

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

DATE: September 24, 2021

OVERVIEW

Jurisdiction: City of Clayton

Summary: The City of Clayton requests the reduction of its Draft RHNA Allocation by 285 units (50 percent) from 570 units to 285 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
 - Existing and projected jobs and housing relationship.
 - 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.
 - Distribution of household growth assumed for Plan Bay Area 2050.
 - The region's greenhouse gas emissions targets to be met by Plan Bay Area 2050.
- 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.

Staff Recommendation: Deny the appeal.

BACKGROUND

Draft RHNA Allocation

Following adoption of the Final RHNA Methodology on May 20, 2021, the City of Clayton received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Clayton	170	97	84	219	570

Local Jurisdiction Survey

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

ANALYSIS

The City of Clayton has submitted an appeal based on Government Code Section 65584.05(b)(1), that ABAG “failed to adequately consider 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, Clayton does not meet the statutory criteria for submitting an appeal, as described in Government Code Section 65584.05(b)(1), because the City did not submit a survey response to ABAG. Though the jurisdiction lacks a valid basis for appealing its draft allocation, ABAG-MTC staff responded to the issues raised in the jurisdiction’s appeal.

Issue 1: *Clayton argues the RHNA methodology does not further the RHNA objectives to “promote an improved intraregional relationship between jobs and housing” and to promote the “achievement of the region’s greenhouse gas reductions targets.” Clayton has a jobs-housing imbalance with 96.8% of employed residents commuting out of the city to work. 79% of employed residents drive to jobs because of lack of convenient transit. Adding substantial new units to Clayton will increase commute trips out of the city and contribute to increased air pollution and greenhouse gas (GHG) emissions. This is counter to regional and statewide objectives to reduce GHG emissions, as well as regional goals to promote transit use through coordinated land use/transportation planning.*

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.¹ Regarding the RHNA objective related to “Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction,” HCD made the following findings:

¹ For more details, see [HCD’s letter](#) confirming the methodology furthers the RHNA objectives.

The draft ABAG methodology² allocates more RHNA units to jurisdictions with more jobs. Jurisdictions with a higher jobs/housing imbalance receive higher RHNA allocations on a per capita basis. For example, jurisdictions within the healthy range of 1.0 to 1.5 jobs for every housing unit receive, on average, a RHNA allocation that is 61% of their current share of households. Jurisdictions with the highest imbalances – 6.2 and higher – receive an average allocation 1.21 times their current share of households. Lastly, higher income jurisdictions receive larger lower income allocations relative to their existing lower income job shares.

The RHNA methodology incorporates each jurisdiction's jobs-housing relationship through use of the Plan Bay Area 2050 Final Blueprint as the baseline allocation. The Final Blueprint incorporates information about each jurisdiction's existing and projected jobs and households. The Final Blueprint emphasizes growth near job centers and in locations near transit, including in high-resource areas, with the intent of reducing greenhouse gas (GHG) emissions. It includes strategies related to increased housing densities and office development subsidies to address jobs-housing imbalances in the region. 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 Final Blueprint help improve the region's jobs-housing balance, leading to shorter commutes—especially for low-income workers. The Draft RHNA Allocation was also found to be consistent with Plan Bay Area 2050, which meets the statutory GHG reduction target.

The final RHNA methodology amplifies the Plan Bay Area 2050 Final Blueprint's emphasis on improving jobs-housing balance by using factors related to job proximity to allocate nearly half of the Regional Housing Needs Determination (RHND). It is important to note that Housing Element Law requires that the RHNA methodology improve the *intraregional* relationship between jobs and housing—not the jobs-housing balance in any particular jurisdiction. The job proximity factors direct housing units to those jurisdictions with the most jobs that can be accessed with a 30-minute commute by automobile and/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.

These factors measure job access based on a commute shed to better capture the lived experience of accessing jobs irrespective of jurisdiction boundaries. Housing and job markets extend beyond jurisdiction boundaries—in most cities, a majority of workers work outside their jurisdiction of residence, and demand for housing in a particular jurisdiction is substantially

² 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.

influenced by its proximity and accessibility to jobs in another community. Even in jurisdictions that lack robust transit service or where most residents commute by automobile, adding more housing in areas with easy access to jobs can lead to shorter commutes, helping to reduce vehicle miles travelled (VMT) and GHG.

Notably, state law also requires the RHNA methodology to consider the balance between the number of low-wage jobs and the number of affordable housing units in each jurisdiction, as described in Government Code Section 65584.04(e)(2)(B). Data from the Census Bureau indicates that Clayton has an imbalanced ratio between low-wage jobs and affordable housing units, with almost 19 low-wage jobs per unit of rental housing affordable to low-wage workers and their families.³ Accordingly, the allocation of 267 units of lower-income RHNA assigned to Clayton could enable many of the low-wage workers in Clayton to live closer to their jobs, helping to improve the jobs-housing balance, reduce commute times, and lower GHG.

Issue 2: Clayton argues that encouraging housing development in the city, which has basic transit service and has no designated Growth Geographies in the Plan Bay Area Final Blueprint, does not further the RHNA objective related to promoting the “encouragement of efficient development patterns.” The City asserts the methodology for identifying High Resource Areas is flawed because it does not account for the lack of transit service that would connect residents to opportunity.

