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Re: ***SCAG's November 7th Illegal Action to Apportion Excessive, Arbitrary & Capricious RHNA to the City of Huntington Beach for the 6th Planning Cycle***

Dear Messrs. Metcalf, Gilhooley, Ikhata, and Hon. Viegas-Walker,

We are writing to place into the record an objection to the illegal and blatantly unfair vote that took place at the November 7, 2019, Southern California Association of Governments ("SCAG") Regional Council Meeting. As you know, in a substitute motion, in a 43-19 vote, SCAG took action to approve an "alternative" Regional Housing Needs Allocation ("RHNA") distribution method proposed by, and promoted by, Riverside Mayor Rusty Bailey.

To be abundantly clear, this violates the law both procedurally and substantively.

First, the City of Huntington Beach *did not receive proper or adequate* notice that SCAG would entertain such a vote on such an “alternative” and legally unsupported methodology. It was not clearly part of the advance agenda and there was only a brief, vague letter sent by email two days prior to Huntington Beach that this “alternative” methodology was being contemplated. To the contrary, prior to this meeting, SCAG had consistently and repeatedly set forth certain methodologies upon which the City of Huntington Beach relied.

In addition to the lack of adequate notice of the “alternative” RHNA distribution method that ultimately occurred, the City of Huntington Beach was not allowed to provide any meaningful input, or place any objections on the record at the meeting before the vote. In a blatant disregard of controlling parliamentary rules, the Mayor Pro Tem of Huntington Beach, Lyn Semeta's request to speak to the members was categorically denied – depriving her and the City of Huntington Beach any opportunity to voice an objection to, or provide any input to, the voting members before the vote was taken. Again, a blatant denial to Huntington Beach to participate in the SCAG RHNA process.

Moreover, this illegal vote resulted in a massive shift of RHNA for the 6th Cycle to coastal cities. Prior to the November 7th vote, the City of Huntington Beach had been informed by SCAG to anticipate a RHNA distribution for the 6th Cycle of 3,612 units. After the November 7th vote by SCAG, the City of Huntington Beach has learned that the RHNA distribution will be 13,300 – a nearly 370% increase to the City of Huntington Beach.

This massive shift of RHNA to beach cities, like Huntington Beach, squarely undermines SCAG's long and historical defense of the legality of the RHNA methodology. The City of Huntington Beach on the other hand has long held, and has repeatedly voiced, that the methodology for RHNA determinations has been flawed, wrought with political manipulation, and not based on objective, verifiable real-world empirical data, this latest vote on November 7th proves the very point that Huntington Beach has argued all along, i.e., that there is no rational methodology *at all*.

In fact, peeling back the veil of false pretense, we now see these RHNAs amount to nothing more than an arbitrary and capricious assignment of a zoning/development burdens imposed on cities by a political majority from outside those cities.

SCAG Denied the City of Huntington Beach a Voice, Participation in the Process

For the past year, the SCAG RHNA subcommittee and the City of Huntington Beach have been meeting monthly, parsing through complicated formulas in an effort to determine a reasonable methodology that complies with RHNA statutory law. These formulas appear to provide unbridled discretion regarding options like proximity to jobs, access to transportation, available land to build on and projected household growth when determining RHNA distribution. As the process evolved, many public meetings were held throughout the SCAG region to discuss and obtain public comment on the methodology. All of this input also included the opportunity for individual

jurisdictions to use estimation calculator tools provided by SCAG to ascertain impacts of various proposed methodologies on their city. The jurisdictions each had the opportunity to provide suggestions for changing the proposed formulas and many cities, like Huntington Beach, did provide suggestions.

At the end of this year-long process, SCAG staff proposed a final methodology to be voted on at the November 7th Regional Council Meeting. Although we continue to object to the 1.3 million regional allocation, Huntington Beach and the other Orange County cities were prepared to vote in favor of the SCAG staff-recommended methodology as it appeared to be a fair, equitable formula for distribution based on reasonable factors, i.e., factors set forth by State law. Bear in mind, with each change to the proposed methodology options throughout the process, SCAG staff spent considerable time crunching the numbers, applying the different factors so that at the time the Regional Council voted on the final proposal, the methodology had been thoroughly vetted and analyzed for its impacts and rationale as a "reasonable" methodology.

Unfortunately, at the 11th hour, after ignoring earlier multiple opportunities to give input as to why an alternate formula should be proposed, the elected officials of Riverside and Los Angeles, in an apparent backroom deal, sprung new, "alternative" (irrational) methodology that capriciously and baselessly shifted a massive portion of the RHNA distribution onto Orange County, targeting, specifically, beach cities.

Notably, the day of the meeting, eleven of the fourteen Los Angeles City Council Members, who are all able to cast votes due to their city's size, decided to attend the SCAG's meeting to vote against smaller Orange County. It appears that many of these Council Members never attended prior SCAG meetings. San Bernardino County voted in support of the deal because it benefitted them as well. As a result of the massive, 11th hour, "overnight" shift of RHNA to Orange County pursuant to the vote, Riverside's RHNA went from 235,131 units to 165,696; San Bernardino's was reduced, 181,774 to 135,047; and Orange County's increased dramatically from 107,978 units to 182,194.

