



**ASSOCIATION of
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June 7, 2010

Richard Bruckner
Director of Planning
County of Los Angeles
320 West Temple Street, 13th Floor
Los Angeles, California 90012

Dear Mr. Bruckner:

We want to inform you that SCAG staff is in the process of developing a set of draft Regional Housing Needs Assessment (RHNA) annexation and transfer guidelines. These guidelines will aid the SCAG Community, Economic & Human Development (CEHD) Committee and the Regional Council in addressing matters related to RHNA transfers during the annexation process and following incorporation of a new city.

As you may be aware, California Government Code Section 65584.07 (Code, a copy of which is attached) provides that regional council of governments such as SCAG notify the State Department of Housing and Community Development (HCD) when a RHNA transfer has been mutually agreed to. The Code also provides for SCAG to mediate disputes related to a RHNA transfer at the request of either a city or a county when a mutual agreement cannot be achieved after an annexation is completed. SCAG has 90 days from the annexation date to render a decision in such cases, and notify the HCD of its determination.

Attached are proposed guidelines that will be integrated into the report to the CEHD Committee as part of its July 1, 2010 meeting agenda. The report to the CEHD Committee in July will serve as a starting point for further review and comment. SCAG staff would appreciate receiving feedback on these proposed guidance from the six SCAG counties prior to submittal to the CEHD Committee. Please contact Joseph Carreras, Housing Program Manager, (213) 236-1856 or carreras@scag.ca.gov, at your earliest convenience to set up a meeting if you wish to discuss further. Alternatively, you may also provide your feedback or written comments regarding the proposed guidelines to Mr. Carreras by the close of business on Thursday, June 17, 2010, so that it may be considered as part of the July 1st CEHD Committee report. We look forward to hearing from you.

Sincerely,

Huasha Liu
Director
Land Use & Environmental Planning

Enclosures: SCAG Proposed RHNA Transfers Guidelines dated June 7, 2010
Government Code Section 65584.07

- 1. In cases where a city and county may reach a mutually acceptable agreement for transfer of a portion of the county's RHNA allocation to the city, SCAG shall accept such an agreement as long as it is consistent with the RHNA methodology used to allocate the county's share. Furthermore, a mutually acceptable transfer agreement shall be effective immediately upon receipt by SCAG and it shall make the transfer effective within 180 days after receipt of the written request. The transfer shall neither reduce the total regional housing needs nor change the regional housing needs allocated.**

Govt. 65584.07(d) specifies that these conditions be met.

- 2. SCAG will only make a determination on a RHNA transfer related to an annexation or new city after an annexation or incorporation has occurred per the requirements contained in AB 242.**

Section 65584.07 (c) and (d)(1) of the California Government Code provide that after an annexation or incorporation has taken place and if a city and county cannot reach a mutually acceptable agreement regarding a transfer of RHNA units, either party may submit a written transfer request to the council of governments to consider data and methodology presented by both parties so that the council of governments can make the determination.

- 3. Within 90 days of an annexation or incorporation, SCAG will receive and review and/ or approve a transfer request within 180 days after receipt of such a request.**

Section 65584.07(d)(2)(A) of the California Government Code provides for this review and approval timeframe.

- 4. SCAG finds that it is appropriate for a county and city to continue its negotiations and work towards finding a reasonable approach for disaggregating the County's RHNA allocation as part of the annexation process.**

As part of the annexation process, SCAG is willing to facilitate meetings with the respective county and city, and share information it may have to assist with the parties' negotiations.

- 5. SCAG will not "approve" a single county or city methodology for purposes of RHNA transfers in the case of annexation because each annexation is different and presents a unique set of circumstances and considerations depending on the parties involved.**

A county's or city's proposed methodology for purposes of RHNA transfers serves as a good "starting point" for resolving issues related to the potential for

future growth in the negotiation of annexation agreements between a county and city, but the parties should be open to other reasonable approaches so as to achieve a mutually acceptable agreement by all involved. By consenting to a single city or county methodology, SCAG may be potentially limiting future reviews. SCAG must reserve its authority to consider all reasonable approaches for disaggregating the county's RHNA allocation as part of the annexation process.

6. RHNA transfer calculations should be supported by land use plans, zoning, etc.

Review of the applicable land use plans and zoning information is important in assessing the appropriate RHNA transfer for the area in question. One consideration is if the annexed land is vacant, has a zoning designation / plan category of open space, or is environmentally sensitive, and is not part of the county site and zoning inventory, the RHNA transfer may be zero (0) units. For example, if a county does not envision planning for housing units in a particular area proposed for annexation during the current RHNA planning period, then it may be inappropriate to transfer RHNA land use capacity between jurisdictions unless the SCAG methodology for RHNA calculated its allocation of housing need to the county based on projected growth in the area to be annexed.

SCAG may also try to determine the housing need for the area proposed for annexation, if feasible. However, this approach is more difficult given that RHNA allocations are not made below the jurisdictional level. It should also be noted that the Housing Element law does not require the adequate sites inventory to correspond geographically with the growth forecast to calculate the RHNA, nor does it preclude the annexing jurisdiction from rezoning the sites as appropriate, following local public hearing and housing element update requirements.

7. SCAG shall only approve the total RHNA transfer and shall not break the transfer of units down by income level.

As different local jurisdictions have different percentage breakdowns in housing affordability, the annexing city should apply its own designated percentages to the total number of RHNA need transferred.

8. The RHNA transfer determination by SCAG shall be based upon the methodology SCAG used to assign the RHNA numbers within the region.

Govt. 65584.07(d) specifies that this condition be met.

9. If the annexed land is subject to a development agreement authorized under subdivision (b) of Section 65865 that was entered into by a city and a landowner prior to January 1, 2008, the revised determination shall be based upon the number of units allowed by the development agreement.

