

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

DATE: October 8, 2021

OVERVIEW

Jurisdiction: City of Mill Valley

Summary: City of Mill Valley requests the decrease of its Draft RHNA Allocation by 286 units (33 percent) from 865 units to 579 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.
 - Availability of land suitable for urban development or for conversion to residential use.
 - 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.
- 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

Draft RHNA Allocation

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

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
City of Mill Valley	262	151	126	326	865

Local Jurisdiction Survey

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

ANALYSIS

Issue 1: *Mill Valley argues that the RHNA methodology does not promote infill development and socio-economic equity through efficient development patterns that achieve greenhouse gas emission targets and protect environmental and agricultural resources, as required in Government Code Section 65584(d)(2). The City also argues the methodology does not consider each jurisdiction's constraints related to areas at risk of flooding or wildfires.*

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 noted in the City's appeal, HCD made the following findings:

The draft ABAG methodology 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

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

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 adequately considers the potential development constraints described in Mill Valley'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 the Mill Valley'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 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."*²

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

The Bay Area is subject to wildfire, flood, seismic, and other hazards and climate impacts, and ABAG-MTC staff understands the City'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."³ 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.⁴ Ultimately, HMC members 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. The only exception is for locally-nominated Priority Development Areas (PDAs), which doesn't apply to Mill Valley.⁵ While there may be areas at risk of flooding in Mill Valley, 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 that the flood management infrastructure is inadequate to avoid the risk of flooding, consistent with 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, Mill Valley has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, the city can choose to take hazard risk into consideration with where and how it sites future development or by increasing building standards for sites within at-risk areas to cope with the hazard. Per Government Code Section 65584.04(e)(2)(B), Mill Valley 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

³ 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."

⁴ See the [meeting materials for HMC meetings](#), including detailed notes for each meeting, for more information.

⁵ The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need.⁶

Issue 2: *Mill Valley argues Plan Bay Area 2050 Strategy H3, which allows a greater mix of housing densities and types in Growth Geographies, should only apply in the eastern part of the City that is a high-resource area, near transit, outside a floodplain, and outside the Fire Severity Zone. The City also asserts that its draft RHNA is inconsistent with Plan Bay Area 2050's growth forecasts and timeline, asserting that Plan Bay Area forecasts growth of 1,000 households in Mill Valley by 2050, while the 8-year RHNA is 865 units.*

ABAG-MTC Staff Response: The Plan Bay Area 2050 Final Blueprint accounts for the concerns raised in this appeal. Strategy H3 applies only to those areas identified as a Growth Geography, which includes only a small area within the eastern part of Mill Valley identified as a Transit-Rich High-Resource Area. As noted above, 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). Additionally, the Growth Geographies incorporate hazards by excluding CAL FIRE designated "Very High" fire severity areas in incorporated jurisdictions. The only exception is for locally-nominated Priority Development Areas (PDAs), which does not apply to Mill Valley.⁷ While only a small portion of Mill Valley is identified as a Growth Geography where higher densities may be appropriate, a limited amount of infill growth at a scale more similar to existing communities is still envisioned in areas outside of Growth Geographies in the Plan Bay Area 2050 Final Blueprint.

The City's argument about how the Plan Bay Area 2050 Final Blueprint should forecast growth in Growth Geographies again 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.

Regarding the arguments related to consistency between RHNA and Plan Bay Area 2050, 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

⁶ See HCD's [Housing Element Site Inventory Guidebook](#) for more details on the various methods jurisdictions can use to plan for accommodating their RHNA.

⁷ The only locally nominated PDA affected was the Urbanized Corridor PDA in Marin County.

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.⁸ 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. Mill Valley is located within South Marin County superdistrict. 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 Mill Valley is located (see Table 1 below for more details).

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: Mill Valley argues that ABAG made an error in calculating the city's allocation.

ABAG-MTC Staff Response: There is no error in ABAG's calculation of Mill Valley's allocation. In Attachment 3 of the City's appeal, the second table shows the correct baseline 2050 share for Mill Valley 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).

⁸ View the table of 35-year household growth at https://www.planbayarea.org/sites/default/files/FinalBlueprintRelease_December2020_GrowthPattern_Jan2021Update.pdf.

