

TO: ABAG Administrative Committee

DATE: October 22, 2021

FR: Deputy Executive Director, Policy

RE: County of Santa Clara Appeal of Draft RHNA Allocation and Staff Response

OVERVIEW

Jurisdiction: County of Santa Clara**Summary:** County of Santa Clara requests the decrease of its Draft RHNA Allocation by 2,000 units (64 percent) from 3,125 units to 1,125 units based on the following issues:

- ABAG failed to adequately consider information submitted in the Local Jurisdiction Survey related to:
 - Sewer or water infrastructure constraints for additional development due to laws, regulatory actions, or decisions made by a provider other than the local jurisdiction.
 - Availability of land suitable for urban development or for conversion to residential use.
 - County policies to preserve prime agricultural land.
 - County-city agreements to direct growth toward incorporated areas of county.
- 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 County of Santa Clara received the following draft RHNA allocation on May 25, 2021:

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
County of Santa Clara	828	477	508	1,312	3,125

Local Jurisdiction Survey

The County of Santa Clara 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 401 comments that specifically relate to the appeal filed by the County of Santa Clara. 400 comments support the County's appeal and 1 comment opposes it. [All comments received](#) are available on the ABAG website.

ANALYSIS

Issue 1: *The County argues that ABAG failed to adequately consider information on the availability of land suitable for urban development; lands preserved or protected from urban development to protect open space, farmland, environmental habitats; and agreements between the County and cities to direct growth toward incorporated areas of the county.*

ABAG-MTC Staff Response: In its appeal, the County of Santa Clara argues that ABAG did not adequately consider information provided in the Local Jurisdiction Survey related to agreements between the County and cities to direct growth toward incorporated areas of the county. However, the County's draft allocation was determined in accordance with Housing Element Law, which assigns responsibility for RHNA units to the jurisdiction with land use authority. The County's approach to site identification of allowing cities and towns to include sites located in the unincorporated county in their Housing Element site inventories is different than the standard practice outlined in Housing Element Law where an unincorporated county retains land use authority over an area until it is annexed by a city or town. The expectation that an unincorporated county will plan for housing in an area until it is annexed is the rationale for the provisions in Housing Element Law that allow a county to transfer responsibility for RHNA units to a city or town when an area is annexed.¹ Housing Element Law also recognizes some of the specific challenges unincorporated areas face by including a provision available only to counties that allows for the County and one or more jurisdictions to voluntarily agree on a transfer of units from the County to the city or town.²

The final RHNA methodology adequately considers the potential development constraints described in the County of Santa Clara'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 County's share of the region's households in 2050, which is an input into its RHNA allocation.

¹ See [Government Code Section 65584.07\(d\)](#).

² See [Government Code Section 65584.07\(a\)](#).

Additionally, using the Plan Bay Area 2050 Final Blueprint as the RHNA baseline integrates several key strategies related to agricultural preservation. First, the growth pattern in the Final Blueprint is significantly driven by Strategy EN4 that maintains all existing urban growth boundaries, without any expansion, over the lifespan of the long-range plan. After much discussion with Santa Clara County staff in 2020, the Plan Bay Area 2050 Final Blueprint used Urban Service Areas as the de facto urban growth boundary in Santa Clara County as part of Strategy EN4. Existing urban growth boundaries help not only to protect prime agricultural lands from development, but also parks and open space. Second, this strategy is supported by Strategy EN5, which envisions \$15 billion in future funding for agricultural land preservation to acquire land for permanent agricultural use.

Though the growth forecasted in Plan Bay Area 2050 is constrained to reflect the County's Urban Service Areas and environmental protections and is focused in areas of existing development, 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."*³

Accordingly, the Plan Bay Area 2050 Blueprint forecasts additional feasible growth within the County's Urban Service Areas by increasing allowable residential densities and expanding housing into select areas currently zoned for commercial and industrial uses through strategies such as Strategy H3, Strategy H6, and Strategy H8.

Part of the reason the County's draft allocation is larger than other jurisdictions in Santa Clara County is because the County has the sixth highest number of existing households (26,300) in the county. Importantly, 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. The final RHNA methodology accomplishes this by using total households in 2050 as the baseline allocation

³ See [HCD's comment letter on appeals](#) for more details.

because it incorporates both existing households and the forecasted growth in households from the Final Blueprint.

Housing Element Law requires the RHNA allocation to affirmatively further fair housing, which means overcoming patterns of segregation and addressing disparities in access to opportunity. Incorporating existing housing patterns into the RHNA methodology ensures that the allocations further this objective in all communities, not just those expected to experience significant growth. 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.

