

PREFACE

As is fitting in these unprecedented times, we, the City of Mission Viejo, appeal an unprecedented issue within the legal, moral, ethical and professional structure of the Southern California Association of Governments (SCAG), the State Department of Housing and Community Development (State HCD), and the Regional Housing Needs Assessment (RHNA) process. We are not challenging any individual allocation to any jurisdiction on its unique merits; we are not appealing SCAG's formula or application of the number of regional units the State HCD determined SCAG must equitably allocate, and we are not seeking to challenge the context discussed in the 2009 lawsuit titled "City of Irvine v SCAG."

The provision of very low, low, moderate and above-moderate housing is difficult, economically challenging, presents land use issues in local jurisdictions, and is a process guided by the Housing Element law, in toto, as set forth in the California Government Code. Conformance to law at all times is so important, but is especially critical when the quality of life of California residents, regardless of ethnicity, income, race, place of origin or any and all characteristics, is imperiled. Careful, correct and rational implementation of the Housing Element laws ensures the greater likelihood that everyone, including the "working poor," minority residents, middle class residents and everyone, can enjoy safe and sanitary housing at reasonable income-based rates.

This brings us to our unprecedented appeal. SCAG, using its fiduciary and adjudicative powers, is appealed to recognize, based on the credible evidence in this appeal, that the State HCD has not followed the law by double counting, or more, the State's housing needs. This means SCAG was provided a defective regional allocation. SCAG, in good faith, sought to fairly allocate that State number but, in doing so, doubled each jurisdiction's shares and halved each jurisdiction's chance of success. SCAG functions as a "super-judge" as, in some cases, perhaps not in this unprecedented case, as the final adjudicative body as to RHNA allocations. SCAG must honor its regional fiduciary and adjudicative roles and itself test the State HCD calculations and challenge the State as necessary. SCAG has the legislative authority to do so, has established a RHNA Litigation Study Team to address this, and must carefully complete its analysis to ensure the State, and thereby SCAG, is properly implementing the Housing Element laws.

Not sending a confirmation request to the State of the defective State HCD numbers allocation (i) is a failure by SCAG to fulfill its fiduciary and legal adjudicatives, (ii) punishes minorities, the working poor and all Californians facing housing needs, and, (iii) perhaps most incredibly, citing to the Court of Appeals decision in the City of Irvine v SCAG case, allows State HCD, the source of the initial, foundational error, the argument that it has now proven its own number correct and any further judicial review is prohibited: "Finally, noting HCD's of defendant's final RHNA allocation defendant claimed it now 'has no authority to implement the relief' sought by the plaintiff."

This meant the City of Irvine, once SCAG's allocation was accepted by State HCD, was without any judicial remedy. This case may well be different, but SCAG cannot reasonably submit a "double allocation" to State HCD and then allow State HCD to approve its own error, to the

damage of every city and county. We have seen the stresses of the political directions given to State agencies, the stress of the COVID-19 pandemic, and the stress of administration leadership issues, all serve to illustrate gross failures of State offices. The State Department of Motor Vehicles (DMV) was repeatedly criticized by the State Legislature for poor management and performance. Recently the State Employment Development Department (EDD) showed a complete inability to handle unemployment claims and literally ceased processing claims until it fixed its systems. This backdrop makes it equally likely that State HCD miscounted, or misunderstood, the State Department of Finance (State DOF) numbers, or misunderstood Housing Law, or had to deviate from past RHNA cycles to achieve a politically demanded 3.5 million units, when proper analysis, from multiple sources, shows that is grossly wrong.

We implore SCAG to do the right, moral and legal duty and grant our appeal and challenge State HCD's very suspect (as later evidence suggests) regional housing allocation.

CITY OF MISSION VIEJO APPEAL #1:

The Starting Point of SCAG’s RHNA Allocation Methodology – State HCD’s Baseline of 1.34 Million Housing Units of Regional Need – is Incorrect and Defective, Based on New 2020 Reports Released by Freddie Mac and the Embarcadero Institute

Bases for Appeal #1:

- 1) Application of the adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029); and,
- 2) Changed Circumstances (Per Government Code Section 65584.05(b); appeals based on change of circumstance can only be made by the jurisdiction or jurisdictions where the change in circumstance occurred).
- 3) Failure of State HCD to follow the Housing Law (Exhibit A-6 incorporated herein) and the current failure of SCAG to ensure those same housing laws are being correctly applied by the State HCD so as to allocate a lawful RHNA allocation to the City of Mission Viejo and all cities and counties.

Summary:

On September 4, 2020, the City of Mission Viejo received a draft 6th cycle Regional Housing Needs Assessment (RHNA) allocation of 2,211 housing units from the Southern California Association of Governments (SCAG) for the RHNA planning period of October 2021 to October 2029. The City’s draft allocation is based upon an October 15, 2019 State Department of Housing and Community Development (State HCD) determination that the regional housing need for the six-county SCAG region is 1,341,827 units. The 2,211 housing units assigned to the City of Mission Viejo represents the City’s fair share of the 1.34 million units of regional housing need, based upon SCAG’s adopted RHNA allocation methodology, utilizing defective State HCD baseline numbers.

