

TO: ABAG Administrative Committee  
FROM: Therese W. McMillan, Executive Director  
SUBJECT: City of Sausalito RHNA Appeal Final Determination

DATE: November 12, 2021

## **RHNA Background**

The [Regional Housing Needs Allocation \(RHNA\)](#) is the state-mandated process to identify the number of housing units (by affordability level) that each jurisdiction must accommodate in the Housing Element of its General Plan. The California Department of Housing and Community Development (HCD) determined Bay Area communities must plan for 441,176 new housing units from 2023 to 2031.

ABAG convened an ad hoc [Housing Methodology Committee \(HMC\)](#) from October 2019 to September 2020 to advise staff on the methodology for allocating a share of the region's total housing need to every local government in the Bay Area. The allocation must meet the [statutory objectives](#) identified in Housing Element Law and be consistent with [Plan Bay Area 2050](#). The HMC included local elected officials and staff as well as regional stakeholders to facilitate sharing of diverse viewpoints across multiple sectors.

The ABAG Executive Board approved the Proposed RHNA Methodology in October 2020 and held a [public comment period](#) from October 25 to November 27 and conducted a public hearing at the November 12, 2020 meeting of the ABAG Regional Planning Committee. After considering comments received, the ABAG Executive Board approved the Draft RHNA Methodology in January 2021. As required by law, ABAG submitted the Draft RHNA Methodology to HCD for its review. On April 12, 2021, [HCD sent ABAG a letter](#) confirming the Draft RHNA Methodology furthers the RHNA objectives.

On May 20, 2021, the ABAG Executive Board approved the final RHNA Methodology and draft allocations, which are described in detail in the [Draft RHNA Plan](#). Release of the draft RHNA allocations in May 2021 initiated the [appeals phase of the RHNA process](#).

## **ABAG RHNA Appeals Process**

At its meeting on May 20, 2021, the ABAG Executive Board approved the [ABAG 2023-2031 RHNA Appeals Procedures](#). The Appeals Procedures provide an overview of existing law and the statutory procedures and bases for an appeal, as outlined in [Government Code Section 65584.05](#), and outline ABAG's policies for conducting the required public hearing for considering appeals. The ABAG Executive Board also delegated authority to the ABAG Administrative Committee to conduct the public hearing and to make the final determinations on the RHNA appeals.

On May 25, 2021, ABAG notified the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public about the adoption of the draft RHNA allocations and the initiation of the appeals period. The email to jurisdictions included a link to the *ABAG 2023-2031 RHNA Appeals Procedures* on the ABAG website.

ABAG received 28 appeals from Bay Area jurisdictions during the 45-day appeals period from May 25, 2021 to July 9, 2021. On July 16, 2021, ABAG posted all [appeal materials received from local jurisdictions](#) on its website and distributed them to the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public consistent with Government Code Section 65584.05(c).

During the public comment period from July 16, 2021 to August 30, 2021, ABAG received nearly 450 comments from local jurisdictions, HCD, regional stakeholders, and members of the public on the 28 appeals submitted. On September 1, ABAG posted [all comments received during the comment period](#) on its website and distributed them along with the public hearing schedule to the city/town manager or county administrator and planning or community development director of each local jurisdiction, HCD, and members of the public. This notification ensured that each jurisdiction that submitted an appeal was provided notice of the schedule for the public hearing at least 21 days in advance, consistent with Government Code Section 65584.05(d). Between August 29, 2021 and September 3, 2021, legal notices were posted on the ABAG website and published in multiple languages in newspapers in each of the nine counties of the Bay Area, announcing the dates of the public hearing.

The ABAG Administrative Committee conducted the public hearing to consider the RHNA appeals at six meetings on the following dates:

- [September 24, 2021](#)
- [September 29, 2021](#)
- [October 8, 2021](#)
- [October 15, 2021](#)
- [October 22, 2021](#)
- [October 29, 2021](#).

