

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

DATE: September 24, 2021

## OVERVIEW

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**Jurisdiction:** City of Dublin

**Summary:** The City of Dublin requests the reduction of its Draft RHNA Allocation by 2,267 units (61 percent) from 3,719 units to 1,452 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
  - 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.
- 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 City of Dublin received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Dublin	1,085	625	560	1,449	3,719

### Local Jurisdiction Survey

The City of Dublin 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, but there were none that specifically relate to the appeal filed by the City of Dublin. [All comments received](#) are available on the ABAG website.

## ANALYSIS

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**Issue 1:** *Dublin requests that its above moderate-income allocation (1,449 units) be re-allocated to other jurisdictions because the City lacks sufficient land to accommodate its RHNA allocation because of recently constructed housing units, as well as additional housing units in its project pipeline. During the current RHNA cycle (2015-2023), Dublin has issued building permits for 4,396 units compared to its allocation of 2,285 units, including 4,252 above moderate-income units (688% of its allocation for that income category).*

**ABAG-MTC Staff Response:** We commend the City of Dublin's track record in building new homes. However, 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>

Per Government Code Section 65584.04(e)(2)(B), Dublin 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 underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.<sup>2</sup>

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

<sup>2</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.

Regarding the City's concern about its allocation of above moderate-income units, it is important to note that moderate- and above moderate-income units represent nearly 60 percent of the housing needs assigned to the Bay Area by HCD. If these units were not allocated to areas like Dublin with high access to opportunity (which also tend to have a higher share of higher-income households), then they would be directed to communities with a higher share of lower-income households, which could increase displacement pressures in these communities. 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 2:** *Dublin argues that the drought could create a challenge to provide water service for existing and planned growth. The Dublin San Ramon Services District (DSRSD) is the local water retailer for the City of Dublin. DSRSD recently prepared the Draft 2020 Urban Water Management Plan (UWMP), dated May 2021. The UWMP acknowledges that Dublin could experience problems due to an expiring water supply contract, dependence on imported water sources, and increased demand. Drought conditions could be more impactful on communities, like Dublin, which source water from the delta. Water supplied from the delta is more susceptible to problems due to endangered species and increased use by the agricultural industry.*

**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 City of Dublin do not meet the requirements for a valid RHNA appeal. Although the City cites information from the Urban Water Management Plan (UWMP) prepared by the Dublin San Ramon Services District (DSRSD) about possible water supply issues and potential challenges posed by further growth, the City has not demonstrated that it is precluded from accommodating its RHNA allocation because of a decision by this water service provider.

The Bay Area's history demonstrates that 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 and 2007, total water use increased by less than one percent.<sup>3</sup> 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

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<sup>3</sup> San Francisco Bay Area Integrated Regional Water Management Plan, 2019.

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 further reduce 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."

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 reliability concerns and drought preparedness on a mutually beneficial and regional focused basis.<sup>4</sup> The Drought Contingency Plan identifies 15 projects of a regional nature to further increase water supply reliability during droughts and other emergencies.

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<sup>4</sup> See the [Drought Contingency Plan](#) for more information.

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.

**Issue 3:** *The City cites the population decline from 2020-2021 in California (0.46%) and Dublin (0.7%). If the declining population trend continues, it could translate to decreased households in 2050, which, as the baseline allocation in the RHNA methodology, is a factor used for calculating the City's allocation.*

**ABAG-MTC Staff Response:** Government Code Section 65584.04(g)(3) states that stable population numbers cannot be used as a justification for a determination or a reduction of a jurisdiction's share of the regional housing need. Consistent with this statutory language, stable or declining population in a jurisdiction is not, by itself, evidence that there is not a need for additional homes in the community. It may instead be a sign of an unhealthy housing market where individuals and families lack affordable housing choices and must leave the jurisdiction to find housing elsewhere. In fact, a primary reason the RHND of 441,176 units was higher than the need assigned to the Bay Area in past RHNA cycles was because it included factors related to overcrowding, high housing cost burdens and a target vacancy rate as a way to address the region's challenges in meeting the housing needs of the existing population. In addition, the City of Dublin cites a population decline that has occurred over one year and, in particular, the year impacted by COVID-19. Dublin has not provided evidence to suggest that its population will continue to decline long-term or that there has been a reduction in the jurisdiction's housing need for the 2023-2031 RHNA planning period.