The City of Mission Viejo files an appeal of its 6th cycle RHNA allocation challenging the starting point of SCAG’s adopted RHNA allocation methodology – the likely defective 1.34 million housing units of regional housing need as determined by State HCD. The City of Mission Viejo finds that the input and application of the 1.34 million housing units into SCAG’s RHNA allocation methodology is a flawed mathematical data point of housing need that overinflates the region’s housing need by at least double. Every city and county area are subject to arbitrary, capricious and very suspect requirements which are a clear abuse of discretion by State HCD and any body that acts in reliance upon that number.

SCAG’s use of State HCD’s flawed and over-inflated 1.34 million housing units contaminates the resulting distribution of individual RHNA numbers to each of the 197 jurisdictions in the SCAG region. By using a flawed starting point in SCAG’s adopted RHNA allocation methodology, the output of each jurisdiction’s fair share of the regional need is, by computation, flawed and overstated. This impairs, if not crushes, each city’s ability to achieve the distribution, hurting minorities, low-income and all residents. This is a current and actual controversy, requiring administrative correction and adherence to the Housing Law, which has not been done. The City of Mission Viejo seeks SCAG’s declaration that the RHNA allocation provided by the State

HCD does not comport with Housing Law, and further, that SCAG and State HCD are lawfully required to ensure correct compliance with Housing Law to achieve, statewide and regionally (respectively) compliance with Housing Law.

Specific peer level or better analyses conducted by outside entities confirm the over-inflation of State HCD's regional housing need number to SCAG, which is presented in this appeal request. Outside agency analyses conclude that SCAG's fair-share of the State of California housing need for the 6th RHNA cycle should be in the order of 651,000 housing units or less, in contrast to the 1,341,827 units as determined by State HCD on October 15, 2019. This represents an over-count of 691,000 units or more that has been assigned to the SCAG region. The cited causes for the over-count is State HCD errors in calculating SCAG's regional housing need, as discussed in this appeal request.

By generally halving the starting point number, the City of Mission Viejo reasons that each jurisdiction's individual RHNA allocation will be less, since this appeal proposes no additional changes to the further application of the allocation methodology, after the data input of the 1.34 million units is first corrected in the allocation methodology. A properly calculated State HCD base housing need calculation must be demanded from State HCD, and then used by SCAG in its RHNA Allocation methodology to allocate jurisdiction-specific housing needs.

The exact calculation of each jurisdiction's revised RHNA allocation – should this appeal be granted – requires SCAG to generate honest and lawfully sound numbers, to be able to update its RHNA estimator tool. SCAG's update to its RHNA estimator tool is necessary, to enable each of the 197 jurisdictions in the SCAG region, including the City of Mission Viejo, to be informed of its revised, reduced draft RHNA calculation, after the starting point of the RHNA allocation methodology is corrected from 1.34 million housing units to a clearly provable 651,000 housing units or less. The demonstrable failure of State HCD to properly and lawfully calculate statewide housing (and jobs) needs has forced SCAG to improperly allocate that number to the cities and counties. This unfair burden on SCAG presents a failure of SCAG to follow Housing Law, because State HCD did not follow Housing Law in establishing the Statewide and SCAG regional housing needs. Exhibit A-6 clearly shows the State HCD has the power and duty to follow the law and assist others in doing so, but to date, has failed to do so. SCAG must now compel itself and State HCD to properly implement Housing Law and recalculate the regional allocation, using a correct housing need baseline.

For those critics that may question why these arguments about bad data were not raised during SCAG's RHNA consultation with State HCD and during SCAG's development and adoption of its RHNA Allocation methodology, the City of Mission Viejo makes clear that the two reports cited in our arguments, are reports that were released after State HCD's 10/15/2019 determination of SCAG's regional need. Both reports were released in 2020 and brought to the attention of SCAG's Regional Council in 2020, after the RHNA methodology was adopted and the Draft RHNA allocations released to local jurisdictions. The State's failure to test its numbers or do any professional due diligence, meant the cities were put in a delayed position to challenge State HCD's numbers.

From a public policy perspective, the City of Mission Viejo maintains that bad data should not be used to dictate and command housing policy. If the data is flawed, it should be recognized and corrected.

Desired Outcome:

The City of Mission Viejo's two-fold request to the SCAG RHNA Appeals Board is as follows:

- 1) to revise the calculation of the draft 6th cycle RHNA allocation for the City of Mission Viejo and for all SCAG jurisdictions, based on new information released in 2020 that conclude that State HCD incorrectly calculated the SCAG region's 6th cycle RHNA determination and at minimum, doubled SCAG's housing need; and,
- 2) to revise SCAG's 6th cycle RHNA Allocation Methodology and RHNA Allocation Calculator to:
 - a) remove the 1,341,827 housing units data point that represents State HCD's SCAG's regional housing need, and replace it with an adjusted and corrected 651,000 units or less; and,
 - b) revise the SCAG RHNA Allocation Calculator formulas such that the re-calculation of the RHNA calculations for the City of Mission Viejo and for all the jurisdictions in the SCAG region, is based on a corrected regional number of 651,000 housing units or less.

