

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

DATE: September 24, 2021

## OVERVIEW

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**Jurisdiction:** City of Pleasanton

**Summary:** City of Pleasanton requests the decrease of its Draft RHNA Allocation by 1,193 units (20 percent) from 5,965 units to 4,772 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 Pleasanton received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Pleasanton	1,750	1,008	894	2,313	5,965

### Local Jurisdiction Survey

The City of Pleasanton 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 Pleasanton. [All comments received](#) are available on the ABAG website.

## ANALYSIS

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**Issue 1:** *The City argues ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to water infrastructure constraints. Specifically, the City notes it has found some level of contamination in all three of its groundwater wells, which represent 20 percent of the City's groundwater supplies. These findings resulted in one of the wells being taken offline. The City states it conducted a study in May 2021 that concluded necessary repairs would not be completed until at least 2025. The appeal also asserts that the Zone 7 Water Agency that provides 80 percent of the City's drinking water faces increasing uncertainty around its water supply and reliability. The City also claims that the pending uncertainties related to its water supply represent a significant and unforeseen change in circumstances that merits a revision of the information submitted in the Local Jurisdiction Survey, per Government Code Section 65584.05(b)(3).*

**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." Importantly, the City did not provide any information in its Local Jurisdiction Survey related to the claims in its appeal. While the City marked water capacity as a possible constraint to the development of additional housing, the survey response gives no information about the well contamination and reduction in water supply mentioned in this appeal.

Furthermore, the arguments put forward by the City do not meet the requirements for a valid RHNA appeal related to changed circumstances. While Pleasanton does currently have a reduced water supply due to local actions in response to state regulations, the City has not demonstrated that it is precluded from accommodating its RHNA allocation for the entirety of the 2023-2031 Cycle 6 RHNA. As the City notes in its appeal, there are potential solutions to its current reduction in water supply, such as purchasing additional water from the Zone 7 Water Agency, which already supplies the vast majority of the City's water. Additionally, the City states that it may be able to bring all of its wells back online as early as 2025, which is only two years into the eight-year RHNA cycle. While the City's appeal discusses potential future uncertainty in its ability to supply adequate amounts of water, the appeal also notes that the City's largest water supplier is pursuing several projects to address potential future supply deficits. Ultimately,

these potential uncertainties do not definitively demonstrate that the City lacks the necessary water supply for future development during the 2023-2031 planning period.

Furthermore, the City's appeal does not conclusively prove that its water supply, even with one well offline, cannot provide the necessary water required for additional development. Indeed, 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>1</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 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.

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

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<sup>1</sup> San Francisco Bay Area Integrated Regional Water Management Plan, 2019.

existing communities that have more resources to promote climate resilience and conservation efforts.”<sup>2</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 reliability concerns and drought preparedness on a mutually beneficial and regional focused basis.<sup>3</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.

***Issue 2:*** *The City argues ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to the availability of land suitable for urban development or for conversion to residential use, as described in Government Code Section 65584.04 (e)(2)(B). Specifically, the City notes it identified the lack of vacant land as a constraint to housing and identified constraints in re-purposing existing commercial properties near transit. Additionally, the City’s appeal asserts the RHNA Methodology fails to account for real world constraints and feasibility of new development. The City also believes the assumptions for the public land and mall/office park conversion strategies in the Plan Bay Area 2050 Final Blueprint are flawed, and claims Pleasanton staff had no opportunity to examine the realistic capacity assumed within Plan Bay Area 2050’s modeling. Additionally, the appeal argues that since the City produces most lower-income housing through inclusionary zoning, an unrealistically high number of market-rate units would need to be built to fulfill the City’s lower-income RHNA allocation.*

**ABAG-MTC Staff Response:** The RHNA methodology adequately considers the availability of land suitable for urban development or for conversion to residential use. The Final RHNA Methodology integrates data from the Plan Bay Area 2050 Final Blueprint as the baseline

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<sup>2</sup> See [HCD’s comment letter on appeals](#) for more details.

<sup>3</sup> See the [Drought Contingency Plan](#) for more information.

allocation, which addresses the issues described in the Town's appeal. 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. The City argues that the RHNA Methodology fails to account for the feasibility of new development, but a strength of the land use model used for Plan Bay Area 2050 forecasting is that it does assess feasibility and the cost of redeveloping a parcel. These feasibility and cost assessments are used to forecast Pleasanton's share of the region's households in 2050, which is an input into its RHNA allocation. Furthermore, financial feasibility of development is not one of the statutory factors required for RHNA, and thus this argument is not a valid basis for appeal.

