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The Honorable Rex Richardson, President  
Regional Council Members  
Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700  
Los Angeles, California 90017

Subject: SCAG Regional Council Future Discussion on State Department of Housing  
and Community Development Issuance of 1.34 Million Housing Units to  
the SCAG Region

Dear President Richardson and Members of the SCAG Regional Council,

The SCAG RHNA Appeals Board just completed a monumental task in completing its review of more than 50 appeals filed by SCAG jurisdictions on their respective draft Regional Housing Needs Assessment (RHNA) allocations.

In listening to these public hearings, we were reminded of the concerns that were expressed by jurisdictions and residents – both within the filed appeals, as well as public comments expressed – on the need for SCAG to conduct a Closed Session of its Regional Council to discuss outstanding concerns over the State Department of Housing and Community Development (State HCD) issuance of 1.34 million housing units to the SCAG region for the 6th cycle RHNA.

We hope that this opportunity is made available to the Regional Council members. Should such a meeting be convened, I respectfully would offer the following questions to help guide any such discussions. And please feel free to contact me to further discuss.

Respectfully,

HARPER & BURNS LLP

William P. Curley III, City Attorney  
City of Mission Viejo

**Inquiry:**

The issue is the starting point: the 1.34 million housing units that California State Department of Housing and Community Development (State HCD) issued for the SCAG region, and if said number is statutorily defensible. In other words, did SCAG receive from State HCD, a defective regional allocation? And if SCAG did receive a defective regional allocation, what steps should SCAG take to right this wrong?

Both SCAG and local governments have raised concern that State HCD failed to use SCAG's 2020 RTP/SCS growth forecasts in determining the region's existing and projected housing need, and by such failure, did not comply with Government Code Section 65584.01(a) governing RHNA (See Attachment 1, Exhibit A).

Further, recent studies issued in 2020, after HCD's October 2019 determination of 1.34 million housing units, conclude that HCD's calculation doubled SCAG's regional housing need, through over-counting and double counting errors outlined by the Embarcadero Institute. Thus, instead of 1.34 million housing units, SCAG's RHNA should have been in the order of 651,000 housing units for the 6<sup>th</sup> cycle. Additional background information on these two issues is provided in Attachment 1.

The answers to several key questions warrant consideration and discussion during the SCAG Regional Council Closed Session:

1. Did HCD follow the law when calculating the regional determination of 1.34 million housing units?
  - a) Was this discussed at the RHNA Litigation Study Team meeting of November 2, 2020?
  - b) Did the RHNA Litigation Study Team conclude that State HCD did not follow the law?
  - c) Did SCAG's Legal Counsel determine that State HCD did not follow the law?
  - d) If so, are we really just going to let this issue go?
- 2) If HCD did not follow the law, does SCAG have a moral obligation to its member jurisdictions to demand that the law be followed?
  - a) If we let this issue go, are we setting ourselves up for the same problems to occur in the next RHNA cycle?
  - b) Should not HCD be held accountable for not following the law?
  - c) Do we want SCAG to be an active agent in perpetuating incorrect and unlawful implementation of State law?
  - d) If SCAG does nothing, won't our jurisdictions pay the price for inaction for the next decade, by having to find sites for an over-inflated housing need for the 6<sup>th</sup> cycle? Are we just going to explain this away as a learning experience?

- e) Further, if SCAG does not challenge HCD on its noncompliance and its errors, what groundwork, and what precedence, does this lay for the 7<sup>th</sup> RHNA cycle?
- 3) Has SCAG informally discussed these concerns with State HCD, and if so, what was State HCD's response?
- 4) What are the options before us to address this matter?
  - a) Does SCAG have legal standing to sue State HCD over this violation of the law?
  - b) What other options are on the table?

**Background Information:**

**State HCD Regional Determination: 1.34 Million Housing Units for SCAG Region**

On October 15, 2019, the State Department of Housing and Community Development (State HCD) issued a final regional housing need of 1.34 million units for the six-county SCAG region to plan for, for the 6<sup>th</sup> cycle Regional Housing Needs Assessment (RHNA) period of October 2021 to October 2029.

Regionally, this is more than three times the amount that State HCD issued in 2012 for the current RHNA 5<sup>th</sup> cycle.

At the direction of the Regional Council, SCAG prepared an official objection letter to State HCD on September 18, 2019, pursuant to State Government Code provisions.

