



SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS  
900 Wilshire Blvd., Ste. 1700  
Los Angeles, CA 90017  
T: (213) 236-1800  
www.scag.ca.gov

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Community, Economic &  
Human Development  
Peggy Huang, Transportation  
Corridor Agencies

Energy & Environment  
Linda Parks, Ventura County

Transportation  
Curt Hagman, San Bernardino  
County

## REGULAR MEETING

# REGIONAL HOUSING NEEDS ASSESSMENT (RHNA) SUBCOMMITTEE

***Please Note Date and Time***  
***Monday, February 4, 2019***  
***10:00 a.m. – 12:00 p.m.***

**SCAG MAIN OFFICE**  
**900 Wilshire Blvd., Ste. 1700**  
**RC Board Room**  
**Los Angeles, CA 90017**  
**(213) 236-1800**

***See Next Page for Other Meeting Locations***

If members of the public wish to review the attachments or have any questions on any of the agenda items, please contact Tess Rey-Chaput at (213) 236-1908 or via email at REY@scag.ca.gov. Agendas & Minutes are also available at: [www.scag.ca.gov/committees](http://www.scag.ca.gov/committees)

SCAG, in accordance with the Americans with Disabilities Act (ADA), will accommodate persons who require a modification of accommodation in order to participate in this meeting. SCAG is also committed to helping people with limited proficiency in the English language access the agency's essential public information and services. You can request such assistance by calling (213) 236-1908. We request at least 72 hours (three days) notice to provide reasonable accommodations and will make every effort to arrange for assistance as soon as possible.

## **VIDEOCONFERENCE SITES & ADDRESSES**

### **SCAG Los Angeles Office (Main Office)**

900 Wilshire Blvd., Ste. 1700, Los Angeles, CA 90017

### **SCAG Imperial County Regional Office**

1503 N. Imperial Ave., Ste. 104, El Centro, CA 92243

### **SCAG Orange County Regional Office**

600 S. Main St., Orange, CA 92868

*\*Due to limited capacity, please RSVP prior to the meeting to ensure availability, [housing@scag.ca.gov](mailto:housing@scag.ca.gov)*

### **SCAG Riverside County Regional Office**

3403 10<sup>th</sup> St., Ste. 805, Riverside, CA 92501

### **SCAG San Bernardino County Regional Office**

1170 W. 3<sup>rd</sup> St., Ste. 140, San Bernardino, CA 92410

### **Coachella Valley Association of Governments Office**

73-710 Fred Waring Dr., Ste. 200, Palm Desert, CA 92260

### **City of Palmdale Office**

38250 Sierra Hwy., Palmdale, CA 93550

### **South Bay Cities Council of Governments Office**

South Bay Environmental Services Center  
20285 S. Western Avenue, Suite 100 Torrance, CA 90501

## **TELECONFERENCE SITES & ADDRESSES**

### **Oxnard City Hall**

300 W 3rd Street  
Oxnard, CA 93030

### **Simi Valley City Hall**

2929 Tapo Canyon Road  
Simi Valley, CA 93063

**CLOSURE NOTICE:** The SCAG Ventura County Regional Office is closed until further notice.

## **WEBCASTING AVAILABLE**

Webcast participation is view-only. Registration for webcasting is limited and is on a first come, first serve basis. Please register at

<https://scag.zoom.us/meeting/register/95796f16e787593ad746f627e8486654>

## **RHNA SUBCOMMITTEE MEMBERS – RHNA 6<sup>TH</sup> CYCLE**

### **VOTING MEMBERS**

#### **Representing Imperial County**

Primary: Hon. Jim Predmore, Holtville  
Alternate: Hon. Bill Hodge, Calexico

#### **Representing Los Angeles County**

Primary: Hon. Margaret Finlay, Duarte  
Alternate: Hon. Rex Richardson, Long Beach

#### **Representing Orange County**

Primary: Hon. Wendy Bucknum, Mission Viejo  
Alternate: **CHAIR** Peggy Huang, Yorba Linda, TCA

