



September 13, 2019

Sent Via Email

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**RE: SCAG 6th Cycle Regional Housing Needs Assessment Proposed Allocation
Methodology**

Dear Mr. Ajise:

We are writing to provide comments on the Southern California Association of Government's (SCAG's) Regional Housing Needs Assessment (RHNA) Proposed Allocation Methodology for the 6th Housing Element Cycle. Our organizations serve lower-income renters and homeowners across SCAG's service area. We collectively serve and represent thousands of individuals who are among the hardest hit and the most at risk from California's housing crisis and whose access to fair housing choice remains unfulfilled due to unremediated local, state, and federal discriminatory housing, land use, and financial policies. State law was recently amended to revise the objectives and factors that apply to the RHNA allocation process. These changes provide SCAG with an opportunity and a mandate to develop and adopt a RHNA methodology that more accurately reflects the region's housing needs and opportunities and to play a crucial role in addressing the barriers to fair housing choice and access to opportunity that continue to impact the region.

We appreciate SCAG staff's work to develop and explain the proposed methodologies. However, it is our opinion that the proposed methodologies fail to adequately further the objectives of the statute and to fully incorporate the factors set forth in state law. Our comments below describe

the inconsistencies between the proposed methodologies and the requirements set forth in Government Code Sections 65584 and 65584.04¹ and provide recommendations with respect to further analysis or factors that SCAG should consider in order to achieve compliance with these provisions.

A. SCAG’s Proposed Methodologies Fail on Their Face to Further Objectives Set Forth in Section 65584(d) and to Consider Factors Set Forth in Section 65584.04(b)&(e) as Required

Government Code Section 65584(d) contains the mandatory directive that the RHNA plan adopted pursuant to Sections 65584.04 and 65584.05 “shall further all” of the objectives set forth in numerals one through five of that subsection. (underline added).

Section 65584.04(e) in turn provides that, to the extent sufficient data is available from local governments pursuant to the survey required by Section 65584.04(b) or from “other sources,” each council of governments (COG) “shall include” the factors set forth in numerals one through twelve to develop its RHNA allocation methodology.

The SCAG methodology analysis fails to demonstrate that the proposed methodologies further all of the objectives set forth in Section 65584(d) and contains express refusals to include several of the factors that Section 65584.04(e) requires to be included. Accordingly, the proposed methodologies, if adopted by SCAG as drafted, violate the statute.

1. Affirmatively Furthering Fair Housing (65584.04(b)(2) & 65584(d)(5))

Section 65584.04(b)(2) requires that RHNA allocations affirmatively further fair housing (AFFH). As defined in Section 65584.04(e), “affirmatively furthering fair housing” means:

“taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”

SCAG’s AFFH analysis consists of: (1) a review of themes that arose in the varied responses provided by the 90 of 197 total jurisdictions within the SCAG service area that completed the

¹ All future references to provisions of law are to the Government Code, unless stated otherwise.

AFFH survey, (2) a review of the HUD Opportunity Indexes as a tool for determining access to opportunity at the census tract level but does not include an assessment of its application to the proposed methodologies, and (3) an assessment that data indicates that the region currently lacks a job/housing fit but that this finding is not relevant to the RHNA allocation. Based on this review, SCAG concludes that (1) “while there is a wide range of barriers to fair housing opportunities in the SCAG region there is also a wide range of strategies to help overcome these barriers at the local level,” and (2) that the HUD Opportunity Indexes should not be used in the methodology due to distinctions in the scoring of rural and urban census tracts that may complicate scoring for jurisdictions that include census tracts falling in both categories. pp. 30-32.

SCAG’s analysis is insufficient to demonstrate that any of the proposed methodologies further the objective to affirmatively further fair housing as required by Section 65584(d)(5) and comply with the requirements set forth in Section 65584.04(b)(2). First, the analysis relies on self-reported and often highly subjective responses to AFFH survey questions completed by less than half of the jurisdictions within SCAG’s service area. As noted by SCAG, “A number of jurisdictions indicated they did not have any reportable barriers to fair access to housing,” a finding that calls into question the validity of survey responses in light of the data demonstrating a wide range of disproportionate housing needs and fair housing issues impacting people of color, persons with disabilities, and other classes protected under civil rights and fair housing laws on a geographically pervasive basis. p. 29. The surveys therefore do not form a solid foundation for an assessment of the extent to which the proposed methodologies affirmatively further fair housing throughout the region as a whole or a determination that the methodologies comply with that objective. In addition, the analysis does not discuss or demonstrate how the methodologies are “based upon the issues, strategies, and actions that are included...in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing” and housing elements adopted by local jurisdictions” as required. § 65584.04(b)(2).