Also, 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 Final 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>4</sup>

Per Government Code Section 65584.04(e)(2)(B), Pleasanton 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

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<sup>4</sup> See [HCD's comment letter on appeals](#) for more details.

underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.<sup>5</sup>

Pleasanton also claims it cannot realistically accommodate its RHNA based on an assumption that all of its development would need to take place within its Growth Geographies. However, Housing Element Law does not require this, so the City likely has more land available for development and redevelopment than is cited in the appeal. Additionally, the City's argument regarding the number of acres and in turn the number of properties that would need to be redeveloped in these areas uses an assumption of 40 dwelling units per acre. However, the City could consider higher densities than 40 units per acre, similar to what was assumed in Plan Bay Area 2050's Strategy H3 for locations with high-frequency public transit, such as BART station areas. Using these higher density assumptions from Plan Bay Area 2050 would mean less land is required for redevelopment in Pleasanton's Transit Priority Areas than is asserted by the City.

The City also states it cannot realistically build its lower-income RHNA because it produces most affordable units through inclusionary zoning, and it would need to build more than 18,000 market-rate units to produce enough inclusionary affordable units. However, it is entirely possible that lower-income units could be produced in Pleasanton through affordable housing developments constructed with various subsidy programs, as this type of affordable development occurs in many cities throughout the Bay Area. While there is a need for more affordable housing funding to meet the region's affordable housing needs, this issue is true across numerous jurisdictions and is not specific to Pleasanton.

The City's appeal states its staff were not able to review the underlying data for the Plan Bay Area 2050 Final Blueprint. However, both the land use modeling results and the inputs used to produce them have been made available to local staff. In fall 2019, ABAG-MTC staff collected local development policy data (i.e., information about zoning and general plans) from local jurisdictions for use in Plan Bay Area 2050 forecasting and modeling.<sup>6</sup> Local jurisdiction staff had several months to review and correct their land use and development pipeline data.<sup>7</sup>

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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.

<sup>6</sup> To learn more about these datasets, visit this website: <https://basis.bayareametro.gov/>.

<sup>7</sup> Communications to local staff about BASIS and review of Plan Bay Area 2050 baseline data included the following:

- Invitation to a webinar on August 6, 2019 about BASIS and how baseline information would be gathered for use in Plan Bay Area 2050.
- Email on August 26, 2019 asking staff to identify someone to review jurisdiction's baseline data in fall 2019.
- [Videos](#) to assist local staff with the data review process were made available on YouTube.
- Email on October 4, 2019 to jurisdictions who had not identified a staff contact to review BASIS land use data.
- Email reminder on October 29, 2019 to local staff about the BASIS data review process.
- Email to Bay Area planning directors on July 10, 2020 about office hours where local staff could have a one-on-one consultation with ABAG-MTC staff to provide feedback on the Plan Bay Area 2050 Draft Blueprint or BASIS.
- Additional office hours were held in December 2020 to discuss Plan Bay Area 2050 Final Blueprint outcomes and the draft RHNA methodology.

Jurisdictions then had an opportunity to review the growth pattern for the Draft Blueprint in summer 2020 and following adoption of the Final Blueprint in January 2021. This included UrbanSim land use modeling results for the adopted superdistricts (county and sub-county geographies). Final Blueprint land use modeling results that are used in the regional travel model are also publicly available summarized at the Travel Analysis Zone (TAZ) level. Additionally, the modeling assumptions for Plan Bay Area 2050 are documented in the *Draft Forecasting and Modeling Report* published in May 2021.<sup>8</sup>

**Issue 3:** *The City argues the RHNA methodology fails to further the statutory objective related to promoting “the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets,” as described in Government Code Section 65584(d)(2). The City’s appeal states the RHNA Methodology does not achieve this objective because the methodology allocates too little housing to jobs-rich communities in the South Bay and too much housing to rural areas and suburban communities, which will result in increased 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>9</sup> Regarding the RHNA objective noted in the City’s appeal, HCD made the following findings:

*“The draft ABAG methodology<sup>10</sup> encourages a more efficient development pattern by allocating nearly twice as many RHNA units to jurisdictions with higher jobs access, on a per capita basis. Jurisdictions with higher jobs access via transit also receive more RHNA on a per capita basis.*

*Jurisdictions with the lowest vehicle miles traveled (VMT) per capita, relative to the region, receive more RHNA per capita than those with the highest per capita VMT. ABAG’s largest individual allocations go to its major cities with low VMT per capita and better access to jobs. For example, San Francisco – which has the largest allocation – has the lowest per*

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<sup>8</sup> For more details, see the [Draft Forecasting and Modeling Report](#).

<sup>9</sup> For more details, see [HCD’s letter](#) confirming the methodology furthers the RHNA objectives.

<sup>10</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.