This appeal is thus filed to elevate errors in State HCD's calculation of the region's regional housing need number, and halt any issuance of final RHNA allocations to any SCAG jurisdiction, until the errors are corrected by State HCD and a corresponding and accurate regional need number is calculated for the SCAG region and incorporated into SCAG's RHNA allocation methodology. We want it clear that we do not challenge the allocation protocol but only that which is being allocated as presented to, and acted upon, by SCAG.

Procedurally, the City of Mission Viejo's appeal is filed on the basis of two grounds, as stipulated in SCAG's adopted appeals procedures and housing statute:

- 1) Application of the adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029); and,
- 2) Changed Circumstances (Per Government Code Section 65584.05(b); appeals based on change of circumstance can only be made by the jurisdiction or jurisdictions where the change in circumstance occurred).

The bases for these two grounds for appeal are analyzed in the **Bases for Filing Appeal #1** section of this appeal request.

Background for Appeal #1:

On October 15, 2019, State HCD issued a regional determination of 1,341,827 housing units for the SCAG region.¹ The 1.34 million housing units is the State's determination of how many housing units the SCAG region must provide for in the 6th cycle RHNA, which covers the RHNA planning period of October 2021 to October 2029.

As detailed in the **Bases for Filing Appeal #1** section of this report, SCAG's adopted RHNA methodology utilizes State HCD's 1.34 million housing units as a starting point to determine how to allocate a fair share of the 1.34 million housing units to each of the six counties and 191 cities in the SCAG region. This is known as a jurisdiction's RHNA allocation. Based upon State HCD's 1.34 million units of regional need and SCAG's adopted methodology to distribute the regional need to each of the SCAG jurisdictions, the City of Mission Viejo's draft RHNA allocation is 2,211 housing units.

But as credible sources assert, State HCD's starting point is incorrect. If State HCD's starting point is incorrect in SCAG's RHNA Allocation Methodology, then SCAG's calculations of each jurisdiction's draft RHNA allocation is also incorrect, and overestimates the true housing need because of State HCD's overestimated determination of SCAG's regional housing need.

As presented in the City of Mission Viejo's Appeal #1 request, new credible studies have been released in 2020, which indicate that State HCD's starting point of the 1.34 million housing units for the SCAG region is flawed, and the region's housing need for the 6th cycle should be 651,000 units or less. SCAG cannot desire to impose inaccurate and defective housing requirements on the people in its region.

Analysis For Appeal #1:

Two reports released in 2020 provide information and analyses that question the accuracy of the 1.34 million housing unit need that State HCD issued to the SCAG region.

A February 2020 Freddie Mac report (Exhibit A-1) identifies that the housing shortage for the entire State of California, not just the SCAG region, is 820,000 units.² If the SCAG region comprises approximately one-half of the State's population, at 19 million people, the question that must be asked is why would a housing shortage estimate for the entire State of California by a national, government-sponsored financial company for mortgages and mortgage-backed securities, be less than the 1.34 million housing need for the six-county SCAG region? The City of Mission Viejo appeal asks the SCAG RHNA Appeals Board and SCAG staff to analyze this discrepancy.

¹ State Department of Housing and Community Development: October 15, 2019 letter to Mr. Kome Ajise, SCAG Executive Director: *RE: Final Regional Housing Assessment*.

² Freddie Mac, *The Housing Supply Shortage: State of the States* (February 2020), 6.

The Embarcadero Institute, a California non-profit public policy organization, released a September 2020 report that analyzes the State HCD methodology that was used for the 6th cycle regional RHNA determinations for four Metropolitan Planning Organizations (MPOs) in California that account for more than 80% of California’s existing housing stock: SCAG, the San Diego Association of Governments (SANDAG), the Association of Bay Area Governments (ABAG) and the Sacramento Area Council of Governments (SACOG).³ (Exhibit A-2). The Embarcadero Institute concludes that double counting and over-counting of housing need has occurred for all four of these regional planning agencies in their 6th cycle RHNA determinations from State HCD, resulting in an over-count of 941,000 units cumulatively for the four regions.⁴ Of the 941,000 housing unit over-count calculated for the four major MPOs, 73%, or approximately 691,000 units, applies just to the SCAG region.

For the SCAG region specifically, the Embarcadero Institute concludes that State HCD’s use of an incorrect vacancy rate for owner-occupied housing units, and a double counting of “overcrowding” and “cost-burden” factors, have more than doubled the housing need for SCAG’s 6th RHNA cycle. While State HCD issued a regional housing need for the SCAG region of 1.34 million housing units, the Embarcadero Institute methodically researched and re-calculated each factor for SCAG’s regional housing need, and concludes SCAG’s housing need should be approximately 651,000 housing units.⁵ An October 2020 Embarcadero Institute Excel spreadsheet (Exhibit A-3) compares its calculation of SCAG’s regional housing need against State HCD’s calculation of SCAG’s regional housing need, and identifies the differences in SCAG’s regional housing need is included as an attachment.⁶ The SCAG region’s RHNA, according to the Embarcadero Institute report, is over-counted by approximately 691,000 housing units.

