

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

DATE: September 29, 2021

OVERVIEW

Jurisdiction: City of Belvedere

Summary: The City of Belvedere requests the reduction of its Draft RHNA Allocation by 30 units (19%) from 160 units to 130 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.

Staff Recommendation: Deny the appeal.

BACKGROUND

Draft RHNA Allocation

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

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Belvedere	49	28	23	60	160

Local Jurisdiction Survey

The City of Belvedere did not submit a Local Jurisdiction Survey. A [compilation of the surveys submitted](#) is available on the ABAG website.

Summary of 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, and there were nine that specifically relate to the appeal filed by the City of Belvedere. All nine comments oppose the City's appeal. [All comments received](#) are available on the ABAG website.

ANALYSIS

The City of Belvedere argues ABAG mischaracterized the statutory grounds for appeal under Government Code Section 65584.05(b)(2). The City argues that a local government has the right

to appeal based on ABAG's failure to include information identified in Section 65584.04 and the local government's appeal is not limited to only the information it provided in the local government survey. ABAG developed the RHNA Appeals Procedures in accordance with applicable law and responds to the substance of each of the City's arguments below.

Issue 1: *Belvedere argues ABAG made an error in calculating the City's draft allocation, and thus ABAG failed to determine Belvedere's RHNA using the methodology documented in the [Draft RHNA Plan](#).*

ABAG-MTC Staff Response: There is no error in the calculation of Belvedere's allocation. On the "Recalculated RHNA" worksheet in the City's appeal, the second table shows the correct baseline 2050 share for Belvedere and correct factor scores for the RHNA methodology. The City's calculations resulted in a different outcome because the City's re-calculated allocations do not include the final step of adjusting the scaled factor scores for all jurisdictions to ensure they sum to 100%. This final step is shown in Appendix 4 of the Draft RHNA Plan, in the fourth column for each factor, entitled "Factor Distribution: Adjusted Baseline Rescaled to 100%." This re-scaling step is necessary to ensure the methodology allocates the exact number of housing units in each income category that was assigned by HCD in the Regional Housing Needs Determination (RHND).

Appendix 4 in the Draft RHNA Plan shows the impact that each factor has on each jurisdiction's baseline allocation from the Plan Bay Area 2050 Final Blueprint. Appendix 5 shows the number of units, by income category, that each jurisdiction receives as a result of each factor in the methodology. Although the numbers presented in these tables are rounded to a single decimal point, the calculations were done using un-rounded numbers. ABAG-MTC staff also provided access to a jurisdiction's un-rounded baseline allocation through the public open-source RHNA calculations posted on GitHub.¹ Attachment 1 shows the calculation of Belvedere's factor scores using the unrounded baseline.

Using the Access to High Opportunity Areas (AHOA) factor as an example, the sum of the factor scores for all jurisdictions in the region is 92.872889%. Since the total does not equal 100%, each jurisdiction's score needs to be rescaled. Belvedere's unrounded AHOA factor score (0.048487%) is rescaled as follows: $0.048487\% / 92.872889\% = 0.052208\%$. This value is what is then used in the distribution of units for each income category for AHOA.

For very low-income units, given the 70% weight assigned to the AHOA factor and the total of 114,442 units assigned to the Bay Area by HCD, $0.70 * 114,442 = 80,109$ units to be distributed using the AHOA-adjusted baseline. This total (80,109) is then multiplied by Belvedere's rescaled

¹ Source: https://github.com/BayAreaMetro/regional-housing-needs-assessment/blob/master/RHNA/data/juris_baselines.xlsx

AHOA factor score of 0.052208%. This results in a total of 42 very low-income units as a result of the AHOA factor, consistent with Appendix 5 in the Draft RHNA Report. Without the step identified above to rescale the total to 100%, this factor would only allocate 74,397 units in the low-income category in the region, and the total number of units allocated would not match the RHND.

The same rescaling process needs to be conducted for the other two factors, for each income category. Once the calculations for each factor/income category include the use of the "Factor Distribution: Adjusted Baseline Rescaled to 100%," the results match Belvedere's draft allocation, consistent with Appendix 5 in the Draft RHNA Report. As a result, there is no error in the application of the adopted RHNA methodology and, thus, it is not a valid basis for an appeal.

