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October 11, 2019

Kome Ajise, Executive Director  
Southern California Association of Governments  
900 Wilshire Blvd., Ste 1700  
Los Angeles, CA 90017

Re: Draft Regional Housing Needs Assessment (RHNA) Allocation Methodology by the  
Southern California Association of Governments (SCAG)

Dear Executive Director Ajise:

I am addressing this letter to SCAG concerning its Draft RHNA Allocation Methodology (the "SCAG draft methodology") on behalf of Abundant Housing LA ("AHLA"), a grassroots organization "committed to education and advocacy on the affordability, livability and sustainability benefits of more housing." [www.abundanthousingla.org/about-ahla/](http://www.abundanthousingla.org/about-ahla/)

State Senate Bill ("SB") 828 by and State Assembly Bill ("AB") 1771, operative January 1, 2019, amended Government Code sections 65584, 65584.01 and 65584.04. AB 1771 further amended Government Code sections 65584.05 and 65584.06 establishing new requirements for preparation, participation, consultation and ultimately adoption by a council of government (COG) such as SCAG of a RHNA allocation methodology for its 6<sup>th</sup> cycle RHNA.<sup>1</sup>

AB 1771 created new requirements "to increase access to areas of high opportunity for lower-income residents, while avoiding displacement and affirmatively furthering fair housing." (Chapter 989, Statutes of 2018, §1.)

On October 7, 2019, the SCAG RHNA Subcommittee recommended to the Regional Council a SCAG draft methodology with a "local input" component.

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<sup>1</sup>The foregoing statutory references to the Government Code shall sometimes be referred to as "Sections."

AHLA respectfully contends the SCAG draft methodology in its 6<sup>th</sup> cycle RHNA process improperly relies upon “local input” and violates SB 828 and AB 1771. AHLA urges SCAG to adopt a new methodology without “local inputs” that is compliant and achieves the stated goal of achieving socioeconomic equity with special attention to the needs of lower-income residents.

In relevant part, SB 828 and AB 1771 mandate certain objectives a RHNA allocation methodology adopted by a COG must achieve. The RHNA allocation methodology - in this case the SCAG draft methodology - “shall further all the following” five statutory objectives, by:

- (1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.
- (2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region's greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.
- (3) Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.
- (4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.
- (5) Affirmatively furthering fair housing.
- (e) For purposes of this section, “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.

[Gov. Code, §65584, subdivisions (d)(1)-(4), (e).]

Each of the foregoing five statutory objectives for RHNA allocation under Section 65884, subdivision (d) are objective, with measurable outcomes.

Section 65584.04, subdivision (e) enables a COG additionally to include in its methodology

various “factors” obtained by the COG from “local governments” including “existing and projected jobs and housing relationship”: and “constraints and opportunities” to new housing development. [See, generally, Gov. Code, §65584.04, subds. (e)(1)-(11).]

While SCAG contends that “Local Planning Factors” or “local factors” must be considered in SCAG’s Draft Methodology, that misstates Section 65584.04. (SCAG Staff Report, p. 28.)

The term “Local Planning Factors” or “local factors” appears nowhere in Section 65584.04. Section 65584.04 subdivision (e) does authorize including in a COG’s methodology “factors” solicited from “local governments,” but only if “*sufficient data* is available from local governments pursuant to (Section 65584.04 (b)) or other sources....” (bold italics added.)

Under Section 65584.04, subdivision (b)(1), a COG “shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors established in” Section 65584.04, subdivision (e). The survey shall also include “information that will allow development of a methodology based upon the issues” involving fair housing under Section 65584.04, subdivision (d)(5).

SCAG acknowledges that only 55% of the local governments within its COG responded to the survey. (SCAG Staff Report, p. 28.) While there is a hyperlink reference, there is no indication whether or how the surveys that were submitted meet the requisite survey information under Section 65584.04, subdivision (b). *Id.* There is no transparent way to determine whether the surveys collected were representative of all local governments. SCAG does not indicate that it relied upon unspecified “other sources” under Section 65884.04(b)(1) apart from its local government survey. SCAG does not explain what efforts it made to collect surveys from local governments that did not respond, nor determine why no response was received.

In short, SCAG fails to explain how information obtained from local governments could be transformed into its self-described “Local Planning Factors” nor whether SCAG obtained *sufficient data* to warrant considering any of these factors at all in the SCAG draft methodology.

SCAG’s draft methodology, nevertheless, addresses and incorporates 11 enumerated statutory factors under 65584.04 though subdivision (e) (SCAG Staff Report, pp. 28-36).

For example, the last enumerated factor, under Section 65584.04, subdivision (e)(11), describes “(t)he region’s greenhouse gas emissions targeted by the State Air Resources Board pursuant to Government Code section 65080.” (Staff Report, pp. 35-36.)