According to the Embarcadero Institute report, the State HCD errors in calculating SCAG’s 6th cycle RHNA determination are as follows:⁷

- 1) incorrect use of a 5% healthy vacancy rate benchmark for owner-occupied units (versus a 1.5% healthy vacancy rate for owner-occupied units and a state-mandated 5% healthy vacancy rate for rental housing). When applied to the SCAG region, use of the incorrect 5% healthy vacancy rate benchmark for owner-occupied units over-counts 126,000 housing units to SCAG’s regional housing need;
- 2) double counting for an “overcrowded”⁸ factor that the State Department of Finance (State DOF) already incorporates into its household projections data to State HCD, which

³ Gabrielle Layton, Embarcadero Institute, *Double Counting in the Latest Housing Needs Assessment* (Palo Alto, September 2020).

⁴ Ibid., Appendix, A-2.

⁵ Ibid., Appendix.

⁶ Gabrielle Layton, Embarcadero Institute, *Excel Spreadsheet: Embarcadero Institute_Housing-Needs-Assessment-Models-Californias-Four-Major-Planning-Regions-October 2020-Update* (October 2020), Six SoCal Counties SCAG RHNA 6th Tab.

⁷ Layton, *Double Counting in the Latest Housing Needs Assessment*.

results in approximately 460,000 more housing units added to SCAG's regional housing need;

- 3) double counting for a "cost-burden"⁹ factor that State DOF already incorporates into its household projections data to State HCD, which results in approximately 118,000 more housing units added to SCAG's regional housing need; and,
- 4) an accounting error which did not include a healthy vacancy rate adjustment for future renter households, which should have added 13,000 more housing units to SCAG's regional housing need.

The four factors listed above, according to the Embarcadero Report, result in a SCAG regional housing need that is over-counted by 691,000 units for the 6th RHNA cycle, resulting in SCAG's RHNA to be more than doubled (1.34 million versus 651,000 housing units). These demonstrate a failure to follow the requirements in the California Government Code regarding housing, housing elements and common law. Being an active agent in perpetuating incorrect and hence unlawful implementation of State law must be avoided.

Bases for Filing Appeal #1:

Appeal Basis #1: Application of the adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029):

The City of Mission Viejo argues that if the State HCD regional housing need determination is incorrect, due to the factors identified earlier in the Appeal request, then the application of SCAG's adopted RHNA methodology to calculate each SCAG jurisdiction's individual RHNA allocation is flawed, and the output: the local jurisdiction's individual RHNA allocation, is also incorrect.

A review of SCAG's adopted RHNA Allocation Methodology (Exhibit A-4) clearly identifies that the fundamental starting point of SCAG's adopted RHNA Allocation Methodology is explicitly based on State HCD's regional housing need number of 1,341,827 housing units, as presented below.

⁸ Overcrowding is a new factor that was introduced in the 6th cycle RHNA, per SB 828 (Weiner). The State seeks to add more housing need to correct conditions where more people live in housing units than rooms available. The U.S. Census defines overcrowding as a household having more than one person of any age per room in a dwelling unit. The types of rooms counted in a housing unit for the purposes of overcrowding are living rooms, dining rooms, bedrooms, kitchens, family rooms and finished recreation rooms. Rooms not counted for the purposes of overcrowding include bathrooms, kitchenettes, utility rooms and unfinished attics, basements or other unfinished space used for storage.

⁹ Cost-burden is a new factor that was introduced in the 6th cycle RHNA, per SB 828 (Weiner). The state seeks to add more housing need to correct conditions where households pay at least 30 percent of their household income on housing costs.

Any necessary correction to SCAG's regional housing need number would, in turn, adjust how much of the regional need number would be assigned to Projected Housing Need and Existing Housing Need, and would further directly impact the subsequent RHNA methodology's sequential calculations of local jurisdiction shares of Existing Need that feed into a jurisdiction's RHNA number.

Thus, if the regional need number is indeed lower than 1.34 million housing units, and the Embarcadero Institute believes the 1.34 number is more than double what SCAG's regional housing unit number should be, based on State HCD over-counting and double counting errors, then any application of a corrected regional need number would directly affect and change (lower) each SCAG jurisdiction's draft RHNA allocation. Every jurisdiction would have a more realistic, achievable housing goal and better structure its resources to assist in achieving housing for minorities, low-income people and all people.

The direct relationship between State HCD's flawed regional need number of 1.34 million housing units and the application of that flawed regional number upon the calculations of each local jurisdiction's RHNA, is indisputable. SCAG's adopted RHNA methodology¹⁰ makes numerous and specific references to the direct tie of the RHNA Allocation Methodology to State HCD's total regional need number of 1.34 million housing units.