### **ABAG Administrative Committee Hearing and Review**

The City of Sausalito requests the reduction of its Draft RHNA Allocation by 579-599 units. The City of Sausalito's appeal was heard by the ABAG Administrative Committee on October 15, 2021, at a noticed public hearing. The City of Sausalito, HCD, other local jurisdictions, and the public had the opportunity to submit comments related to the appeal. The materials related to the City of Sausalito's appeal, including appeal documents submitted by the jurisdiction, the ABAG-MTC staff response, and public comments received about this appeal during the RHNA

appeals comment period, are available on the MTC Legistar page at <https://mtc.legistar.com/LegislationDetail.aspx?ID=5180918&GUID=A10FD573-6302-4B85-9929-16290B7056DC&Options=&Search=>. Additional comments on RHNA Appeals are available at:

- <https://mtc.legistar.com/View.ashx?M=AO&ID=108043&GUID=c99193fd-6c9a-43dd-8c87-9a84bd9a83d7&N=SXRIbSA2YyBIYW5kb3V0IExhdGUgUHVibGljIENvbW1lbnQgU2F1c2FsaXRv>
- <https://mtc.legistar.com/View.ashx?M=AO&ID=108222&GUID=ec1f6d78-8c1e-454b-9126-bf902a0ea903&N=SXRIbSA2YywgSGFuZG91dCBMYXRlIFB1YmtpYyBDb21tZW50IFNhdXNhbgI0bw%3d%3d>
- <https://mtc.legistar.com/View.ashx?M=F&ID=9824315&GUID=7E48C1E6-441A-4AFE-B464-2CA74C73B5B4>
- <https://mtc.legistar.com/View.ashx?M=AO&ID=106683&GUID=11d21ca8-c7fe-42b2-b6d2-bf4125769321&N=SXRIbSA2LCBIYW5kb3V0IFB1YmtpYyBDb21tZW50>
- <https://mtc.legistar.com/View.ashx?M=F&ID=9890312&GUID=A565A11F-A38F-40CC-A3BE-1FA306F1CA05>
- <https://mtc.legistar.com/View.ashx?M=F&ID=9890313&GUID=7A4EE16F-F38D-421A-A0A4-AA1DC1163566>

Per ABAG's adopted 2023-2031 RHNA Appeals Procedures, the City of Sausalito had an opportunity to present the bases for its appeal and information to support its arguments to the committee. The City of Sausalito presentation was followed by a response from ABAG-MTC staff, consistent with the information provided in its written staff report (**Attachment 1**). Then, the applicant could respond to the arguments or evidence that ABAG-MTC staff presented.

After these presentations, members of the public had an opportunity to provide oral comments prior to discussion by members of the Administrative Committee. Following their deliberations, members of the committee took a preliminary vote on the City of Sausalito's appeal. The Administrative Committee considered the documents submitted by the City of Sausalito, the ABAG-MTC staff report, testimony of those providing public comments prior to the close of the hearing and comments made by City of Sausalito and ABAG staff prior to the close of the hearing, and written public comments, which are incorporated herein by reference.

Video of this day of the public hearing is available at: [http://baha.granicus.com/MediaPlayer.php?view\\_id=1&clip\\_id=9524](http://baha.granicus.com/MediaPlayer.php?view_id=1&clip_id=9524). A certified transcript of the proceedings from this day of the public hearing is available at: <https://abag.ca.gov/tools-resources/digital-library/10-15-21-rhna-appeals-day-4-certifiedpdf>.

## **ABAG Administrative Committee Decision**

Based upon ABAG's adoption of the final RHNA methodology and the 2023-2031 RHNA Appeals Procedures and the process that led thereto; all testimony and all documents and comments submitted by the City of Sausalito, HCD, other local jurisdictions, and the public prior to the close of the hearing; and the ABAG-MTC staff report, the ABAG Administrative Committee denies the appeal on the bases set forth in the staff report. The key arguments are summarized as follows:

- *Regarding Issue #1: Lack of Available Land* – The development constraints named in this appeal are considered in the Plan Bay Area 2050 Final Blueprint, which is the baseline allocation for the RHNA methodology. Jurisdictions had access to the land use modeling inputs and results for the Final Blueprint. All data and calculations for the RHNA methodology are available in the Draft RHNA Plan, including data for each step of the RHNA methodology for each jurisdiction. Public open-source RHNA calculations are also posted on GitHub. The Housing Element Site Selection (HESS) Tool plays no role in determining RHNA, and the tool evaluates sites using *existing* local development policies. Government Code Section 65584.04(e)(2)(B) states that ABAG may not limit its consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions and jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.
- *Regarding Issue #2: Areas at Risk of Natural Hazards* – Areas at risk of natural hazards are not identified in Housing Element Law as a constraint to housing development. Sausalito is not protected by Plan Bay Area 2050 sea level rise adaptations because only one housing unit in Sausalito is at risk. No additional households are forecasted in inundation areas, so Sausalito's RHNA baseline allocation is lower than if the land was protected. Sausalito has not provided evidence that FEMA or the Department of Water Resources has determined Sausalito's flood management infrastructure is inadequate to avoid the risk of flooding. Given the variety of natural hazard risks the Bay Area faces, it is not possible to address the region's housing needs and avoid planning for new homes in places at risk. Sausalito has the authority to plan for housing in places with lower risk. Government Code Section 65584.04(e)(2)(B) states that ABAG may not limit its consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions and jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing.

- Regarding Issue #3: Drought* – Government Code Section 65584.04(e)(2)(A) states that ABAG must consider opportunities and constraints to development of housing due to a “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.” Sausalito has not demonstrated it is precluded from accommodating its RHNA allocation because of a decision by its water service provider. A moratorium on new water connections has not been implemented, nor is there an indication a moratorium would extend until the end of the RHNA planning period in 2031.
- Regarding Issues #4 and #5: Methodology Does Not Meet Statutory Requirements* – These arguments challenge the Final RHNA Methodology adopted by ABAG and approved by HCD, and thus fall outside the scope of the appeals process. HCD has the authority to determine if the RHNA methodology furthers the statutory objectives and HCD found that ABAG’s methodology does further the objectives. Housing Element Law requires RHNA be consistent with the Plan Bay Area 2050 development pattern, but statute does not specify how to determine consistency, giving ABAG discretion to define its own approach. The approach to determine consistency used throughout the RHNA methodology development process compares RHNA allocations to Final Blueprint growth forecasts adopted at the county and subcounty (i.e., superdistrict) levels. RHNA is consistent if the 8-year growth from RHNA does not exceed the Plan’s 35-year housing growth at the county or subcounty levels. This evaluation shows RHNA is consistent with Plan Bay Area 2050, including in the Central Marin superdistrict where Sausalito is located.
- Regarding Issue #6: Growth Geography Designation* – The Final Blueprint designates a portion of Sausalito as a Transit-Rich and High-Resource Area based on the Sausalito Ferry Terminal, which is a major transit stop according to Public Resources Code Section 21064.3. The ferry terminal is served by bus service, and there is no frequency requirement for ferry terminals under state law. Directing growth to Growth Geographies is essential to addressing policy priorities required for Plan Bay Area 2050 and RHNA, including promoting efficient development patterns, reducing greenhouse gas emissions, and affirmatively furthering fair housing.
- Regarding Issues #7, #8, #9, #10, and #11: Critiques of Methodology* – These arguments challenge the Final RHNA Methodology adopted by ABAG and approved by HCD, and thus fall outside the scope of the appeals process.
- Regarding Issue #12: Maximum Growth Potential* – Statute forbids ABAG from calculating RHNA using the same constraints Sausalito included in its calculation of near-term development capacity. Government Code Section 65584.04(e)(2)(B) states that ABAG

may not limit its consideration of suitable housing sites to a jurisdiction's existing zoning and land use restrictions and must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions and jurisdictions must consider underutilized land, opportunities for infill development, and increased residential densities as a component of available land for housing. Sausalito's recalculation of its RHNA does not identify mistakes in the application of the adopted RHNA methodology. This recalculation represents a critique of the adopted methodology, and such critiques are not a valid basis for a RHNA appeal.

## **Conclusion**

For the foregoing reasons and based on the full record before the ABAG Administrative Committee at the close of the public hearing (which the Committee has taken into consideration in rendering its decision and conclusion), the ABAG Administrative Committee hereby denies the City of Sausalito's appeal and finds that the City of Sausalito's RHNA allocation is consistent with the RHNA statute pursuant to Section 65584.05(e)(1).