Under the rubric of this local factor, the SCAG draft methodology “includes local input as a distribution component. Local input is a basis for SCAG’s Connect SoCal Plan, which addressees greenhouse gas emission at the regional level since it is used to reach the State Air Resources Board regional targets.” *Id.*, at 35.

Section 65584.04, subdivision (e)(12) adds a catch-all provision where SCAG may consider “other factors” SCAG has adopted “that further the objectives listed in subdivision (d) of Section

65584.04...” SCAG though must specify “which of the (five Section 65584(d)) objectives each additional factor is necessary to further.”

SCAG’s draft methodology though does not consider any other unenumerated factors under Section 65584.04 subdivision (e)(12) (SCAG Staff Report, p. 36.).

Conversely, a COG’s allocation methodology must not consider “stable population numbers and prior underproduction of housing.” (Gov. Code, §65594.04, subd. (g).)

And while SCAG’s Staff Report does set forth how each of what it describes are “local factors” follow the enumerated factors under Section 65584.04, subdivision (e), there is no indication in what specific manner SCAG’s draft methodology, as required under Section 65584.04, subdivision (f), “furthers the objectives listed in (Section 65584(d)).” Section 65584.04, subdivision (f) further mandates that the COG post this “information and any other supporting materials used in determining the methodology” on its website.

Section 65584.04, subdivision (m) in part does require that the “housing planning be coordinated and integrated with the regional transportation plan (RTP),” including being “consistent with the sustainable communities strategy (SCS) in the regional transportation plan...” (Gov. Code, §65584.04, subds. (1), (3).)

Significantly, however, the RHNA plan’s coordination and integration with the RTP, including its SCS element of the RTP, is qualified, circumscribed and delimited by subdivision (m) of Section 65584.04 itself. A COG’s reliance on its RTP in order for its RHNA allocation to be compliant must advance the five statutory objectives of Section 65584, subdivision (d):

The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the sustainable communities strategy in the regional transportation plan and ***furthers the objectives listed in subdivision (d) of Section 65584.***

[Gov. Code, § 65584.04, subdivisions (m)(3)(bold italics added.)]

As previously noted, SCAG’s draft methodology explicitly relies on “local input” as a factor under 65584.04, subdivision (e)(11). (Staff Report, pp. 35-36.) SCAG acknowledges the diminishing role local input should play in SCAG’s draft methodology given “there has been an increased statutory emphasis on other factors such as aligning transit accessibility and increasing housing supply near employment with RHNA distribution.” (SCAG Staff Report, p. 23.) And staff further acknowledges the “limitations of using local input to the Growth Forecast as the only factor in the RHNA methodology.” *Id.* SCAG does not explain what those limitations are in the SCAG Staff Report.

“Despite this limitation of using local input....,” SCAG plows ahead and asserts as self-evident the following:

The use of the Growth Forecast at the jurisdictional level in determining projected need

also ensures the RHNA allocation is aligned and consistent with Connect SoCal, a requirement of SB 375. Input from local jurisdictions is an important step in strengthening the Growth Forecast *to ensure that relevant local concerns and conditions are reflected at the jurisdictional level.*"

(SCAG Staff Report, p. 23, emphasis added.)

Based on the foregoing analysis, SCAG's draft methodology violates SB 828 and AB 1771 by including "local input" under 65584.04, subdivision (e)(11) under the term "Local Planning Factors," a term that appears nowhere in SB 828 or AB 1771, for the following reasons:

First, as a threshold matter, as previously noted, SCAG has failed to demonstrate that it obtained "sufficient data" in its survey of barely more than half of its local jurisdictions to warrant incorporating any of the enumerated factors of any kind in the SCAG draft methodology under Sections 65584.04, subdivisions (b) and (e).

Second, the use of "local input" as a local factor under 65584.04, subdivision (e)(11), particularly as it relates to SCS under SB 375, is arbitrary and without any foundation in law or as good public policy in achieving the required RHNA objectives.

When interpreting a statute, "where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Civ. Code, §1858.) Statutes, in turn, must be construed "with reference to the entire scheme of law which it is part so that the whole may be harmonized and retain effectiveness." *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 941 (internal citation omitted).

Here, the use of "local input" under Section 65584.04, subdivision (e)(11) is not a factor that is either required or explicitly can be used by SCAG. SCAG has cited to "local input" as past practice as a factor used for many years in its RTP, a consideration SCAG recognizes has its own "limitations."

Looking to the statute and the statutory scheme as a whole, a COG must specify in writing how "local input" as a factor in a Growth Forecast "further the objectives listed in (Section 65584(d)) as required by Section 65584.04, subdivision (f).

In order for "local input" to be relevant and valid, it must be consistent - not with SB 375 generally as suggested by SCAG (SCAG Staff Report, p. 23.) - but with the SCS element under Connect SoCal, its RTP. [Gov. Code, § 65584.04, subdivision (m)(3)]. SCAG's "housing planning" must merely be "coordinated" and "integrated" with its RTP under Section 65584.04, subdivision (m)(1).) But SCS "consistency," to the extent it is relevant, must also further one or more of the five statutory objectives under Section 65584, subdivision (d). [Gov. Code, § 65584.04, subdivision (m)(3).]