These direct references include, as follows:

- 1) Page 4 of the adopted RHNA Allocation Methodology introduces the allocation methodology by stating "The next section describes the final RHNA methodology mechanism to distribute the *1,341,827 housing units determined by HCD* to all SCAG jurisdictions." (emphasis added).
- 2) Page 4 of the adopted RHNA Allocation Methodology states, "SCAG's final RHNA methodology starts with *the total regional determination provided by HCD* and separates existing need from projected need." (emphasis added).
- 3) Page 4 of the adopted RHNA Allocation Methodology states that 504,970 units of State HCD's regional need of 1.34 million housing units is allocated to regional Projected Need, and 836,857 units of State HCD's regional need of 1.34 million housing units is assigned to regional Existing Need. The Methodology further defines Existing Need to be "... the remainder of the *regional determination* after projected need is subtracted." (emphasis added).

¹⁰ Southern California Association of Governments, *Final RHNA Methodology and Final RHNA Methodology Data Appendix* (March 5, 2020 Update).

- 4) Pages 5 and 6 of the adopted RHNA Allocation Methodology include tables that detail how much of State HCD’s 1.34 million units is assigned to each RHNA methodology component, as follows:

Methodology Component	Assigned Units
Projected Need: Household Growth	466,958
Projected Need: Future Vacancy Need	14,467
Projected Need: Replacement Need	23,545
Projected Need Subtotal	504,970

	Percentage of Existing Need	Assigned Units
Existing Need: Transit Accessibility	50%	418,429
Existing Need: Job Accessibility	50%	418,428
Existing Need Subtotal		836,857

Total Regional Need	1,341,827
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Source: SCAG Final RHNA Allocation Methodology: Updated 3/5/2020, pages 5 and 6.

- 5) Page 6 of the adopted RHNA Allocation Methodology states, “The first step of the RHNA methodology is to determine a jurisdiction’s projected need. From the *regional determination*, projected need is considered to be regional household growth, regional future vacancy need, and regional replacement need.” (emphasis added).
- 6) Page 9 of the adopted RHNA Allocation Methodology states, “After determining a jurisdiction’s projected need, the next step is to determine a jurisdiction’s existing need. Following the above discussions and *based on HCD’s determination of total regional need*, existing need is defined as the *total need* minus the projected need – approximately 62 percent of the entire regional determination.” (emphasis added).

Thus, as illustrated in the SCAG RHNA Allocation Methodology table above, the sum total of Projected Need (504,970 units) and Existing Need (836,857 units) equals State HCD’s total housing need for the SCAG region: 1,341,827 housing units.

Conclusion for Appeal Basis #1:

The City of Mission Viejo argues that the starting point of State HCD's 1.34 million housing units is a flawed, mathematical data point of housing need that overinflates the region's housing need by 651,000 housing units or less, based on 2020 reports released by Freddie Mac and the Embarcadero Institute. We implore the entirety of SCAG, the cities and counties, and everyone in the State to demand re-analyses. We have seen the State Department of Motor Vehicles (DMV) make errors and the State Employment Development Department (EDD) struggle with unemployment help. State HCD is not immune from errors.

State HCD's 1.34 million housing units number is inextricably integrated into SCAG's RHNA Allocation methodology. It is the starting point of SCAG's RHNA Allocation Methodology. Further, the 1.34 million housing unit number is a data point in the RHNA Allocation methodology that is used to calculate how much of the regional need housing number would be assigned to the region's Projected Housing Need and Existing Housing Need totals. This, in turn, directly affects the subsequent RHNA methodology's sequential calculations of each local jurisdiction's share of Existing Need that ultimately feed into a jurisdiction's RHNA number.

If the regional need number is indeed lower than 1.34 million housing units, and the Embarcadero Institute believes the 1.34 number is more than double what SCAG's regional housing unit number should be, due to State HCD over-counting and double counting errors, then any application of a corrected regional housing need number would directly affect and change (lower) each SCAG jurisdiction's draft RHNA allocation, specifically its Existing Need RHNA number. Such a correction is necessary; defective data should not be used to dictate and command housing policy.

Appeal Basis #2: Changed Circumstances (Per Government Code Section 65584.05(b): That a significant and unforeseen change in circumstance has occurred in local jurisdiction or jurisdictions after April 30, 2019 and merits a revision of the information previously submitted by the local jurisdiction pursuant to subdivision (b) of Section 65584.04. Appeals on this basis shall only be made by the jurisdiction or jurisdictions where the change in circumstances has occurred.

When local jurisdictions worked with SCAG to develop and submit their local input growth forecast data to SCAG in 2018 and 2019, the national economy was at its peak, the national unemployment rate was 3.5%, and the national jobless rate fell to its lowest level since 1969, 3.9%.¹¹

In California, the State Employment Development Department identified that the unemployment rate in California was at a record low 4.0 percent in 2019, and the State of California had a \$21.5 billion surplus. California recovered from the Great Recession of 2008.

¹¹ U.S Bureau of Labor Statistics, April 2020 Monthly Labor Review.