Govt. 65584.07(d) specifies that this condition be met.

- 10. SCAG will approve a RHNA transfer or assignment of need, in case of a new incorporation, as long as the calculation is generally consistent with the SCAG methodology for allocating RHNA need, as provided for in statute, and is mutually agreed to by both the City and the County.**

Govt. 65584.07(c) outlines the requirements of annexation in the case of an incorporation of a new city. If both the newly incorporated city and county mutually reach an agreement for transfer of a portion of the county's allocation to the city, SCAG should accept the transfer.

DRAFT

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 65584.07

65584.07. (a) During the period between adoption of a final regional housing needs allocation and the due date of the housing element update under Section 65588, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(1) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.

(2) The transfer of shares shall only occur between a county and cities within that county.

(3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(4) The council of governments or the department, whichever assigned the county's share, shall approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), and (3) above have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments or the department. The council of governments shall submit a copy of its decision regarding the proposed reduction to the department.

(b) (1) The county and cities that have executed transfers of regional housing needs pursuant to subdivision (a) shall use the revised regional housing need allocation in their housing elements and shall adopt their housing elements by the deadlines set forth in Section 65588.

(2) A city that has received a transfer of a regional housing need pursuant to subdivision (c) shall adopt or amend its housing element within 30 months of the effective date of incorporation.

(3) A county or city that has received a transfer of regional housing need pursuant to subdivision (d) shall amend its housing element within 180 days of the effective date of the transfer.

(4) A county or city is responsible for identifying sites to accommodate its revised regional housing need by the deadlines set forth in paragraphs (1), (2), and (3).

(5) All materials and data used to justify any revision shall be made available upon request to any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship. A fee may be charged to interested parties for any additional costs caused by the amendments made to former subdivision (c) of Section 65584 that reduced from 45 to 7 days the time within which materials and data were required to be made available to interested parties.

(c) (1) If an incorporation of a new city occurs after the council of governments, subregional entity, or the department for areas with no council of governments, has made its final allocation under Section 65584.03, 65584.04, 65584.06, or 65584.08, a portion of the county's allocation shall be transferred to the new city. The city and county may reach a mutually acceptable agreement for transfer of a portion of the county's allocation to the city, which shall be accepted by the council of governments, subregional entity, or the

department, whichever allocated the county's share. If the affected parties cannot reach a mutually acceptable agreement, then either party may submit a written request to the council of governments, subregional entity, or to the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and determine the number of units, by income category, that should be transferred from the county's allocation to the new city.

(2) Within 90 days after the date of incorporation, either the transfer, by income category, agreed upon by the city and county, or a written request for a transfer, shall be submitted to the council of governments, subregional entity, or to the department, whichever allocated the county's share. A mutually acceptable transfer agreement shall be effective immediately upon receipt by the council of governments, the subregional entity, or the department. A copy of a written transfer request submitted to the council of governments shall be submitted to the department. The council of governments, subregional entity, or the department, whichever allocated the county's share, shall make the transfer effective within 180 days after receipt of the written request. If the council of governments allocated the county's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.04 or 65584.08. If the subregional entity allocated the subregion's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.03. If the department allocated the county's share, the transfer shall be based on the considerations specified in Section 65584.06. The transfer shall neither reduce the total regional housing needs nor change the regional housing needs allocated to other cities by the council of governments, subregional entity, or the department. A copy of the transfer finalized by the council of governments or subregional entity shall be submitted to the department. The council of governments, the subregional entity, or the department, as appropriate, may extend the 90-day deadline if it determines an extension is consistent with the objectives of this article.

(d) (1) If an annexation of unincorporated land to a city occurs after the council of governments, subregional entity, or the department for areas with no council of governments, has made its final allocation under Section 65584.03, 65584.04, 65584.06, or 65584.08, a portion of the county's allocation may be transferred to the city. The city and county may reach a mutually acceptable agreement for transfer of a portion of the county's allocation to the city, which shall be accepted by the council of governments, subregional entity, or the department, whichever allocated the county's share. If the affected parties cannot reach a mutually acceptable agreement, then either party may submit a written request to the council of governments, subregional entity, or to the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and determine the number of units, by income category, that should be transferred from the county's allocation to the city.

(2) (A) Except as provided under subparagraph (B), within 90 days after the date of annexation, either the transfer, by income category, agreed upon by the city and county, or a written request for a transfer, shall be submitted to the council of governments, subregional entity, and to the department. A mutually acceptable transfer agreement shall be effective immediately upon receipt by the

council of governments, the subregional entity, or the department. The council of governments, subregional entity, or the department for areas with no council of governments, shall make the transfer effective within 180 days after receipt of the written request. If the council of governments allocated the county's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.04 or 65584.08. If the subregional entity allocated the subregion's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.03. If the department allocated the county's share, the transfer shall be based on the considerations specified in Section 65584.06. The transfer shall neither reduce the total regional housing needs nor change the regional housing needs allocated to other cities by the council of governments, subregional entity, or the department for areas with no council of governments. A copy of the transfer finalized by the council of governments or subregional entity shall be submitted to the department. The council of governments, the subregional entity, or the department, as appropriate, may extend the 90-day deadline if it determines an extension is consistent with the objectives of this article.

(B) If the annexed land is subject to a development agreement authorized under subdivision (b) of Section 65865 that was entered into by a city and a landowner prior to January 1, 2008, the revised determination shall be based upon the number of units allowed by the development agreement.

(3) A transfer shall not be made when the council of governments or the department, as applicable, confirms that the annexed land was fully incorporated into the methodology used to allocate the city's share of the regional housing needs.