SB 375 is cross-referenced by implication in Section 65584.04, subdivision (m)(3) and expressly in Section 65584.04, subdivision (e)(11), but is in fact of the statutory objectives under Section

65584, subdivision (d)(2) in “(p)romoting infill development and socioeconomic equity...and the achievement of the region’s greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.”

SB 375 was enacted in 2008 to address the disproportionate impact to GHG emission caused by the transportation sector, with light trucks and automobiles responsible for 30% GHG emissions. *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 505-506. SB 375 required metropolitan planning organizations (MOPs) to develop an SCS which “must address, among other things, regional distribution of land uses and population, housing needs, and protection of resource areas.” (*Id. at 506, Gov. Code, §65080, subd. (b)(2)(B).*)

In addition, the “reductions mandated by (SB 375) may be achieved through a variety of means, including ‘smart growth’ planning to maximize building densities served by public transit and to locate residences near needed services and shopping to reduce automobile dependency.” *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 506.

SCAG’s stated rationale for reliance on “local input” is unsupported by the purpose of SB 375 in reducing GHG emissions regionally and Statewide. SCAG reveals its intent for “local input” as a conduit or means *to ensure that relevant local concerns and conditions are reflected at the jurisdictional level.*” (SCAG Staff Report, p. 23, emphasis added.)

Rather than further the five statutory objectives of SB 828 and AB 1771, SCAG’s draft methodology undermines these objectives.

By letter dated August 31, 2019 to the Honorable Bill Jahn, President of the Regional Council, a number of esteemed “undersigned professors in the fields of planning and public policy” including its lead signatory Paavo Monkkonen, Associate Professor of Urban Planning and Public Policy, UCLA Luskin School of Public Affairs, an ex-officio member of SCAG representing Academia, criticized SCAG for its use of “local input” in SCAG’s draft methodology. AHLA while not embracing every conclusion reached, cites this letter and agrees that the local input does not “align with the State’s goals of social equity and environmental sustainability.”

By comparing SCAG’s proposed methodology to a methodology without “local input,” such as AHLA’s proposed methodology (“Option H”), the outputs demonstrate that “local input” undermines the five statutory objectives of SB 828 and AB 1771. For example, the current proposed methodology assigns Beverly Hills, a job-rich and transit-adjacent city, 1,373 homes, and the City of Coachella, which lies 131 miles from Downtown Los Angeles, 15,154. Similarly, the methodology assigns Culver City, with its new major rail line and rapidly growing tech sector, only 1,660 homes, and desert cities such as Riverside and Fontana get 20,139 and 22,126, respectively. By comparison, under “Option H,” Coachella would be assigned a realistic 1,565 units of housing, and Culver City would get 5,114.

Local “concerns” untethered to any of the five statutory objectives under Section 65584, subdivision (d) cannot be relevant or considered at the jurisdictional level that perpetuate and worsen urban sprawl, increase vehicle miles traveled, or increase to the jobs-to-housing imbalance. (Cf. SCAG Staff Report, p. 23.)

For the foregoing reasons, AHLA concludes that SCAG’s Draft Methodology’s reliance on “local input” depresses an appropriate calculation of projected housing need to increase RHNA numbers, creates barriers rather than access for low-income residents, accelerates rather than avoids displacement, and inhibits rather than affirmatively promotes fair housing. This then would render its RHNA allocation as non-compliant with both the express statutory mandates to be followed and public policy objectives meant to be achieved by SB 828 and AB 1771.

Indeed, local inputs accomplish indirectly what SCAG is prohibited from doing directly; namely, considering a factor in SCAG’s draft methodology which perpetuates “stable population numbers and prior underproduction of housing” under Section 65584.04, subdivision (g).

Accordingly, any resolution adopting a RHNA allocation plan based upon SCAG’s current draft methodology would be a prejudicial abuse of discretion by SCAG, analogous to a public agency’s compliance under the California Environmental Quality Act, in failing to proceed in a manner required by law or in adopting a resolution for a RHNA allocation otherwise unsupported by substantial evidence. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427.

AHLA respectfully urges SCAG to adopt a new allocation methodology that does not rely upon any “local input” by evaluation projected housing need based upon a combination of factors raised by Paavo Monkkonen, et al. in their letter of August 31, 2019 to the Honorable Bill Jahn.

Thank you for your anticipated consideration.

Sincerely,

BERNARD, BALGLEY & BONACCORSI, LLP



DAVID BONACCORSI

dpb/DPB

cc: Megan Kirkeby, Assistant Deputy Director for Fair Housing, Department of Housing and Community Development Division of Housing Policy Development

Leonora Camner, Managing Director, Abundant Housing LA (Via email only @ [leonora@abundanthousingla.org](mailto:leonora@abundanthousingla.org))