Issue 2: *The City uses its draft RHNA allocation and the total households in the region in 2050 from Plan Bay Area 2050 to impute the "implied growth" in the Plan Bay Area 2050 Final Blueprint for Belvedere and other jurisdictions in the South Marin Superdistrict. The City uses its calculations of implied growth rates to argue ABAG failed to determine Belvedere's RHNA allocation in a way that is consistent with the South Marin superdistrict's 21% growth rate in the Final Blueprint.*

ABAG-MTC Staff Response: While Government Code Statute 65584.04(m) requires that the RHNA plan allocate units consistent with the development pattern included in the Sustainable Community Strategy, the statute does not specify how to determine consistency. In the absence of statutory direction, ABAG has discretion to identify the framework to be used for establishing that RHNA is consistent with Plan Bay Area 2050.

Plan Bay Area 2050 includes adopted growth forecasts at the county and subcounty levels, not the jurisdiction level where RHNA is statutorily focused.² Therefore, staff developed an approach for determining consistency between RHNA and Plan Bay Area 2050 that received support from the Housing Methodology Committee, the ABAG Regional Planning Committee, and the ABAG Executive Board. This approach compares the 8-year RHNA allocations to the 35-year housing growth from the Plan Bay Area 2050 Final Blueprint at the county and subcounty geographies used in the plan. If the 8-year growth level from RHNA does not exceed the 35-year housing growth level at either of these geographic levels, then RHNA and Plan Bay Area 2050 are determined to be consistent. Staff evaluated the draft RHNA allocations using the described approach and found the RHNA allocations are fully consistent with Plan Bay Area 2050, including the allocations to the South Marin superdistrict where Belvedere is located (see Table 1 for more details).

² View the table of 35-year household growth at https://www.planbayarea.org/sites/default/files/FinalBlueprintRelease_December2020_GrowthPattern_Jan2021Update.pdf.

Table 1. Superdistrict Forecasted Growth in Final Blueprint Compared to Draft RHNA*

Superdistrict	County	Superdistrict Name	Blueprint Final 2015-2050 Growth	Draft RHNA
34	Marin	South Marin County	9,000	5,976

* The South Marin County superdistrict contains the following jurisdictions: Belvedere, Corte Madera, Mill Valley, Sausalito, Tiburon, Larkspur, and portions of unincorporated Marin County.

Issue 3: The City argues the RHNA methodology double counts the High Resource Area impact on Belvedere's RHNA allocation, once in the baseline allocation and again in the application of the AHOA factor. The City also questions why the RHNA methodology directs additional growth to a "Transit Rich" area after concluding, in the development of the Jobs Proximity – Transit factor, that Belvedere's JPT factor is at the lowest end of the scale at 0.5.

ABAG-MTC Staff Response: As noted by the City, a portion of Belvedere is identified as a Transit-Rich and High-Resource Area in the Plan Bay Area 2050 Final Blueprint. The designation of the Transit-Rich and High-Resource Area in the Final Blueprint is based on the Tiburon Ferry Terminal. Contrary to what is stated in the City's appeal, this is a major transit stop based on Public Resources Code Section 21064.3, since the ferry terminal is served by bus service; there is no frequency requirement for ferry terminals under state law.³

Directing growth to these types of Growth Geographies is an essential component to addressing the policy priorities required for Plan Bay Area 2050 and RHNA, including promoting efficient development patterns, reducing greenhouse gas emissions, and affirmatively furthering fair housing. In addition, the use of consistent geographies in the Final Blueprint and the RHNA methodology helps ensure consistency between RHNA and Plan Bay Area 2050, as required by Government Code Statute 65584.04(m). Rather than constituting double counting, use of the High Resource Areas in both processes provides a bridge between the long-term growth forecast in Plan Bay Area 2050 and the short-term focus of RHNA. Inclusion of High Resource Areas indicates that these are areas that are prioritized for an increased focus on near-term growth during the eight-year RHNA period.