ABAG-MTC Staff Response: There is a High Resource Area (HRA) Growth Geography in Clayton designated in the Plan Bay Area 2050 Final Blueprint. The State’s Opportunity Map⁴ identifies places with well-resourced schools and access to jobs and open space and those areas are designated a HRA in the Final Blueprint if they also meet a baseline transit service threshold of bus service with peak headways of 30 minutes or better. For Clayton, this designation is based on the service frequencies on County Connection Route 10.⁵

The City’s argument again challenges the Final RHNA Methodology that was adopted by ABAG and approved by HCD, which falls outside the scope of the appeals process. In its review of ABAG’s RHNA methodology, HCD made the following findings regarding the RHNA objective related to “Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.”

³ For more information, see this data source created by ABAG for the Local Jurisdiction Survey: <https://rhna.mtcanalytics.org/jobshousingratio.html?city=Clayton>.

⁴ California Fair Housing Task Force, [Methodology for the 2020 TCAC/HCD Opportunity Map](#), June 2020.

⁵ The transit service frequencies used to determine the Plan Bay Area 2050 Blueprint Growth Geographies were drawn from reported in January 2020, as well as any service improvements included in the project list of County Transportation Agencies (CTAs).

"The draft ABAG methodology⁶ 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 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."

Issue 3: Clayton argues it is a built out, hillside community, with little unconstrained vacant land remaining. There are significant areas that consist of natural hazards and natural resources that preclude development. The City also references information from the ABAG-MTC Housing Element Site Selection (HESS) Tool that shows no "adequate" sites identified.

ABAG-MTC Staff Response: The final RHNA methodology adequately considers the potential development constraints described the Clayton's appeal through use of data from the Plan Bay Area 2050 Final Blueprint as the baseline allocation. 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. A strength of the land use model used for Plan Bay Area 2050 forecasting is that it assesses feasibility and the cost of redeveloping a parcel, including the higher cost of building on parcels with physical development constraints, e.g., steep hillsides. These feasibility and cost assessments are used to forecast Clayton's share of the region's households in 2050, which is an input into its RHNA allocation.

However, 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

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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."*⁷

The City of Clayton cites information from the HESS Tool to argue it does not have sufficient developable land available to accommodate its RHNA, based on a lack of vacant sites or sites without constraints. The HESS Tool is a web-based mapping tool that is currently being developed by ABAG-MTC staff to assist Bay Area jurisdictions with preparing the sites inventory required for their Housing Element updates. The tool is still under development and further data collection, data quality control, and refinements to the HESS Tool's screening methodology are underway. When Clayton activated its HESS account, the City received an email noting that the tool was under active development and the data presented was preliminary. ABAG expects to have a final release of the data and an updated version of the HESS Tool available in fall 2021. Local jurisdictions will be able to review this data and submit corrections directly to ABAG.

It is important to note that the HESS Tool evaluates potential sites based on **existing** local development policies. As noted above, Housing Element Law specifically prohibits ABAG from limiting RHNA based on the existing zoning or land use restrictions that are shown in the HESS Tool. In addition, sites identified in the HESS Tool as "environmentally constrained" may still be developable. The HESS Tool designates sites as environmentally constrained if they possess hazard risks or other restrictive environmental conditions such as critical habitats and California protected areas. Local jurisdictions are generally advised to avoid locating new housing on these sites where possible. However, local jurisdictions may find that siting housing on sites with hazards is unavoidable in order to accommodate their housing need, in which case appropriate

⁷ See [HCD's comment letter on appeals](#) for more details.

mitigation measures should be considered. For additional guidance on how to integrate resilience into the Sites Inventory and the Housing Element more broadly, refer to ABAG's Resilient Housing Instruction Guide and associated resources.⁸

Per Government Code Section 65584.04(e)(2)(B), Clayton must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. While the City of Clayton asserts that it is built out and has little urban land available for development, it does not provide evidence that it is unable to consider underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.⁹

Issue 4: *Clayton asserts the RHNA process has not adequately considered water services planning and drought impacts. The Urban Water Management Plan (UWMP) prepared by Contra Costa Water District (CCWD) assumes less population growth for Clayton from 2020 to 2030 than its draft RHNA allocation.*

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 Clayton do not meet the requirements for a valid RHNA appeal. Although Clayton cites information from the Urban Water Management Plan (UWMP) prepared by the Contra Costa Water District (CCWD), the City has not demonstrated that it is precluded from accommodating its RHNA allocation because of a decision by this water service provider. Clayton indicates the RHNA allocation exceeds the population growth assumption used by the CCWD in the UWMP. However, this difference in assumptions about expected growth does not represent a determination that Clayton will not have sufficient water capacity in the future.

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

⁸ The Resilient Housing Instruction Guide is available on ABAG's website: https://abag.ca.gov/sites/default/files/documents/2021-07/0_ResilientHousingInstructionGuide.docx. Additional resources for incorporating resilience in Housing Element updates are available here: <https://abag.ca.gov/our-work/resilience/planning/general-plan-housing-element-updates>.

⁹ See HCD's [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

2007, total water use increased by less than one percent.¹⁰ 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 existing communities that have more resources to promote climate resilience and conservation efforts."¹¹

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

¹⁰ San Francisco Bay Area Integrated Regional Water Management Plan, 2019.

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

basis.¹² 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.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by the City of Clayton to reduce its Draft RHNA Allocation by 285 units (from 570 units to 285 units).

¹² See the [Drought Contingency Plan](#) for more information.