While a Social Equity Adjustment (SEA) may be helpful in accomplishing the goal of affirmatively furthering fair housing, if the methodology continues to perpetuate disproportionately smaller RHNA allocations--and particularly disproportionately smaller allocations at the low- and very low-income levels--to exclusionary, high opportunity areas, it will have failed to meet the goal of affirmatively furthering fair housing. p. 18. Ultimately, jurisdictions that currently lack housing opportunities for lower-income households must receive a proportionately higher share of the region’s lower-income RHNA.

We also deeply question the inclusion of the factor weighting a jurisdiction’s “relative share of building activity” in Option 1 by decreasing a jurisdiction’s RHNA proportionate to their share of building permits issued that exceeds the region as a whole. As drafted, the factor does not consider the affordability of housing permitted by a jurisdiction by income category. Therefore, a

wealthy jurisdiction that has permitted a disproportionate share of above-moderate income housing compared to the region as a whole but no lower-income housing may see its RHNA for all income categories reduced as a result. This result is contrary to the objective that the RHNA methodology affirmatively further fair housing.

On the other hand, to “address significant disparities in housing needs and in access to opportunity,” SCAG must ensure that its RHNA allocation methodology does not assign so small a lower-income RHNA share to high-poverty jurisdictions that housing elements will not necessarily adequately address the housing needs of low-income households, households of color, and other households protected under civil rights and fair housing laws. For example, Options 1 and 2 heavily weight the RHNA allocations based on population share and share of population within a High Quality Transit Area (HQTA). Unincorporated Eastern Riverside County, which has a relatively low population compared to dense urban centers in the SCAG service area and which largely lacks HQTAs, would receive a minimal allocation under these two factors, yet farmworkers and other low-wage workers who live and work in the Eastern Coachella Valley are deeply impacted by high rent burdens and dilapidated and unsafe housing conditions in mobilehome parks and direly need access to safe and affordable housing options.

Further, the AFFH analysis also suffers from the same inadequacy as the jobs/housing relationship analysis, described further below, as the methodology declines to incorporate lack of jobs housing fit into a consideration of AFFH.

In addition, SCAG’s suggestion that the HUD Opportunity Indexes be used to assess the outcomes of the RHNA methodology lacks clarity about how SCAG will do so in an objective manner, how it will use the Indexes to determine if a methodology does not satisfy the objective to AFFH, and what SCAG will do in response to such a finding. We request that SCAG clarify these matters and explore further how the HUD Opportunity Indexes can be formally incorporated into the final methodology. In addition, SCAG did not but should consider and compare other tools that measure access to opportunity for their applicability to a RHNA allocation methodology and the duty to AFFH. Other tools that we recommend SCAG consider include the California Environmental Protection Agency’s California Communities Environmental Health Screening Tool, 3.0, the California Tax Credit Allocation Committee and Department of Housing and Community Development’s Opportunity Area Maps, HUD’s Racially and Ethnically Concentrated Areas of Poverty; and areas of the state at or below 60% of Area Median Income.

2. Jobs Housing Relationship (§ 65584.04(e)(1))

AB 1771 (Bloom, Chapter 989, Statutes of 2018), codified at Sections 65584 and 65584.04, among other sections, required a new approach to analyzing jobs and housing throughout a

region for purposes of allocating the RHNA, a “jobs/housing fit” approach that includes a particular focus on whether jurisdictions have an adequate supply of housing affordable to workers in low-wage jobs. As presented, SCAG’s draft RHNA shows that jobs/housing fit is worsening, but then appears to intentionally ignore the statutory requirement to address jobs/housing fit. As stated in the proposal, “...SCAG staff does not recommend using jobs housing fit as a factor in the distribution methodology.” (Page 20). As such, none of the proposed methodologies is consistent with the law.