In the RHNA methodology, the Job Proximity – Transit factor is based on the number of jobs that can be accessed within a 45-minute transit commute from a jurisdiction. The three factors in the RHNA methodology are placed on the same scale so a factor can modify a jurisdiction's baseline allocation in the range from 50% to 150%. Thus, jurisdictions scoring at the top for the region will get baseline share times 1.5, while jurisdictions scoring at the bottom for the region will get baseline share times 0.5. This scaling approach helps distribute RHNA units throughout

³ [Public Resources Code Section 21064.3.](#)

the region by ensuring that even a jurisdiction with a low score gets an allocation from each factor and placing a limit on how many units can be assigned to a jurisdiction with a high score. Relative to other jurisdictions in the region, Belvedere has a small number of jobs that can be accessed within a 45-minute commute. As a result of its low score, the City receives a scaled score of 0.5 on the Job Proximity – Transit factor, which means few units are allocated to Belvedere based on this factor compared to other jurisdictions in the region.

Issue 4: *Belvedere uses data from the ABAG-MTC Housing Element Site Selection (HESS) Tool to argue ABAG has not considered the actual availability of land suitable for urban development or for conversion to residential use.*

ABAG-MTC Staff Response: The City of Belvedere indicates it used the HESS Tool to evaluate whether ABAG adequately considered the availability of land suitable for urban development in the RHNA methodology. Per Government Code Section 65584.05(b), this is not a valid basis for an appeal, because the HESS Tool is not used as an input in the RHNA methodology, and thus played no role in determining Belvedere’s RHNA.

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 Belvedere 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.

Belvedere’s appeal states that it reviewed HESS data because its staff were not able to review the underlying data for the Plan Bay Area 2050 Final Blueprint, but 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.⁴ Local jurisdiction staff had several months to review and correct their land use and development pipeline data.⁵ Jurisdictions then had an opportunity to review the growth pattern for the Draft

⁴ To learn more about BASIS and download its datasets, visit this website: <https://basis.bayareametro.gov/>.

⁵ 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.

Blueprint in summer 2020 and prior to the adoption of the Final Blueprint in January 2021, with office hours available to local jurisdictions to discuss model inputs and forecasted growth from the Bay Area UrbanSim 2.0 model. While only county and sub-county projections are used for the purposes of Plan Bay Area 2050, the jurisdiction-level totals of households in 2050 produced by the Final Blueprint forecast were then provided for use as the baseline allocation for the RHNA Methodology.

The City of Belvedere also uses information from the HESS Tool to argue it does not have sufficient developable land available to accommodate its RHNA. As noted previously, the data in HESS is still under development (with an opportunity for future review by local jurisdictions) and it was not used in the RHNA methodology. Furthermore, Belvedere was notified that this data was preliminary and under active development when it activated its HESS account. It is also important to note that the HESS Tool evaluates potential sites based on **existing** local development policies. 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. 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."*⁶

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 Blueprint. Thus, the RHNA methodology

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- 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.

⁶ See [HCD's comment letter on appeals](#) for more details.

adequately considers the development constraints raised in this appeal, but the allocation to this jurisdiction also reflects the realities of housing demand in the Bay Area.

Per Government Code Section 65584.04(e)(2)(B), the City of Belvedere must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. In addition to considering non-vacant sites, 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 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.⁷

Based on the information above, staff concludes that Belvedere’s claims about the HESS Tool are neither evidence that the RHNA Methodology failed to consider the availability of land suitable for development nor do they provide evidence that Belvedere is unable to consider underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.⁸

Issue 5: *Belvedere argues ABAG failed to adequately consider water service capacity due to decisions made by a water service provider. Marin Municipal Water District (MMWD) provides water to the City of Belvedere. The population growth associated with the draft RHNA allocation exceeds the growth analyzed in the Urban Water Management Plan (UWMP) adopted by MMWD on June 15, 2020.*

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.”

⁷ 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>.

