



Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

June 17, 2010

Ms. Huasha Liu
Director, Land Use & Environmental Planning
Southern California Association of Governments
818 W. Seventh Street, 12th Floor
Los Angeles, CA 90017

Dear Ms. Liu:

Thank-you for the opportunity to comment and collaborate with you on the development of SCAG's guidelines and procedures for RHNA transfers for annexations and incorporations. We commend SCAG for taking the necessary steps to establish a clear and definitive procedure for this very important issue.

In general, we feel that the draft guidelines need to be further developed to clarify and provide a uniform approach and application for RHNA transfers. In addition to referencing the legal requirements in Government Code 65584.07 (c) and (d), the guidelines should provide specific details on procedures for implementing these statutes. For example, how does a city or county submit a written request and to whom? How will cities and counties present their facts, data and methodologies to SCAG? The draft guidelines do not provide a clear process for when a city and county cannot come to a mutual agreement on a RHNA transfer.

Attached are our preliminary comments on the draft guidelines. Due to the short timeframe to respond, and as we are coordinating comments from other County staff, we may forward additional comments to SCAG in the near future.

Thank you for your consideration. We look forward to working with you.

Sincerely,

FOR
Richard J. Bruckner
Director of Planning
County of Los Angeles Department of Regional Planning

RJB:RCH:CC

Enclosure: Los Angeles County comments on SCAG Proposed RHNA Transfers Guidelines dated June 3, 2010

Proposed Guidelines for RHNA Transfers Due to Annexations and Incorporations (6/3/2010)
(with County Comments)

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 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 are met.

COMMENT: As Government Code 65584.07 (c) and (d) describe nuanced differences in approaches to RHNA transfers for incorporations and annexations, as well as mutually agreed upon RHNA transfers vs. written requests for COG-determined RHNA transfers, it would be helpful to summarize those provisions in a table. See suggested tables below.

RHNA TRANSFERS FOR INCORPORATIONS - REQUIRED			
	Submittal	Submittal Deadline	Effective
Mutually agreed upon RHNA transfer by city and county	Mutually agreed upon transfer agreement <ul style="list-style-type: none"> • Specifies agreed upon RHNA transfer, by income category 	Within 90 days after incorporation; can be extended by SCAG if appropriate	Upon SCAG's receipt of RHNA transfer agreement SCAG sends copy of transfer agreement to HCD
SCAG-determined RHNA transfer	Written request by city or county for SCAG to determine RHNA transfer <ul style="list-style-type: none"> • Both parties present facts, data and methodologies • SCAG determines transfer, by income category, and based on SCAG's adopted RHNA methodology 	Within 90 days after incorporation; can be extended by SCAG if appropriate	180 days after SCAG's receipt of written request for SCAG to determine RHNA transfer SCAG notifies all parties and HCD of its final determination

RHNA TRANSFERS FOR ANNEXATIONS - OPTIONAL			
	Submittal	Submittal Deadline	Effective
Mutually agreed upon RHNA transfer by city and county	Mutually agreed upon transfer agreement <ul style="list-style-type: none"> • Specifies agreed upon RHNA transfer, by income category 	Within 90 days after annexation; can be extended by SCAG if appropriate	Upon SCAG's receipt of RHNA transfer agreement SCAG sends copy of transfer agreement to HCD
SCAG-determined RHNA transfer	Written request by city or county for SCAG to determine RHNA transfer <ul style="list-style-type: none"> • Both parties present facts, data and methodologies. 	Within 90 days after annexation; can be extended by SCAG if appropriate	180 days after SCAG's receipt of written request for SCAG to determine RHNA transfer SCAG notifies all parties and HCD of its final

	<ul style="list-style-type: none"> • SCAG determines transfer, by income category, and based on SCAG's adopted RHNA methodology 		determination
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2. SCAG will only make a determination on a RHNA transfer related to an annexation of new city after an annexation or incorporation has occurred per the requirements in AB 242 Government Code 65584.07 (c) and (d).