It was against this backdrop of economic growth that the region's 2020 Regional Transportation Plan/Sustainable Communities Strategy and its associated growth forecast was under development, with the growth forecasts from the SCAG region's local jurisdictions helping to inform the 2020 Regional Transportation Plan/Sustainable Communities Strategy, and the growth forecasts also helping to inform the housing need for the SCAG region for its 6th cycle RHNA.

As a state and as a region, there was confidence in a robust economy that would continue to move the region towards an economic recovery out of the Great Recession and move forward with aggressive plans to grow in jobs and in housing, with sustainability as a core of this growth. HCD's aggressive RHNA allocation of 1.34 million units was developed and imposed upon the SCAG region by October 2019, six months before the global COVID pandemic

On March 11, 2020 the World Health Organization declared the novel coronavirus (COVID-19) outbreak a global pandemic, and the ripple effect of the pandemic upon jobs, revenues, and where people want to now live, must be recognized as a backdrop against State HCD's determination that the SCAG region must deliver 1.34 million housing units, or 168,000 units a year over the eight-year period of the 6th RHNA cycle.

With no revenue stream available to local government to subsidize affordable units, estimated at \$350,000 per unit, with significantly reduced revenues that local governments are suffering due to the impacts of the pandemic (and with new and added costs to contain COVID-19 within their jurisdictions), and the questionable ability of local government and the building community to finance and support the infrastructure needed to deliver an unprecedented dictate of housing units, State HCD's number of housing need for the SCAG region must be even more carefully scrutinized as to its accuracy.

As posited in the City's RHNA appeals request, new and credible reports released in 2020 – after the development of the growth forecasts and after the determination by State HCD of the SCAG region needing to plan for 1.34 million housing units – conclude that the State HCD's regional need is more than two times higher than determined sound, due to errors that State HCD conducted in developing the regional need.

In its September 2020 forecast for California, the UCLA Anderson Forecast identified that the unemployment rate jumped from a record low 4.0% in 2019 to a peak of 14.7% in April 2020. They report that employment subsequently dropped to 13.3% in May, 11.1% in June, 10.2% in July and 8.4% in August, as compared to the record low 4% unemployment rate in 2019.¹²

Against all this, the Anderson Forecast identifies a projection of "strong growth" in residential building permits. According to the Anderson Forecast, "residential building permits are

¹² UCLA Anderson School of Management, "UCLA Anderson Forecast Cautiously Projects 'Better than Expected Outcome,'" September 30, 2020.

predicted to be back almost to their 2020 first-quarter level by year's end, at 117,000 per year, and will reach approximately 130,000 units by the end of 2022.”¹³

It is the interface of this information, against the backdrop of State HCD's regional determination of 1.34 million housing units for the 8-year RHNA planning period of October 2021 to October 2029 that is troubling, and raises the question of the credibility of State HCD's number.

The UCLA forecast identifies that for the entire State of California, residential building permits are at the level of 117,000 per year, and forecasts that the entire State of California will reach approximately 130,000 units per year by end of 2022, which is the after one full year of the 6th cycle RHNA planning period.¹⁴ If the SCAG region represents approximately one-half of the State's population, and one compares the actual statewide production rate of 117,000 units per year against the State HCD regional determination of 1,341,827 million over the 8-year RHNA planning period, this would mean that the 6-county SCAG region would be tasked to plan for approximately 168,000 housing units per year, more than the entire State of California than the Anderson Forecast projects during the current economic downturn through to 2022.

It is against this backdrop of economic changed circumstances that the City of Mission Viejo questions the credibility of a regional need of 1.34 million housing units for the SCAG region. If credible sources identify the SCAG's regional need should be 651,000 units or less over the 8-year RHNA planning period, this 651,000 units would equate to 81,000 units per year. This number is still significantly higher but more in line with the UCLA forecast of 130,000 units per year for the entire State of California by end of 2022.

¹³ Ibid.

¹⁴ Ibid.

CITY OF MISSION VIEJO APPEAL #2:

The Starting Point of SCAG’s RHNA Allocation Methodology – State HCD’s Baseline of 1.34 Million Housing Units of Regional Need – is Incorrect and Defective, Based on State HCD’s Failure to Use SCAG’s Population Estimates in Determining SCAG’s Regional Housing Need

Basis for Appeal:

Application of the Adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029)

Summary:

On September 4, 2020, the City of Mission Viejo received a draft 6th cycle RHNA allocation of 2,211 housing units from SCAG for the RHNA planning period of October 2021 to October 2029. The City’s draft allocation is based upon an October 15, 2019 State HCD determination that the regional housing need for the six-county SCAG region is 1,341,827 units. The 2,211 housing units assigned to the City of Mission Viejo represents the City’s fair share of the 1.34 million units of regional housing need, based upon SCAG’s adopted RHNA allocation methodology, but utilizing defective State HCD baseline numbers.

The City of Mission Viejo files Appeal #2 of its 6th cycle RHNA allocation, again challenging the starting point of SCAG’s adopted RHNA allocation methodology – the defective 1.34 million housing units of regional housing need as determined by State HCD, but on a separate and distinct foundation.