⁸ See HCD’s [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

However, the arguments put forward by the City of Belvedere do not meet the requirements for a valid RHNA appeal. Although the City cites information from the Urban Water Management Plan (UWMP) prepared by Marin Municipal Water District (MMWD), Belvedere has not demonstrated that it is precluded from accommodating its RHNA allocation because of a decision by this water service provider. The City indicates the RHNA allocation exceeds the population growth assumption used by the water service provider in the UWMP. However, this difference in assumptions about expected growth does not represent a determination that Belvedere 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 2007, total water use increased by less than one percent.⁹ 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.

While Marin Water has discussed a potential moratorium on new water connections in response to the drought, this action has not yet been implemented. Even if a moratorium is implemented in the future, there is no indication that it would extend for the next ten years until the end of the RHNA planning period in 2031. Thus, at this time, there is no evidence that Belvedere is precluded from accommodating its RHNA allocation.

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

⁹ San Francisco Bay Area Integrated Regional Water Management Plan, 2019.

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.”¹⁰

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.¹¹ 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 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 Belvedere to reduce its Draft RHNA Allocation by 30 units (from 160 units to 130 units).

¹⁰ See [HCD’s comment letter on appeals](#) for more details.

¹¹ See the [Drought Contingency Plan](#) for more information.

ATTACHMENT(S):

Attachment 1: Overview of Factor Score Calculations Using Unrounded Baseline

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In its appeal, the City of Belvedere includes a recalculation of its factor scores (similar to what is shown in Appendix 4 of the Draft RHNA Plan) using the un-rounded baseline allocation. The following shows the results for the factor scores when using the unrounded baseline:

- For the **Access to High Opportunity Areas (AHOA)** factor, Belvedere's raw score is 100.0%; this becomes 1.5 when scaled to the 0.5-1.5 range. The scaled factor score (1.5) is multiplied with Belvedere's un-rounded baseline share (0.032325%) to result in 0.048487% for the AHOA factor. The sum of the factor scores for *all* jurisdictions in the region is 92.872889%, so a rescaling of all the factors to 100% is done as a last step, as follows: $0.048487\% / 92.872889\% = 0.052208\%$. This value is what is then used in the distribution of units for each income category for AHOA. This last adjustment was omitted in Belvedere's appeal.
- For the **Job Proximity - Auto (JPA)** factor, Belvedere's raw score is 3.208475; this becomes 0.6 when scaled to the 0.5-1.5 range with 1-digit precision. The calculation retains full floating-point precision, so the scaled factor score (0.597460) is multiplied with Belvedere's un-rounded baseline share (0.032325%) to result in 0.019313% for the JPA factor. The sum of the factor scores for *all* jurisdictions in the region is 103.624431%, so a rescaling of all the factors to 100% is done as a last step, as follows: $0.019313\% / 103.624431\% = 0.018637\%$. This value is what is then used in the distribution of units for each income category for JPA. This last adjustment was omitted in Belvedere's appeal.
- For the **Job Proximity - Transit (JPT)** factor, Belvedere's raw score is 0.0; this becomes 0.5 when scaled to the 0.5-1.5 range. The scaled factor score (0.5) is multiplied with Belvedere's un-rounded baseline share (0.032325%) to result in 0.016162% for the JPT factor. The sum of the factor scores for *all* jurisdictions in the region is 74.786074%, so a rescaling of all the factors to 100% is done as a last step, as follows: $0.016162\% / 74.786074\% = 0.021612\%$. This value is what is then used in the distribution of units for each income category for JPT. This last adjustment was omitted in Belvedere's appeal.

The City uses its own recalculated factor scores to show the impact of each factor on the jurisdiction's final allocation (similar to what is shown in Appendix 5 of the Draft RHNA Plan) and argues that use of the un-rounded baseline resulted in a total allocation of 151 units instead of 160 units. However, as noted in ABAG-MTC Staff's response to Issue 1 in the appeal, the City's calculations result in a different total allocation because they do not include the final step of adjusting the scaled factor scores for all jurisdictions to ensure they sum to 100%, which is necessary to ensure the methodology allocates the exact number of housing units in each income category in the RHND.