The County of Santa Clara's appeal does not provide evidence that ABAG failed to adequately consider information provided in the Local Jurisdiction Survey nor that ABAG failed to determine the jurisdiction's draft allocation in accordance with the adopted final RHNA methodology. Per Government Code Section 65584.04(e)(2)(B), the County of Santa Clara must consider the availability of underutilized land, opportunities for infill development and increased residential densities to accommodate its RHNA. The County does not provide evidence that it is unable to consider underutilization of existing sites, increased densities, accessory dwelling units (ADUs), and other planning tools to accommodate its assigned need. In developing its Housing Element, the County has the opportunity to identify the specific sites it will use to accommodate its RHNA. In doing so, it can choose locations and plan for densities that avoid developing on farmlands, grazing lands, conservation lands and critical habitats.

Issue 2: *The County argues that the RHNA methodology does not meet the RHNA objective to promote infill development and socioeconomic equity, protect environmental and agricultural resources, encourage efficient development patterns, and achieve greenhouse gas reduction targets. Specifically, the County argues it will have to identify sites outside of the Urban Service Areas, which will increase vehicle miles traveled and greenhouse gas emissions and loss of rural and agricultural lands.*

ABAG-MTC Staff Response: This argument by the County 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.⁴ Regarding the RHNA objective mentioned in the County's appeal, HCD made the following findings:

⁴ For more details, see [HCD's letter](#) confirming the methodology furthers the RHNA objectives.

“The draft ABAG methodology⁵ 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 County of Santa Clara indicates it used the Housing Element Site Selection (HESS) Tool to evaluate potential sites for accommodating its RHNA. Per Government Code Section 65584.05(b), this is not a valid basis for an appeal, because the HESS Tool played no role in determining the County’s RHNA. The HESS Tool is a web-based mapping tool developed by ABAG-MTC staff to assist Bay Area jurisdictions with preparing the sites inventory required for their Housing Element updates. The data from the HESS Tool cited in the County’s appeal comes from a beta version of the HESS Tool that was still under development. When the County activated its HESS account, it received an email noting that the tool was under active development and the data presented was preliminary. ABAG anticipates releasing version 1.0 of the HESS Tool this month. Local jurisdictions will be able to review this data and submit corrections directly to ABAG for future iterations of the HESS Tool. Even with the updates in version 1.0, the HESS Tool still plays no role in RHNA.

The County states in its appeal that it evaluated the share of parcels in unincorporated Santa Clara County within Transit-Rich Areas and High Resource Areas using the beta version of the HESS Tool. Particularly relevant to this part of the County’s appeal, the spatial extent of the Transit-Rich Area and High Resource Area layers included in this version of the HESS Tool are defined differently compared to the Plan Bay Area 2050 Growth Geographies.⁶ It is also important

⁵ 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.

⁶ The adopted Growth Geography criteria—which includes the criteria for Transit-Rich and High-Resource Areas—can be found in ABAG Resolution No 03-2020, and MTC Resolution No. 4410.

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. The County of Santa Clara is welcome to follow up with ABAG-MTC about questions related to the HESS data.

The purpose of the HESS Tool is to provide jurisdictions with contextual information as they work to identify sites for future housing. While the HESS Tool intends to encourage jurisdictions to locate new housing in locations near transit or high-resource neighborhoods where feasible to meet climate and equity goals, accommodation of RHNA is not restricted to these areas by Housing Element law. In developing its Housing Element, the County can choose locations for future growth that have the most access to jobs and areas of opportunity. 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 and other amenities can lead to shorter trips, helping to reduce vehicle miles travelled (VMT) and GHG.

RECOMMENDED ACTION

ABAG-MTC staff have reviewed the appeal and recommend that the Administrative Committee **deny** the appeal filed by County of Santa Clara to reduce its Draft RHNA Allocation by 2,000 units (from 3,125 units to 1,125 units).

Although ABAG-MTC staff is not recommending a reduction in the County of Santa Clara's draft RHNA allocation, we understand the County's concerns about accommodating its RHNA in a way that fosters efficient infill and protection of agricultural and environmental resources. As noted previously, Housing Element Law recognizes some of the specific challenges unincorporated areas face by including provisions available only to counties that allow for a transfer of RHNA units to incorporated cities and towns in the county following adoption of the final RHNA allocation.⁷ One option allowed by the statute is for the County and one or more jurisdictions to voluntarily agree on a transfer of units from the County to the city or town. A second option is for a County to transfer units following annexation of unincorporated land to a city.

By statute, voluntary transfers can be completed following ABAG's adoption of the final RHNA plan and prior to the Housing Element due date (January 2023) and transfers related to annexations can occur at any point during the RHNA cycle, as long as the request is submitted to ABAG within 90 days of the annexation. ABAG-MTC staff is prepared to work with jurisdictions in Santa Clara County to come to agreement on a voluntary transfer as a way to advance the County's goals for city-centered growth, and to move forward with approval of the transfer expediently following adoption of the final RHNA in December 2021.

⁷ See [Government Code Section 65584.07](#) for more details.