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.⁹ Attachment 1 shows the calculation of Mill Valley'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. Mill Valley's unrounded AHOA factor score (0.246444%) is rescaled as follows: $0.246444\% / 92.872889\% = 0.265356\%$. 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 Mill Valley's rescaled AHOA factor score of 0.265356%. This results in a total of 213 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 is 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 Mill Valley'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 4: *The City argues that the factors used in the RHNA methodology are all within the same area and should only be counted once.*

ABAG-MTC Staff Response: This argument by the City again 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

⁹ Source: https://github.com/BayAreaMetro/regional-housing-needs-assessment/blob/master/RHNA/data/juris_baselines.xlsx

the jurisdiction's allocation; a critique of the adopted methodology itself falls outside the scope of the appeals process.

Issue 5: *Mill Valley argues that the RHNA methodology does not adequately consider local constraints to additional development of housing. The City asserts that at least 65% of City's land should be removed from any forecasting based on High Fire Severity zone and FEMA Floodway. In addition, the City states that minimum lot sizes and lack of vacant land are also constraints to building housing.*

ABAG-MTC Staff Response: See the response to Issue 1 for a description of how information about constraints to housing development were considered in the RHNA methodology.

Issue 6: *Mill Valley argues that there has been a significant change in circumstances because recommendations in the draft 2020 Fire Hazard Planning Technical Advisory are in conflict with RHNA methodology. The City also notes that Mill Valley is at increased fire risk because of climate change/drought.*

ABAG-MTC Staff Response: Mill Valley's appeal cites example policies related to minimizing risks to existing and new land uses from the State's Fire Hazard Planning Technical Advisory. Specifically, the appeal cites example policies that recommend that all infill development projects be required to comply with applicable state or local fire safety and defensible space regulations or standards and that jurisdictions should avoid expanding new development in areas subject to extreme threat or high risk "unless all feasible risk reduction measures have been incorporated into project designs or conditions of approval."

Contrary to Mill Valley's assertion, the RHNA methodology is not in conflict with these recommendations. As noted previously, given the natural hazard risks in the Bay Area, it is essentially impossible to avoid all hazards when siting new development. In developing its Housing Element, Mill Valley can choose sites for housing that are at lower risk from fires and adopt policies to require risk reduction measures, as recommended in the State's Technical Advisory.

The City of Mill Valley also contends that increased fire risk represents a change in circumstances meriting a reduction in the City's RHNA. However, as HCD notes in its comment letter on appeals that identified increased wildfire risk 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 Wildfire hazard in

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

California is increasing, but the increasing fire hazard alone does not directly correlate to increasing fire risk. Risk is a function of hazard, susceptibility, consequence, and adaptive capacity. The hazard has been increasing over time while the response was constant for many years. However, recently the State of California and local governments have begun to take more aggressive actions to reduce susceptibility and consequences, which in turn may keep overall wildfire risk constant during the coming RHNA cycle.

Issue 7: *Mill Valley notes California's population growth slowed down in the last decade and argues ABAG should modify its population and households forecasts accordingly.*

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, Mill Valley 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.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by City of Mill Valley to reduce its Draft RHNA Allocation by 286 units (from 865 units to 579 units).

ATTACHMENT(S):

Attachment 1: Overview of Factor Score Calculations Using Unrounded Baseline

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In its appeal, the City of Mill Valley 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, Mill Valley'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 Mill Valley's un-rounded baseline share (0.164296%) to result in 0.246444% 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: $0.246444\% / 92.872889\% = 0.265356\%$. This value is what is then used in the distribution of units for each income category for AHOA. This last adjustment was omitted in Mill Valley's appeal.
- For the **Job Proximity - Auto (JPA)** factor, Mill Valley's raw score is 6.628723; this becomes 0.7 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 (0.704695) is multiplied with Mill Valley's un-rounded baseline share (0.164296%) to result in 0.115779% 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: $0.115779\% / 103.624431\% = 0.111729\%$. This value is what is then used in the distribution of units for each income category for AHOA. This last adjustment was omitted in Mill Valley's appeal.
- For the **Job Proximity - Transit (JPT)** factor, Mill Valley's raw score is 0.268235; this becomes 0.518421 when scaled to the 0.5-1.5 range. The scaled factor score (0.518421) is multiplied with Mill Valley's un-rounded baseline share (0.164296%) to result in 0.0851745% 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: $0.0851745\% / 74.786074\% = 0.113891\%$. This value is what is then used in the distribution of units for each income category for AHOA. This last adjustment was omitted in Mill Valley'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 818 units instead of 865 units. However, as noted in ABAG-MTC staff's response to Issue 3 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.