

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

DATE: October 8, 2021

OVERVIEW

Jurisdiction: City of Larkspur

Summary: City of Larkspur requests the decrease of its Draft RHNA Allocation by 236 units (24 percent) from 979 units to 743 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 Larkspur received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Larkspur	291	168	145	375	979

Local Jurisdiction Survey

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

ANALYSIS

The City of Larkspur argues that 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: *Larkspur argues ABAG did not adequately consider constraints in availability of land. The City identifies constraints related to natural hazard risks and lack of undeveloped land in the areas identified as Transit-Rich Areas and High-Resource Areas in the Plan Bay Area 2050 Final Blueprint.*

ABAG-MTC Staff Response: The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands Larkspur's concerns about the potential for future growth in areas at risk of natural hazards. However, with only a small exception, Housing Element Law does not identify areas at risk of natural hazards as a potential constraint to housing development."¹ 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....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."²

Given the significant natural hazard risks in the Bay Area, whether to incorporate information about hazard risks when allocating RHNA units was one of the topics most thoroughly discussed by the Housing Methodology Committee (HMC) during the methodology development process.³ Ultimately, HMC members took a vote and came to consensus that though housing in high hazard areas is a concern, adding a specific hazard factor to the RHNA methodology may not be the best tool to address this issue. In large part, this is because the Plan Bay Area 2050 Final Blueprint, which forms the baseline of the final RHNA methodology, already addresses concerns about natural hazards, as the Final Blueprint excludes areas with unmitigated high hazard risk from Growth Geographies.

The Final Blueprint Growth Geographies exclude CAL FIRE designated "Very High" fire severity areas in incorporated jurisdictions, and "High" and "Very High" fire severity areas as well as county-designated wildland-urban interfaces (WUIs) where applicable in unincorporated areas.

¹ Government Code Section 65584.04(e)(2)(B) states "The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding."

² See [HCD's comment letter on appeals](#) for more details.

³ See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

The only exception is for locally-nominated Priority Development Areas (PDAs), which does not apply to Larkspur.⁴ Plan Bay Area 2050 assumes one foot of sea level rise by 2035 and two feet of rise in 2050. The adaptation solutions that are imagined are targeted along portions of shoreline that have inundation with just two feet of rise, including locations in Larkspur. While there may be areas at risk of flooding in the jurisdiction, the City has not provided evidence that it cannot accommodate its RHNA allocation due to a determination by FEMA or the Department of Water Resources consistent with the requirements of Government Code Section 65584.04(e)(2)(B).

Throughout the region, it is essentially impossible to avoid all hazards when siting new development, but jurisdictions can think critically about which areas in the community have the *highest* hazard risk. Notably, the residents of new development are likely to be safer from hazards than current residents living in older structures, as new construction is built to modern standards that more effectively address hazard risk. In developing its Housing Element, the City of Larkspur has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, Larkspur can choose to take hazard risk into consideration with where and how it sites future development, either limiting growth in areas of higher hazard or by increasing building standards for sites within at-risk areas to cope with the hazard.

While Larkspur asserts that it will be forced to build in areas of high hazard risk, it has not demonstrated that it cannot accommodate its RHNA in locations within the jurisdiction that are subject to lower risk of natural hazards. Per Government Code Section 65584.04(e)(2)(B), the City of Larkspur 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.⁵

Issue 2: *Larkspur argues that the RHNA methodology does not promote socioeconomic equity and the encouragement of efficient development patterns as required by Government Code Section 65584(d)(2) and does not promote “an improved intraregional relationship between jobs and housing,” as required by Government Code Section 65584(d)(3).*

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

⁴ The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

⁵ See HCD’s [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

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.⁶ 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,"* HCD made the following findings:

"The draft ABAG methodology⁷ 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."

The Draft RHNA Allocation was also found to be consistent with Plan Bay Area 2050, which meets the statutory greenhouse gas reduction target.

In its findings that the RHNA methodology furthers the statutory 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 stated:

⁶ For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

⁷ 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.

The draft ABAG methodology⁸ 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 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 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 Need 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 influenced by its proximity and accessibility to jobs in another community. As Larkspur notes in its appeal, Plan Bay Area 2050 forecasts a decline in the number of jobs in the Central and

⁸ 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.

Southern Marin superdistricts. However, regional transportation, environmental, and housing goals aim for a jobs-housing balance at the regional level, and areas in the Central and Southern Marin superdistricts remain in close proximity to many of the region's jobs. 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 and greenhouse gas emissions.

Notably, Government Code Section 65584(d)(3) also requires the RHNA methodology to consider the balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction. Data from the Census Bureau indicates Larkspur has an imbalanced ratio between low-wage jobs and affordable housing in the region, with 6.5 low-wage jobs per unit of rental housing affordable to low-wage workers and their families.⁹ Accordingly, the allocation of 459 units of lower-income RHNA assigned to Larkspur could enable many of the low-wage workers in Larkspur to live closer to their jobs, helping to improve the jobs-housing balance, reduce commute times, and lower greenhouse gas emissions.

Issue 3: *Larkspur 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 Larkspur. 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."

However, the arguments put forward by the City of Larkspur do not meet the requirements for a valid RHNA appeal. Although Larkspur cites information from the UWMP prepared by MMWD, the City has not demonstrated that it is precluded from accommodating its RHNA allocation because of a decision by this water service provider. Larkspur indicates the RHNA allocation exceeds the population growth assumption used by the MMWD in the UWMP. However, this difference in assumptions about expected growth does not represent a determination that the City will not have sufficient water capacity in the future.

⁹ For more information, see this data source created by ABAG for the Local Jurisdiction Survey: <https://rhna.mtcanalytics.org/jobshousingratio.html?city=Larkspur>.

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. 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 MMWD 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 Larkspur 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 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 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 City of Larkspur to reduce its Draft RHNA Allocation by 236 units (from 979 units to 743 units).

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

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