We assert that the input and application of the 1.34 million housing units into SCAG’s RHNA allocation methodology is a flawed mathematical data point of housing need that overinflates the region’s housing need by 133,262 housing units, due to State HCD not following housing law and refusing to use SCAG’s population estimates in calculating the region’s housing need.

SCAG’s use of State HCD’s over-inflated 1.34 million housing units contaminates the resulting distribution of individual RHNA numbers to each of the 197 jurisdictions in the SCAG region. By using a flawed starting point in SCAG’s adopted RHNA allocation methodology, the output of each jurisdiction’s fair share of the regional need is, by computation, flawed and overstated.

Desired Outcome:

The City of Mission Viejo’s two-fold request to the SCAG RHNA Appeals Board is as follows:

- 1) to revise the calculation of the draft 6th cycle RHNA allocation for the City of Mission Viejo and for all SCAG jurisdictions, by using a regional housing need number that is based on the use of SCAG’s Regional Transportation Plan population forecasts, as required by Government Code 65584.01(a), which, if used, would reduce State HCD’s regional determination by 133,262 housing units; and,
- 2) to revise SCAG’s 6th cycle RHNA Allocation Methodology and RHNA Allocation Calculator to:
 - a) remove the 1,341,827 housing units data point that represents State HCD’s SCAG’s regional housing need number, and replace it with an adjusted and corrected

- 1,208,565 housing units data point, derived from the statutorily allowed use of SCAG's population forecast; and,
- b) revise the SCAG RHNA Allocation Calculator formulas such that the re-calculation of the RHNA calculations for the City of Mission Viejo and for all the jurisdictions in the SCAG region, is based on a corrected regional number of 1,208,565 housing units.

This appeal is thus filed to elevate State HCD's failure to calculate SCAG's regional housing need number using SCAG's regional population forecast, as required by Government Code Section 65584.01(a), and halt any issuance of final RHNA allocations to any SCAG jurisdiction, until this error is corrected by State HCD and a corresponding and accurate regional need number is calculated for the SCAG region and incorporated into SCAG's RHNA allocation methodology. We want it clear that we do not challenge the allocation protocol but only that which is being allocated as presented to, and acted upon, by SCAG.

Procedurally, the City of Mission Viejo's appeal is filed on the basis of "Application of the adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029)."

The basis for this ground for appeal is analyzed in the **Basis for Filing Appeal #2** section of this appeal request.

Analysis For Appeal #2:

State housing law is clear on how to calculate the regional determination. State HCD, however, did not follow housing law in determining SCAG's regional housing number.

Specifically, California Government Code Section 65584.01 and 65584.01(a) states:

"For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each councils of government, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(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.” (emphasis added).

SCAG’s regional population forecast for its 2020 Regional Transportation Plan (RTP) differs from the State Department of Finance’s (State DOF) projection by **1.32%**, which falls *within* the statutory range of 1.5% outlined in state law. Based upon housing statute, State HCD was thus required to use SCAG’s population projections as a basis for determining SCAG’s regional housing need. State HCD did not.

SCAG’s September 18, 2019 letter to State HCD (Exhibit A-5) states “SCAG projects total regional population to grow to 20,725,878 by October, 2029. SCAG’s projection differs from Department of Finance (DOF) projection of 20,689,591, which was issued by DOF in May, 2018, by 0.18%. The total population provided in HCD’s determination is 20,455,355, reflecting an updated DOF projection, differs from SCAG’s projection by 1.32%. As SCAG’s total projection is within the statutory tolerance of 1.5%, accordingly HCD is to use SCAG’s population forecast.”¹⁵

State HCD, in its October 15, 2019 issuance of a final Regional Housing Needs Assessment to SCAG (Exhibit A-6) cites two reasons for not using SCAG’s total regional population forecast:¹⁶

- 1) The total *household* projection from SCAG is 1.96% lower than DOF’s household projection (emphasis added); and,
- 2) The age cohort of under 15-year old persons from SCAG’s population projections differs from DOF’s projections by 15.8%.

State HCD’s interpretation and application of Government Code 65584.01(a) is flawed for the following two reasons:

- 1) Government Code 65584.01(a) clearly states that the 1.5% range is based on the total regional **population** forecast, not the regional **household** projection forecast that State HCD used; and,
- 2) Government Code 65584.01(a) clearly states that the 1.5% range is based on the **total** regional population forecast and not on **age-cohort** population forecasts that State HCD used.

¹⁵ Southern California Association of Governments: September 18, 2019 letter to Mr. Doug McCauley, State HCD Acting Director, 2.

¹⁶ State HCD: October 15, 2019 letter, 2.

Had HCD adhered to the provisions of Government Code Section 65584.01(a) and used SCAG's population forecast as submitted by SCAG, SCAG's regional determination would have been 133,262 housing units less, as calculated by an Orange County analysis of this issue (Exhibit A-7).^{17 18}

Bases for Filing Appeal #2:

Appeal Basis: Application of the adopted Final RHNA Methodology for the 6th Cycle RHNA (2021 – 2029):

The City of Mission Viejo argues that if State HCD's regional housing need determination is incorrect – due to State HCD's failure to use SCAG's population estimates in calculating SCAG's regional need, as required by State law – then the application of SCAG's adopted RHNA methodology to calculate each SCAG jurisdiction's individual RHNA allocation is flawed, and the output: the local jurisdiction's individual RHNA allocation, is also incorrect.