For example, the Coachella Valley’s economy is largely based on agriculture and tourism. Many low-income workers in these industries commute from homes in the eastern Coachella Valley to jobs in the communities in the western Coachella Valley. The limited affordable housing in the western portion of the valley does not give low-wage workers the option to live near job centers. Rather than providing housing for the area’s workforce, many of the homes in the western Coachella Valley are short-term vacation rentals for people who do not live year-round in the community. The RHNA allocation process should be a starting point for remedying this situation by allocating a higher share of the lower-income RHNA to western Coachella Valley communities.

SCAG’s analysis contends that the HQTA weighting covers the jobs/housing relationship factor somewhat. However, Section 65584.04(e)(1) does not allow this conflation. Rather, the provision provides that the jurisdiction “shall” factor into its methodology “[e]ach member jurisdiction’s existing and projected jobs and housing relationship.” The provision further specifies that this:

“shall include an estimate based on readily available data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to low-wage workers as well as an estimate based on readily available data, of projected job growth and projected household growth by income level within each member jurisdiction during the planning period.”

Further, SCAG’s reasoning for not including the required jobs/housing relationship factor is flawed. SCAG argues that just because an individual resides in the same jurisdiction as their job, that does not mean that they have a reduced commute and it is possible that an individual may live in a different jurisdiction but because they and their job are near the border, their commute may be minor. p.20. While this may be true in some situations, relying on other jurisdictions to reduce one’s own gap between low-wage jobs and affordable housing will never result in meaningful improvements and the issue will never be resolved on a regional level if it is not also resolved within each individual jurisdiction. By not incorporating this factor into the methodology, jurisdictions with the greatest gaps will not be forced to meaningfully address the issue. Furthermore, by not incorporating this factor into the methodologies, it continues to

segregate housing and negatively impact the environment by perpetuating long commutes and the separation of low-income families from wealthier jurisdictions where they are employed. In this way, the methodologies do not further the statutory objectives to AFFH, promote an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction, protect the environment, and promote the achievement of the state's GHG reduction targets. § 65584(d)(2), (3), &(5).

SCAG's analysis does not show that HQTAs are an accurate proxy for jobs/housing fit, as it states only that HQTAs overlap "with some of the areas identified as having a high concentration of jobs to housing overall and low wage jobs to low wage workers." p. 20 (italics added). pp. 19-20.

Staff has studied jobs and housing data, as demonstrated in the appendix pages. We recommend that SCAG revise its proposed methodologies so that they are based on this data as required by statute.

3. Lack of sewer & water during the planning period (§ 65584.04(e)(2)(A))

According to SCAG, the proposed methodologies expressly rely on only aerial data and general plan land use data, without attempting to determine actual sewer and water availability. The analysis provides no indication that SCAG considered the housing elements of the jurisdictions that must address sewer and water capacity pursuant to Government Code Section 65583.2. There is also no indication that SCAG considered federal and state laws, such as the Sustainable Groundwater Management Act, Local Agency Management Plan requirements, and the Safe and Affordable Drinking Water Fund, that affect sewer and water availability or decisions of sewer or water providers as required by the subdivision. p. 20. We recommend that SCAG develop a revised methodology that expressly takes into consideration these factors using both data provided by local governments and "other sources" as required. § 65584.04(e)(2)(A).

Regions such as the Eastern Coachella Valley are highly burdened by the lack of safe and affordable housing and access to water and sewer infrastructure as one of the many infrastructure needs that continuously limits plans for affordable housing. Considering the nexus of water and sewer with affordable housing is essential for rural communities like the Eastern Coachella Valley.

4. Loss of Assisted Units (§ 65584.04(e)(5))

SCAG's analysis expressly fails to include the loss of assisted units in its proposed methodologies, though data is available regarding these units. The analysis attempts to justify the exclusion of this mandatory factor by stating that the impact of the loss of assisted housing

“is not regionally uniform.” But that is irrelevant. Each of the factors listed in Section 65584.04 manifest differently and to a different degree in every community. Some exclusionary communities do not have any assisted units to lose, while others with relative concentrations of assisted units are at greater risk of loss of affordable housing stock and tenant displacement. p. 22-23. The statute does not allow SCAG to avoid this factor. SCAG must do the work necessary to address it in its RHNA methodology.

The fact that local jurisdictions must include in their housing elements goals and programs to address the loss of affordable housing does not relieve SCAG of its obligation to incorporate these factors in its methodology. pp. 22-23. In fact, the RHNA allocated to local jurisdictions must include these factors in its determination for jurisdictions to be incentivized to properly address these issues.