SCAG's objection letter specifically noted that State HCD failed to use SCAG's 2020 RTP/SCS growth forecasts in determining the region's existing and projected housing need, and by such failure, raised concern that State HCD did not comply with Government Code Section 65584.01(a). Section 65584.01(a), which is provided in Exhibit A, states that State HCD shall use the regional forecasts of a council of governments, if said forecasts are within a 1.5% tolerance range of the State Department of Finance population projections. SCAG's population forecasts were within the 1.5% tolerance range. SCAG's letter also raised additional concerns with data sources and methodology that State HCD used to calculate the 1.34 million housing units. Based on SCAG staff's technical documentation, SCAG recommended an alternative proposed 6<sup>th</sup> cycle RHNA determination ranging from 824,000 to 921,000 units. State HCD maintained the 1.34 million units for the SCAG region.

**Freddie Mac and Embarcadero Institute Reports:**

Further, in 2020, two reports were released that raised question on the accuracy of the 1.34 million housing unit allocation from State HCD: a February 2020 Freddie Mac report and a September 2020 Embarcadero Institute report. These reports raised concerns whether State HCD's regional determination was over-inflated. The Embarcadero Institute Report further researched and recalculated each factor for SCAG's regional housing need, and concludes that SCAG's housing need should be approximately 651,000 housing units as compared to the issued 1.34 million housing units, due to double-counting errors conducted by State HCD. The Embarcadero Institute Report also identified that this same error was conducted with the regional determinations for the San Diego Council of Governments (SANDAG), the Association of Bay Area Governments (ABAG), and the Sacramento Area of Governments (SACOG), resulting in a 941,000 housing unit over-count, cumulatively, for the four regions. The greatest over-count was for the SCAG region; 73%, or approximately 691,000 units, applies just to the SCAG region.

**Request to Re-Convene SCAG's RHNA Litigation Study Team:**

Based on these concerns, members of the Regional Council and SCAG jurisdictions requested SCAG to re-convene its SCAG RHNA Litigation Study Team, to have the RHNA Litigation Study Team discuss whether to pursue legal action against State HCD for noncompliance with housing statute and the new additional information that raised question on State HCD's calculation of the 1.34 million housing units. After several months of requests, the SCAG RHNA Litigation Study Team was convened on November 2, 2020, and the RHNA Litigation Study Team met in a closed meeting and determined to not pursue any legal challenge against State HCD.

**SCAG RHNA Litigation Study Team Report-Out:**

At the 11/04/2020 SCAG Executive/Administration Committee (E/AC) meeting and the 11/05/2020 SCAG Regional Council meeting, SCAG President Rex Richardson verbally reported out that the SCAG RHNA Litigation Study Team met on Monday, November 2, 2020. He summarized that the RHNA Litigation Study Team:

- 1) Discussed HCD's 1.34 million housing unit determination for the SCAG region and the Freddie Mac study, and,
- 2) Conducted a healthy discussion, and reached a general consensus that SCAG should not pursue litigation against HCD over the regional housing determination number.

At the 11/05/2020 Regional Council meeting, Councilmembers Wendy Bucknum (Mission Viejo) and Trevor O'Neil (Anaheim) requested that the full Regional Council be provided the opportunity to discuss and make a decision on this issue. They felt that the importance of the issue and its impact on the RHNA of all the SCAG jurisdictions, warranting the consideration of the entire Regional Council to weigh in.

Councilmember O'Neil further requested that the information that the RHNA Litigation Task Force reviewed at its 11/02/2020 meeting, be shared with the entire Regional Council, and that the full Regional Council body discuss and make a decision on SCAG's course of action with State HCD. At the January 7, 2021 Regional Council meeting, President Richardson announced that such a Closed Session meeting of the Regional Council would be convened.

The item is now being considered at Thursday's 2/04/2021 Regional Council meeting, under Closed Session, for discussion and action.

Further, during December 2020 and January 2021, SCAG's RHNA Appeals Board conducted public hearings on 51 appeals filed by SCAG jurisdictions. During the RHNA Appeals process, many of the appellants supported the request that the SCAG Regional Council conduct a meeting to discuss the starting number issued by State HCD, expressing concerns with allocations that were multiple-fold higher than their 5<sup>th</sup> cycle allocation and the ability to find enough sites to plan for these allocations. The SCAG

staff and the RHNA Appeals Board determined that State HCD's regional determination number is not a valid basis for a RHNA appeal, and is not within the authority of SCAG's RHNA Appeals Board or Regional Council to modify.

**California Government Code Section 65584.01(a):**

*The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the projection year, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 1.5 percent of the total regional population forecast for the projection year by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population projected by the council of governments and the total population projected for the region by the Department of Finance is greater than 1.5 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If agreement is not reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.*