A review of SCAG's adopted RHNA Allocation Methodology (Exhibit A-4) clearly identifies that the fundamental starting point of SCAG's adopted RHNA Allocation Methodology is explicitly based on State HCD's regional housing need number of 1,341,827 housing units, as presented below.

The direct relationship between State HCD's flawed regional need number of 1.34 million housing units and the application of that flawed regional number upon the calculations of each local jurisdiction's RHNA is indisputable. SCAG's adopted RHNA methodology makes numerous and specific references to the direct tie of the RHNA Allocation Methodology to State HCD's total regional need number of 1.34 million housing units, versus a corrected 1,208,565 housing units, as detailed below:

- 1) Page 4 of the adopted RHNA Allocation Methodology introduces the allocation methodology by stating "The next section describes the final RHNA methodology mechanism to distribute the *1,341,827 housing units determined by HCD* to all SCAG jurisdictions." (emphasis added).
- 2) Page 4 of the adopted RHNA Allocation Methodology states, "SCAG's final RHNA methodology starts with *the total regional determination provided by HCD* and separates existing need from projected need." (emphasis added).
- 3) Page 4 of the adopted RHNA Allocation Methodology states that 504,970 units of State HCD's regional need of 1.34 million housing units is allocated to regional Projected

¹⁷ Orange County Mayors: September 18, 2020 letter to Honorable Rex Richardson, SCAG President, Attachment 2, Exhibit A.

¹⁸ State HCD's regional determination of 1,341,827 housing units minus 1,208,565 housing units (using SCAG's population estimates) equals a 133,262 housing unit over-count.

Need, and 836,857 units of State HCD’s regional need of 1.34 million housing units is assigned to regional Existing Need. The Methodology further defines Existing Need to be “the remainder of the *regional determination* after projected need is subtracted.” (emphasis added).

- 4) Page 5 and 6 of the adopted RHNA Allocation Methodology include tables that details how much of State HCD’s 1.34 million units is assigned to each RHNA methodology component, as follows:

Methodology Component	Assigned Units
Projected Need: Household Growth	466,958
Projected Need: Future Vacancy Need	14,467
Projected Need: Replacement Need	23,545
Projected Need Subtotal	504,970

	Percentage of Existing Need	Assigned Units
Existing Need: Transit Accessibility	50%	418,429
Existing Need: Job Accessibility	50%	418,428
Existing Need Subtotal		836,857

Total Regional Need	1,341,827
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Source: SCAG Final RHNA Allocation Methodology: Updated 3/5/2020, pages 5 and 6

- 5) Page 6 of the adopted RHNA Allocation Methodology states, “The first step of the RHNA methodology is to determine a jurisdiction’s projected need. From the *regional determination*, projected need is considered to be regional household growth, regional future vacancy need, and regional replacement need.” (emphasis added).
- 6) Page 9 of the adopted RHNA Allocation Methodology states, “After determining a jurisdiction’s projected need, the next step is to determine a jurisdiction’s existing need. Following the above discussions and *based on HCD’s determination of total regional need*, existing need is defined as the *total need* minus the projected need – approximately 62 percent of the entire regional determination.” (emphasis added).

Conclusion:

As illustrated in the SCAG RHNA Allocation Methodology table above, the sum total of Projected Need (504,970 units) and Existing Need (836,857 units) equals State HCD's total housing need for the SCAG region: 1,341,827 housing units.

This is a number we argue is incorrect and defective, based on State HCD's failure to use SCAG's population estimates in determining the region's housing need. HCD's denial to use SCAG's population forecast to determine SCAG's regional housing unit need, results in a 133,262 housing unit over-count of housing need for the SCAG region. Further, as argued above, this incorrect number is embedded in SCAG's RHNA Allocation methodology, and its application results in a flawed, starting point in calculating each jurisdiction's individual RHNA housing allocation.

State HCD's 1.34 million housing unit number is inextricably integrated into SCAG's RHNA allocation methodology. It is the starting point of SCAG's RHNA Allocation methodology. Further, the 1.34 million housing units number is a data point in the RHNA Allocation methodology that is used to calculate how much of the regional need number would be assigned to regional Projected Housing Need and regional Existing Housing Need. This, in turn, directly affects the subsequent RHNA methodology's sequential calculations of each local jurisdiction's share of Existing Need that ultimately feed into deriving a jurisdiction's 6th cycle RHNA number.

Had State HCD utilized SCAG's population forecast, as required by State Government Code 65584.01(a), the RHNA Allocation Methodology would have used a starting point of 1,208,565 housing units to calculate the region's Projected Need and Existing Need, not the 1,341,827 housing units as currently factored in the SCAG RHNA Methodology. Such a correction is demanded and necessary; defective data should not be used to dictate and command housing policy.