5. Rent Burdened and Severely Rent Burdened Households (§ 65584.04(e)6)

According to SCAG, the percent of households at each income level that are paying more than 30% and more than 50% of their rent is only “implicitly” considered via the overarching analysis of the lack of supply of housing for all income levels. pp. 23-24. The analysis explains the failure to consider this factor by saying that “it’s impossible to determine through the methodology how and why cost-burdening is occurring in a particular jurisdiction.” But SCAG’s inability to determine why a cost-burden exists is not a basis in the statute for not including the factor in the allocation methodology. The factor must be considered in determining the distribution of the RHNA. § 65584.04(e)6. If one community is significantly more burdened than an adjacent community, that factor must be considered in allocating the RHNA.

The fact that local jurisdictions must include in their housing elements goals and programs to address rent-burdened families does not relieve SCAG of its obligation to incorporate these factors in its methodology. pp. 22-23. In fact, the RHNA allocated to local jurisdictions must include these factors in its determination for jurisdictions to be incentivized to properly address these issues.

6. Rate of Overcrowding (§ 65584.04(e)7)

As SCAG does for the factor of rent burden, it does not include an indicator in its methodology that directly accounts for overcrowding, “because it’s impossible to determine why its occurring in a particular area.” As mentioned above, SCAG’s stated inability to determine the cause of a factor set forth in section 65584.04 does not alleviate it of its duty to use data available to it to include that factor in its methodology.

SCAG conclusion that overcrowding is included in the proposed methodology’s existing need component, “[b]ecause overcrowding is caused by an accumulated housing supply deficit” is

inadequate. Section 65584.04(e)(7) requires SCAG to explicitly consider overcrowding, not to evade analysis by equating it to other factors. We also encourage SCAG to further research the underlying causes of overcrowding in the region so that the factors incorporated address those underlying causes.

7. Housing Needs of Farmworkers (§ 65584.04(e)(8))

SCAG has the data but refuses to factor in farmworker housing needs because “most jurisdictions do not have agricultural land or only have small agricultural operations.” (p. 25) But SCAG includes large rural counties such as Riverside, San Bernardino, and Ventura, which are home to thousands of farmworkers, most of whom have acute unmet housing needs. That some localities self report that they do not have need for dedicated farmworker housing does not authorize SCAG’s conclusion that it must not factor in the need for housing of rural agricultural workers employed in the region. The state and the counties have current records on agricultural employment that should be utilized. In addition, SCAG’s analysis should extend beyond dedicated farmworker housing, as many farmworkers live in and prefer other types of housing such as mobilehome parks.

8. Housing Needs Generated by the Presence of Universities (§ 65584.04(e)(9))

The proposed methodologies fail to consider housing needs generated by the presence of colleges and universities as required. Based on self-reported survey responses, “SCAG staff concludes that most housing needs related to university enrollment are addressed and met by dormitories provided by the institution both on- and off-campus.”

Like the other factors set forth in Section 65584.04, SCAG does not have discretion to ignore Section 65584.04(e)(9) in its methodology. The omission of this factor from SCAG’s proposed methodologies is particularly significant given the sheer number of public and private universities in the SCAG service area with a total student population in the tens of thousands, which impacts the availability of housing across the region. In a recent poll completed by more than 15,000 students at public and private universities throughout California, more than 30% of college students said that they did not have enough money to pay for housing.² These numbers are unlikely to be significantly lower in the high-cost housing market that comprises the SCAG service area. We recommend that SCAG develop a proposed methodology that assesses and incorporate the housing needs generated by the presence of universities.

² <https://calmatters.org/education/2019/09/california-college-costs-tuition-housing-textbooks-food-survey/>

B. Conclusion

For the foregoing reasons, we believe that all of SCAG’s proposed RHNA allocation methodologies fail to meet the requirements of state law. We urge SCAG to develop a revised methodology that incorporates all required factors and that furthers the objectives of the statute. The RHNA process is a critical fair housing tool aimed at reducing concentrations of poverty and segregation through planning and ensuring opportunity and housing choice for households at all income levels in all jurisdictions. A methodology that ignores key elements of the law cannot produce a RHNA allocation that achieves these goals.

Thank you for your consideration of our comments. Please feel free to contact Ashley Werner at awerner@leadershipcounsel.org if you would like to set up a time to discuss the contents of this letter with us over the phone.

Sincerely,

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