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.

COMMENT: In the case of a mutually acceptable agreement between a county and city, can this be submitted prior to an annexation?

In order to ensure that there is no confusion, SCAG should include a reference to #4, stating explicitly that SCAG encourages counties and cities to engage in negotiations over RHNA transfers during the annexation process and that SCAG is willing to help facilitate those discussions.

3. Within 90 days of an annexation or incorporation, SCAG will receive and review and/or approve a transfer 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.

COMMENT: The guidelines should include more details, such as a timeline provided for scheduling the meeting (eg., within 30 days of a request), and there needs to be an expectation of a resolved outcome.

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.

COMMENT: The statute specifies that the transfer shall be based on SCAG's adopted RHNA methodology.

SCAG's statement that no single methodology will be approved because each annexation presents a unique set of circumstances and considerations depending on the *parties* (emphasis added) involved is troubling because modifying an allocation based on the jurisdictions or representatives involved could lead to perceptions of bias for or against certain jurisdictions. The involvement of one participant or another in a negotiation would not be relevant to the determination of a RHNA transfer.

While multiple methodologies may preserve some leeway for SCAG, adopting no guidance at all for which methodologies may be used will inevitably lead to more disagreements and uncertainty about how RHNA transfers will be resolved. SCAG should, at minimum, provide a list of possible methodologies that jurisdictions may use. Alternatively, SCAG should at minimum offer a jurisdiction wishing such a review preliminary feedback of a proposed "starting point methodology" so that jurisdictions will not be caught off guard by unfavorable determinations later in the RHNA transfer process. Having both sides know that a given methodology has (or has not) been reviewed and given favorable remarks should help all negotiating jurisdictions more easily come to a consensus without forcing SCAG to arbitrate the dispute.

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 areas 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 areas 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 sites as appropriate, following local public hearing and housing element update requirements.

COMMENT: The statement that a local jurisdiction's land use plans and/or zoning designations should be used to help determine RHNA transfers is not consistent with the state law and would allow local jurisdictions to "game the system" by deliberately zoning areas as open space or as other low-density designations. Under state law, RHNA is largely allocated based on projected housing needs of a local jurisdiction, and then it is the responsibility of the local jurisdiction to plan and zone for that projected housing need. Reversing the process by allowing RHNA transfers to be determined by zoning is out of compliance with Section 65584.07(d), which requires that the transfer be based on the methodology specified in 65584.03, 65584.04, or 65584.08 (none of which provide that RHNA allocation is directly based on whatever existing zoning or land use designations happen to have been chosen by a local jurisdiction).

SCAG is correct and we are in complete agreement that the Housing Element law does not require the adequate sites inventory to correspond geographically with the growth forecast, and that a local jurisdiction may have to rezone sites in order to meet their regional housing needs.

Finally, the guidelines should be clear and definitive, and avoid terms such as "if feasible" and "may."

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 percentage to the total number of RHNA need transferred.

COMMENT: The statute indicates that a mutually agreed upon RHNA transfer between a city and county will be determined by income category. In addition, the statute indicates that SCAG's RHNA transfer determination will be made by income category. See 65584.07 (c)(1) and (d)(1). This does not preclude giving consideration to the different breakdowns in affordability for each local jurisdiction.

SCAG should consider any unintended consequences of this approach, such as impacts to the overall regional affordable housing distribution.

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.

COMMENT: SCAG's guidelines should include a copy or reference to SCAG's adopted RHNA methodology. SCAG should also summarize the methodologies (or factors considered) that are specific in the statute to help inform all interested parties, assist local jurisdictions develop their own methodologies and form a sound starting point for voluntary negotiations of RHNA transfer.

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.

COMMENT: SCAG's guidelines should also reference 65584.07 (d)(3) and include some information on what parcels or SOIs were incorporated into a city's RHNA allocation.

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.

COMMENT: What is an "assignment of need"? What is "generally consistent"? This is very confusing.

DRAFT