#### **Representing Riverside County**

Primary: Hon. Rusty Bailey, Riverside  
Alternate: Hon. Russell Betts, Desert Hot Springs

#### **Representing San Bernardino County**

Primary: Hon. Bill Jahn, Big Bear Lake  
Alternate: Hon. Jim Mulvihill, San Bernardino

#### **Representing Ventura County**

Primary: Hon. Carmen Ramirez, Oxnard  
Alternate: Hon. Mike Judge, Simi Valley, VCTC

### **NON-VOTING/EX-OFFICIO MEMBERS**

#### **Representing Academia**

Ex-Officio: Paavo Monkkonen, UCLA Urban Planning

#### **Representing Non-Profit/Advocate**

Ex-Officio: Cesar Covarrubias, Executive Director, Kennedy Commission

#### **Representing Building Industry**

Ex-Officio: Jeff Montejano, Chief Executive Officer, BIA of Southern California



# REGIONAL HOUSING NEEDS ASSESSMENT SUBCOMMITTEE MEETING AGENDA

Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700  
Los Angeles, California 90017  
**Monday, February 4, 2019**  
**10:00 AM**

*The RHNA Subcommittee may consider and act upon any of the items listed on the agenda regardless of whether they are listed as Information or Action Items.*

## **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

*(The Honorable Peggy Huang, Chair)*

## **ROLL CALL**

## **PUBLIC COMMENT PERIOD**

Members of the public desiring to speak on items on the agenda, or items not on the agenda, but within the purview of the Committee, must fill out and present a Public Comment Card to the committee staff prior to speaking. Comments will be limited to three (3) minutes per speaker. The Chair has the discretion to reduce the time limit based upon the number of speakers and may limit the total time for all public comments to twenty (20) minutes.

## **REVIEW AND PRIORITIZE AGENDA ITEMS**

## **CONSENT CALENDAR**

### **Approval Item**

1. Minutes of the December 3, 2018 Meeting

### **Time**

### **Page No.**

1

### **Receive and File**

2. RHNA Subcommittee Topic Outlook
3. RHNA Law

5

6

## **ACTION ITEM**

4. RHNA Subregional Delegation Guidelines  
*(Joann Africa, Chief Counsel)*

10 mins.

22

**Recommended Action:** Recommend the Community, Economic & Human Development (CEHD) Committee to approve the RHNA Subregional Delegation Guidelines.

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<u>DISCUSSION ITEMS</u>	<u>Time</u>	<u>Page No.</u>
5. <u>An Initial Framework for Developing SCAG's RHNA Regional Determination Consultation Package with the California Department of Housing and Community Development (HCD)</u> <i>(Kevin Kane, SCAG Staff)</i>	45 mins.	43
6. <u>RHNA-related Local Planning Factors</u> <i>(Ma'Ayn Johnson, SCAG Staff)</i>	20 mins.	59
7. <u>Legal Action Filed by the California Department of Housing and Community Development (HCD) Against the City of Huntington Beach</u> <i>(Joann Africa, Chief Counsel)</i>	30 mins.	86

### CHAIR'S REPORT

### STAFF REPORT

### ANNOUNCEMENT/S

### ADJOURNMENT

*The next regular meeting of the RHNA Subcommittee is scheduled for March 4, 2019 at 10 a.m. at the Wilshire Grand Center, 900 Wilshire Boulevard, Suite 1700, Los Angeles, CA 90017.*

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**MINUTES OF THE MEETING OF THE  
REGIONAL HOUSING NEEDS ASSESSMENT SUBCOMMITTEE (RHNA)  
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS  
MONDAY, DECEMBER 3, 2018**

**THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE REGIONAL HOUSING NEEDS ASSESSMENT SUBCOMMITTEE. AN AUDIO RECORDING OF THE ACTUAL MEETING IS AVAILABLE FOR LISTENING.**

The Regional Housing Needs Assessment Subcommittee held its meeting at SCAG, 900 Wilshire Boulevard, Suite 1700, Los Angeles, CA 90017. A quorum was present.