**Issue 4:** *The RHNA methodology uses the Opportunity Map, prepared by HCD and the California Tax Credit Allocation Committee (TCAC), as the basis for the Access to High Opportunity Areas (AHOA) factor. The Opportunity Map stems from HCD's policy goals to avoid further segregation and concentration of poverty and to encourage access to opportunity through affordable housing programs. Most of Dublin is labelled High Resource or Highest Resource on the 2020 Opportunity Map, but 61.1% of its population racially identify as minorities or multiracial.*

*The City argues that, by relying on the 2020 Opportunity Map and not factoring in demographic data, more housing is allocated to Dublin compared to other jurisdictions throughout the area and*

*that this methodology detracts from HCD's policy goal to promote diversity since more housing must be planned in Dublin, rather than in more segregated portions of the Bay Area, thus prioritizing economics over racial diversity. In addition, assigning more market rate housing to Dublin does not achieve the stated purpose of providing affordable housing and access to opportunity for lower-income households and fails to acknowledge the City's past performance in the above-moderate income category.*

**ABAG-MTC Staff Response:** This argument by the City 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>5</sup>

As noted by Dublin, the RHNA methodology uses the Opportunity Map, prepared by HCD and the California Tax Credit Allocation Committee (TCAC), as the basis for the Access to High Opportunity Areas (AHOA) factor. The State's intended policy goals for the Opportunity Map were to avoid further segregation and concentration of poverty and to encourage access to opportunity, which are the two primary outcomes related to affirmatively furthering fair housing.<sup>6</sup> "Promoting diversity," as cited by the City, was not one of the goals identified for the Opportunity Map.

HCD/TCAC determined that the best way to affirmatively further fair housing was to evaluate Census tracts based on a set of indicators that have been shown by research to support positive economic, educational, and health outcomes for low-income families. The Opportunity Map includes a filter for identifying high-poverty, racially segregated census tracts, but the methodology for evaluating other census tracts not captured by this filter does not include an indicator related to racial demographics. The RHNA methodology's use of the Highest Resource and High Resource Areas is aligned with the framework established by HCD/TCAC.

In its letter approving ABAG's draft RHNA methodology, HCD specifically identified the Access to High Opportunity Areas as an important element in furthering the RHNA objective to affirmatively further fair housing, stating:

*HCD applauds the significant weighting of Access to High Opportunity Areas as an adjustment factor and including an equity adjustment in the draft methodology.*

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<sup>5</sup> For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

<sup>6</sup> California Fair Housing Task Force, [Methodology for the 2020 TCAC/HCD Opportunity Map](#), June 2020.

*ABAG's methodology allocates more RHNA to jurisdictions with higher access to resources on a per capita basis. Additionally, those higher-resourced jurisdictions receive even larger lower income RHNA on a per capita basis. For example, the high-resourced communities of Cupertino and Mountain View receive higher total allocations on a per capita basis. For lower resourced jurisdictions with high rates of segregation, such as East Palo Alto, their allocations – particularly lower income RHNA allocations – are much lower on a per capita basis.*

**Issue 5:** *Dublin argues that the determination of total households in 2050, which is the baseline allocation in the RHNA methodology, appears to include properties where the City does not have land use authority, including properties owned by the United States of America (i.e., Parks Reserve Forces Training Area (Camp Parks) and the United States Department of Justice), Alameda County, and the Dublin Unified School District. The appeal identifies 10 such parcels. Since these parcels comprise more than one third (36%) of the total acres in Dublin, the City requests that 36% of its draft allocation (1,339 units) be re-allocated to other jurisdictions.*

**ABAG-MTC Staff Response:** Most people living on the parcels identified by Dublin reside in group quarters, such as correctional institutions or military housing. Group quarters are excluded from consideration in both the Plan Bay Area 2050 Final Blueprint and RHNA, and thus are excluded from the count of total households in 2050. The Final Blueprint includes a total of 10 households in 2050 for all 10 parcels identified by the Dublin as being owned by other entities. This is based on information provided by the City through the ABAG-MTC BASIS local data collection process that indicated there were 10 single-family homes built in 2017 on APN 986-0001-001-39. The Final Blueprint did not forecast any additional growth on these parcels. As the City of Dublin has tens of thousands of households now and in the future, the impact of 10 households on Dublin's share of the region's total households in 2050 and, as a result, its draft RHNA allocation, is deemed negligible.

There is no justification for reducing Dublin's allocation based on the land area of these parcels, as the City has not demonstrated that it is unable to consider underutilization of existing sites, increased densities, and other planning tools to accommodate its assigned need. In developing the RHNA methodology, the Housing Methodology Committee considered using land area as the baseline allocation, but ultimately rejected it in favor of using total households in 2050.

## **RECOMMENDED ACTION**

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ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by the City of Dublin to reduce its Draft RHNA Allocation by 2,267 units (from 3,719 units to 1,452 units).