameda's RHNA allocation will require building homes in high hazard areas inconsistent with Plan Bay Area 2050 goals and the ABAG RHNA Methodology.*

ABAG-MTC Staff Response: The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands Alameda’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.² As HCD notes in its comment letter on submitted appeals, “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.”³

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

² 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.”

³ See [HCD's comment letter on appeals](#) for more details.

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 Housing Methodology (HMC) members during the methodology development process.⁴ 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.

Plan Bay Area 2050 assumes one foot of sea level rise by 2035 and two feet of rise in 2050. The adaptation solutions that are imagined are targeted along portions of shoreline that have inundation with just two feet of rise, including locations in the City of Alameda. Importantly, scientific evidence produced by the State of California suggests it is very unlikely there will be sea level rise over the next few decades that is more extreme than the levels assumed in Plan Bay Area 2050.⁵

The City of Alameda's sea-level influence groundwater rise study provides valuable information for the city and region. As the region develops adaptation solutions to address inundation from the Bay companion solutions that address groundwater will also be necessary. New development, like all existing development in Alameda, will need to enact adaptation solutions to address rising groundwater associated with sea level rise. New development may be more able to mitigate groundwater risks as possible solutions may be designed directly into the development.

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, Alameda has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, the City 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.

Per Government Code Section 65584.04(e)(2)(B), the City of Alameda must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. The City does not provide evidence it is unable to consider

⁴ See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

⁵ For more information, see pages 26 and 31 of [Rising Seas in California: An Update on Sea-Level Rise Science](#).

underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.⁶

Issue 4: *With access to the larger region limited to four vehicular bridges and one tunnel all connecting to the already congested I-880 in Oakland, accommodating Alameda's RHNA allocation will result in significant transportation problems locally and regionally.*

ABAG-MTC Staff Response: Transportation impacts are not identified in Government Code Section 65584.04(e) as a factor to be considered in the RHNA methodology. As a result, this is not a valid basis for a RHNA appeal.

Plan Bay Area 2050 includes more than half a trillion dollars of future transportation investments through 12 strategies in its Transportation Element that would encourage alternatives to driving, lessening the impacts of household growth on the City of Alameda's roads. In particular, transportation projects nested within these strategies include the Alameda Point Multimodal Enhancements project, which would improve local bus service in Alameda and support the newly-opened ferry service in between Seaplane Lagoon and Alameda Point, as well as more frequent ferry service at the Alameda Main Street and Harbor Bay ferry terminals. To smooth express bus and auto travel, the long-range plan would invest in the Oakland Alameda Access Project, which would improve connectivity between the Webster and Posey tubes and I-880. Additionally, the plan envisions billions of dollars for active transportation and transportation demand management, further reducing reliance on auto travel for all Bay Area residents.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by the City of Alameda to reduce its Draft RHNA Allocation by 2,703 units (from 5,353 units to 2,650 units).

⁶ See HCD's [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.