**VOTING MEMBERS**

**Representing Imperial County**

Primary:	Hon. Jim Predmore, Holtville	Present – via videoconference
Alternate:	Hon. Bill Hodge, Calexico	Present – in-person

**Representing Los Angeles County**

Primary:	Hon. Margaret Finlay, Duarte	Present - via teleconference
Alternate:	Hon. Rex Richardson, Long Beach	Absent

**Representing Orange County**

Primary:	Hon. Michael Posey, Huntington Beach	Present – in-person
Alternate:	<b>CHAIR</b> Peggy Huang, Yorba Linda, TCA	Present – in-person

**Representing Riverside County**

Primary:	Hon. Rusty Bailey, Riverside	Present – via videoconference
Alternate:	Hon. Russell Betts, Desert Hot Springs	Present – via videoconference

**Representing San Bernardino County**

Primary:	Hon. Bill Jahn, Big Bear Lake	Present – in-person
Alternate:	Hon. Jim Mulvihill, San Bernardino	Present – in-person

**Representing Ventura County**

Primary:	Hon. Carmen Ramirez, Oxnard	Absent
Alternate:	Hon. Mike Judge, Simi Valley	Present – via videoconference

**NON-VOTING/EX-OFFICIO MEMBERS**

Academia:	Paavo Monkkonen, UCLA Urban Planning	Present – in-person
Non-Profit/Advocate:	Cesar Covarrubias, Kennedy Commission	Present – in-person
Building Industry:	Jeff Montejano, BIA of So. California	Absent

## **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Chair Peggy Huang, called the meeting to order at 10:05 AM and asked the Honorable Bill Jahn to lead the Pledge of Allegiance.

## **PUBLIC COMMENT PERIOD**

Gail Shiomoto-Lohr, City of Mission Viejo, commented on Agenda Items #3, #5, and #6, and specifically discussed questions about pursuing subregional delegation. She also addressed overcrowding and requested more clarification on how overcrowding will be factored into the regional housing determination. Ms. Shiomoto-Lohr submitted a written memo with her comments.

## **REVIEW AND PRIORITIZE AGENDA ITEMS**

There was no prioritization of agenda items.

## **CONSENT CALENDAR**

### **Approval Item**

#### 1. Minutes of October of the 29, 2018 Meeting

A MOTION was made (Primary Member Posey, Orange County) to approve the Consent Calendar. The MOTION was SECONDED (Primary Member Jahn, San Bernardino County) and passed by the following votes:

**AYES:** Predmore (Imperial County); Finlay (Los Angeles County); Posey (Orange County); Bailey (Riverside County); Jahn (San Bernardino County); and Judge (Ventura County) (6).

**NOES:** None (0).

**ABSTAIN:** None (0).

### **Receive and File**

#### 2. RHNA Subcommittee Topic Outlook

### **ACTION ITEM**

#### 3. Proposed Final RHNA Subcommittee Charter

Joann Africa, Chief Legal Counsel, presented on the changes made to the charter since the last Subcommittee Meeting in regards to the tie-breaker policy and the RHNA trade and transfer process.

Ms. Africa responded to the question submitted in public comment by Ms. Shiomoto-Lohr about the charter.

Alternate Member Russell Betts, representing Riverside County, clarified that Alternate Members should not be voting on the motion if the Primary Member is in attendance and present at the meeting. Staff noted the comment.

A MOTION was made (Primary Member Jahn, San Bernardino County) to approve the charter. The MOTION was SECONDED (Primary Member Posey, Orange County) and passed by the following votes:

**AYES:** Predmore (Imperial County); Finlay (Los Angeles County); Posey (Orange County); Bailey (Riverside County); Jahn (San Bernardino County); and Judge (Ventura County) (6).

**NOES:** None (0).

**ABSTAIN:** None (0).

#### **DISCUSSION ITEMS**

##### 4. Comparison of Fair Share Housing Approaches

Paavo Monkkonen, Associate Professor, UCLA Department of Urban Planning, presented on the article, "Beyond the Double Veto: Land Use Plans as Preemptive Intergovernmental Contracts," by Christopher C. Elmendorf and discussed best practices on how other regions in the Northeast and Pacific Northwest undertake similar processes to RHNA. He also discussed the importance of fair housing and the legal justification for accommodating population growth. Mr. Monkkonen responded to questions and comments from the Subcommittee, including questions about how other parts of California conduct similar processes and the Oregon Model.