*capita VMT and is observed as having the highest transit accessibility in the region. As a major employment center, San Jose receives a substantial RHNA allocation despite having a higher share of solo commuters and a lower share of transit use than San Francisco. However, to encourage lower VMT in job-rich areas that may not yet be seeing high transit ridership, ABAG's Plan Bay Area complements more housing in these employment centers (which will reduce commutes by allowing more people to afford to live near jobs centers) with strategies to reduce VMT by shifting mode share from driving to public transit."*

The Final RHNA Methodology directly incorporates the forecasted development pattern from the Plan Bay Area 2050 Final Blueprint as the baseline allocation. The Final Blueprint emphasizes growth near job centers and in locations near transit, as well as in high-resource areas, with the intent of reducing greenhouse gas emissions. 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 Blueprint help improve the region's jobs-housing balance, leading to shorter commutes—especially for low-income workers.

The inclusion of job proximity by both automobile and transit as factors in the Final RHNA Methodology directs more housing to the jurisdictions with the most jobs that can be accessed with a 30-minute commute by automobile 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 job proximity factors allocate nearly half of the total number of housing units assigned to the Bay Area by the State. Encouraging shorter commutes for all modes of travel is an important strategy for reducing greenhouse gas emissions.

**Issue 4:** *The City argues that a population decline in Pleasanton over the past year represents a significant and unforeseen change in circumstances that merits a revision of the City's RHNA.*

**ABAG-MTC Staff Response:** Government Code Section 65584.04(g)(3) states that stable population numbers cannot be used as a justification for 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 Regional Housing Needs Determination (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 cites a population decline that has occurred over only one year, a year heavily impacted by COVID-19. The City of Pleasanton 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 5:** *The City argues that the COVID pandemic and resulting changes in job and transportation patterns represent significant and unforeseen changes in circumstances that merit a revision of the City's RHNA.*

**ABAG-MTC Staff Response:** ABAG-MTC Staff appreciates the City's concerns about the significant economic and societal changes resulting from COVID-19. In its comment letter on submitted appeals, HCD indicated that RHNA appeals based on changes caused by COVID-19 do not fall within the appeal criteria defined by statute, stating "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."<sup>11</sup>

Potential impacts of COVID-19, including accelerated shift toward telecommuting and the associated economic boom/bust cycle, are incorporated into the Final RHNA Methodology through integration of the Plan Bay Area 2050 Final Blueprint. Approved in January 2021, the Final Blueprint was crafted throughout the entirety of 2020, taking into account the best information available on future impacts related to telecommuting, locational preferences, and more. External forces, including long-term projections for telecommuting and office square footage needs per employee, were updated to reflect potential post-COVID conditions. Long-range household and job projections were adjusted in the short-to-medium term to capture the weak economic conditions of 2020 and a multi-year recovery period in the years ahead. Additionally, strategies in the Final Blueprint were updated, including new strategies to encourage an accelerated shift toward telecommuting and other sustainable modes of travel, to support job training programs to assist in economic recovery, and to expand opportunities to rebuild aging malls and office parks into housing-rich neighborhoods as e-commerce continues to boom.

Importantly, the eight-year RHNA cycle (which starts in 2023) represents a longer-term outlook than the current impacts of the pandemic in 2020 and 2021. The City has not provided evidence to suggest that COVID-19 reduces Pleasanton's housing need for the entirety of the 2023-2031 RHNA planning period. Additionally, impacts from COVID-19 are not unique to any single jurisdiction, and the appeal does not indicate that the City's housing need has been disproportionately impacted relative to the rest of the Bay Area. Therefore, the pandemic is not cause for a reduction in RHNA for any particular jurisdiction. Regardless of the impacts of the

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<sup>11</sup> See [HCD's comment letter on appeals](#) for more details.

pandemic, demand for housing remains high across the region, as reflected in home prices that continue to rise. Accordingly, jurisdictions must maintain their statutory obligation to plan for additional housing.

**Issue 6:** *The City raises concerns with the assumptions and methodology underlying HCD's calculation of the Regional Housing Needs Determination (RHND), though the City acknowledges that this argument is not a valid basis for an appeal.*

**ABAG-MTC Staff Response:** As the City notes, arguments based on the RHND from HCD do not meet the statutory criteria for an appeal established by Government Code Section 65584.05. In its comment letter on submitted appeals, HCD stated: "The council of government may file an objection within 30 days of HCD issuing the RHND, per Government Code section 65584.01(c)(1). ABAG did not object to the RHND. Government Code section 65584.05(b) does not allow local governments to appeal the RHND during the 45-day period following receipt of the draft allocation. There are no further appeal procedures available to alter the ABAG region's RHND for this cycle."<sup>12</sup>

## RECOMMENDED ACTION

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ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by City of Pleasanton to reduce its Draft RHNA Allocation by 1,193 units (from 5,965 units to 4,772 units).

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<sup>12</sup> See [HCD's comment letter on appeals](#) for more details.