It appears that the Los Angeles, Riverside contingent orchestrated the 11th hour vote ahead of time and therefore had time to line up multiple comment letters and multiple public comment speakers in advance to come to the Regional Council Meeting to speak and support the alternative methodology. Orange County, kept in the dark until the last minute, did not.

Setting aside for a moment the procedural violations, the new/alternative methodology was not fully analyzed for impacts by SCAG staff before the vote – in square violation of substantive provisions of State law. This methodology was not previously supported by SCAG staff. The new/alternative method fails to follow applicable State law in part by removing local input and growth forecast data. The time staff from all jurisdictions spent analyzing and providing data regarding the realities of our own individual jurisdictions, in terms of cities' ability to build housing, was completely and illegally disregarded. The current methodology ignores the very real constraints that coastal cities must cope with

such as obtaining Coastal Commission approvals for zoning and development, and the scarcity and lack of available land and other environmental constraints – including Huntington Beach's particular interest in preserving the only large undeveloped and natural portion of the City – its beautiful and highly valued Wetlands.

SCAG Not Adhering to State Law, Prescribed Methodology

The Department of Housing and Community Development (HCD) through Council of Governments (COG) and/or Southern California Association of Governments (SCAG) purports to identify certain existing and projected regional housing needs for alleged projected State population and household growth. (Government Code § 65584, *et seq.*) SCAG covers the six-county Southern California region counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura. The COG develops a Regional Housing Need Allocation Plan (RHNA-Plan) allocating the region's share of the Statewide need to cities and counties within the region." The typical scenario is that HCD, in consultation with each COG, such as SCAG, determines the existing and projected housing needs for each region. (Government Code § 65584.01 (describing the manner in which the needs determination shall be made).)

The RHNA plan must be consistent with the following objectives: (1) increasing the housing supply and the mix of housing types, tenure, and affordability within the region in an equitable manner, which must result in each jurisdiction receiving an allocation for low- and very low-income units; (2) promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns; (3) promoting an improved intraregional relationship between jobs and housing; and (4) allocating a lower proportion of housing needs to an income category when a jurisdiction already has a disproportionately high share of households in that category. (Government Code § 65584(d).)

According to HCD, "the RHNA-Plan process requires local governments to be accountable for ensuring that projected housing needs can be accommodated and provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation." The November 7th vote is in direct violation of State Housing law. Moreover, there is no evidence that the State conducted an adequate constraints analysis such that projects built to accommodate the City's additional RHNA numbers would be in conflict with the new State law and regulation regarding water conservation. (Government Code Section 65584.04 (d)(2).)

In apparent contravention to the above State law authorities, it appears that SCAG is unilaterally determining each jurisdiction's share of RHNA through an arbitrary, capricious, and clearly politically motivated approach that is in contravention to State law. What this does, especially for the 13,300 RHNA assigned to Huntington Beach, in combination with the unconstitutional State mandates under SB 35, SB 166, SB 1333, and AB 101, is create a situation where Huntington Beach and many other cities will

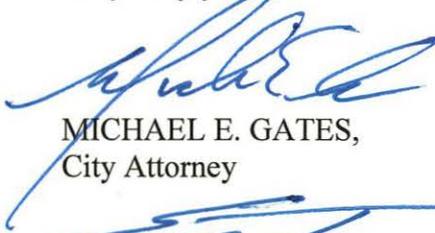
automatically be in violation of the newly passed State Housing laws. Such non-compliance will immediately result, according to recent State laws, in massive monetary damages to the City through the operation AB 101.

A scheme of laws that create an impossible situation for individuals and cities are illegal, unconstitutional, and cannot stand. Clearly, the City of Huntington Beach's concerns with this new proposed RHNA distribution are various, many of which have to do with what this excessive RHNA figure means in the context of the recently-passed untenable, unworkable, impractical, and unconstitutionally overreaching State Housing laws. Those are not the complaints here. However, highlighting what excessive RHNA does to a city in light of these laws is quite illuminating – and quite frankly demonstrates the punitive and destructive nature of the State's grand housing proliferation scheme toward cities.

Based upon the foregoing and as a result of this illegal vote (if fully implemented), the City of Huntington Beach will sustain real, appreciable damages. The November 7th vote by SCAG, which resulted in a massive shift of distribution of RHNA to Huntington Beach in the amount of 13,300 for the 6th Cycle, procedurally and substantively violates State Housing law.

As a result, SCAG must reconsider the November 7th vote in a manner that complies with State law.

Very truly yours,



MICHAEL E. GATES,
City Attorney



ERIK PETERSON,
Mayor



LYN SEMETA,
Mayor Pro Tem
Southern California Association of Governments
Regional Council Member, District 64