##### 5. RHNA Subregional Delegation

Joann Africa, Chief Legal Counsel, presented an introduction on the subregional delegation process under RHNA law, specifically financial assistance, methodology, and the benefits of subregional delegation. Ms. Africa responded to questions and comments from the Subcommittee, including questions about the delegation guidelines, legal liability, and the review process.

Chair Peggy Huang, reminded Subcommittee Members that additional questions and comments can be sent to [housing@scag.ca.gov](mailto:housing@scag.ca.gov).

##### 6. SCAG's Regional Growth Forecast and Recent Housing-related Data Trends

Kevin Kane, SCAG Staff, presented on the 2020 RTP/SCS regional growth forecast, the data necessary for understanding regional housing needs, and recent trends in household formation, vacancy, and overcrowding in order to better understand the regional housing determination. Mr. Kane also



discussed recent changes to housing element law and how they will affect regional determination. Mr. Kane responded to questions and comments from the Subcommittee, including questions on local input, the definition of a “room,” headship rate calculations, multiple and short-term rental homes, the predictors used to determine overcrowding, accessory dwelling units, and the HCD data review process.

### **CHAIR’S REPORT**

#### **7. Determine RHNA Subcommittee Meeting Schedule**

Chair Peggy Huang stated that the Subcommittee would meet the first Monday of every month starting in February 2019 unless otherwise notified and that either a primary or alternate Subcommittee member from each county must be present in order to reach the quorum once the charter is adopted.

### **STAFF REPORT**

A report was not provided.

### **ANNOUNCEMENT/S**

Chair Peggy Huang encouraged Subcommittee members to attend the 9<sup>th</sup> Annual Economic Summit on December 6, 2018.

SCAG President Alan Wapner thanked all for participating.

### **ADJOURNMENT**

There being no further business, Chair Peggy Huang adjourned the meeting at 11:40 AM.

The next regular meeting of the RHNA Subcommittee is scheduled for Monday, February 4, 2019 at 10:00 AM at the Wilshire Grand Center, 900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017.

[ MINUTES ARE UNOFFICIAL UNTIL APPROVED BY THE RHNA SUBCOMMITTEE ]

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## RHNA Subcommittee Topic Outlook

October 2018 – August 2020

Meeting	Proposed Date	Subject	Action
1	October 2018	Overview of RHNA process and legislation; RHNA work plan and schedule; notification to HCD and Caltrans of RTP/SCS adoption date; discussion on housing topics	
2	December 2018	Subregional delegation guidelines; best practices for housing implementation; introduction to the regional determination process; recommend Subcommittee charter	Recommend Subcommittee charter
3	February 2019	Regional determination process; local input process update; local planning factor/affirmatively furthering fair housing and replacement need survey discussion; recommend subregional delegation guidelines	Recommend subregional delegation guidelines to CEHD
4	March 2019	Regional determination process (continued); finalize local planning factor/affirmatively furthering fair housing and replacement need survey	Release local planning factor/affirmatively furthering fair housing and replacement need survey to local jurisdictions and subregions
5	April 2019	Regional determination process (continued); discussion on social equity adjustment	
6	June 2019	Regional determination process (continued); survey results for local planning factors, affirmatively furthering fair housing, and replacement need; continued discussion on methodology: overcrowding; at-risk affordable units; high housing cost burdens; farmworker housing; homelessness; other existing housing needs	
7	July 2019	Regional determination process (continued); continued discussion on proposed RHNA Methodology; RHNA costs	Release proposed methodology for public review; recommend RHNA costs to CEHD
	August 2019	Public Hearing(s) on Proposed Methodology	
8	September 2019	Review comments received on proposed RHNA methodology	Recommend submittal of proposed methodology to HCD
9	December 2019	Review comments from HCD on draft RHNA methodology; RHNA appeals process guidelines	Recommend RHNA methodology adoption; adopt RHNA appeals process guidelines
10	January 2020	Recommend distribution of draft RHNA allocation	Recommend distribution of draft RHNA allocation
11	July 2020	Hearing on appeals	Determine appeals
12	July 2020	Review and ratify the decisions on appeals	Issue written decisions regarding appeals
13	August 2020	Final meeting	Recommend to CEHD proposed Final RHNA Allocation Plan



Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017  
February 4, 2019

To: Regional Housing Needs Assessment Subcommittee (RHNA)

INTERIM  
EXECUTIVE DIRECTOR'S  
APPROVAL

From: MaAyn Johnson, Senior Regional Planner, Compliance and  
Performance Monitoring, (213) 236-1975, [johnson@scag.ca.gov](mailto:johnson@scag.ca.gov)

Subject: RHNA Law

**RECOMMENDED ACTION:**

For information only – no action required.

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

*Government Code Section 65584 through 65584.05 are the California State laws that govern the RHNA process.*

**BACKGROUND:**

The RHNA process is codified in Government Code Sections 65584 through 65584.05. Below is an outline of key sections:

<i>Section</i>	<i>Issue</i>
65584	Goals of RHNA
65584.01, 65584.02	Determining total regional housing need
65584.03	Subregional delegation
65584.04	RHNA methodology
65584.04(e)	Local planning factors
65584.05	Release of draft RHNA allocation
65584.05 (b)-(d)	Appeals procedure
65584.05(e)-(i)	Release of final RHNA allocation

**FISCAL IMPACT:**

Work associated with this item is included in the current FY 18-19 General Fund Budget (800.0160.03:RHNA).

**ATTACHMENT(S):**

1. RHNA Statutes (effective 010119)

## RHNA STATUTES

### **Government Code §65584. Existing and projected regional housing needs; share of city or county needs; determination; objectives; household income levels; exemption from environmental regulations (Effective: January 1, 2019)**

(a) (1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

(2) It is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, and reasonable actions should be taken by local and regional governments to ensure that future housing production meets, at a minimum, the regional housing need established for planning purposes. These actions shall include applicable reforms and incentives in Section 65582.1.

(3) The Legislature finds and declares that insufficient housing in job centers hinders the state's environmental quality and runs counter to the state's environmental goals. In particular, when Californians seeking affordable housing are forced to drive longer distances to work, an increased amount of greenhouse gases and other pollutants is released and puts in jeopardy the achievement of the state's climate goals, as established pursuant to Section 38566 of the Health and Safety Code, and clean air goals.

(b) The department, in consultation with each council of governments, shall determine each region's existing and projected housing need pursuant to Section 65584.01 at least two years prior to the scheduled revision required pursuant to Section 65588. The appropriate council of governments, or for cities and counties without a council of governments, the department, shall adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region required by Section 65588. The allocation plan prepared by a council of governments shall be prepared pursuant to Sections 65584.04 and 65584.05.

(c) Notwithstanding any other provision of law, the due dates for the determinations of the department or for the council of governments, respectively, regarding the regional housing need may be extended by the department by not more than 60 days if the extension will enable access to more recent critical population or housing data from a pending or recent release of the United States Census Bureau or the Department of Finance. If the due date for the determination of the department or the council of governments is extended for this reason, the department shall extend the corresponding housing element revision deadline pursuant to Section 65588 by not more than 60 days.

(d) The regional housing needs allocation plan shall further all of the following objectives:

(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.

(f) For purposes of this section, "household income levels" are as determined by the department as of the most recent American Community Survey pursuant to the following code sections:

(1) Very low incomes as defined by Section 50105 of the Health and Safety Code.

(2) Lower incomes, as defined by Section 50079.5 of the Health and Safety Code.

(3) Moderate incomes, as defined by Section 50093 of the Health and Safety Code.

(4) Above moderate incomes are those exceeding the moderate-income level of Section 50093 of the Health and Safety Code.

(g) Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to this section or Section 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

**Government Code § 65584.01. Existing and projected regional housing needs; manner of determination (Effective: January 1, 2019)**

For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, 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 no agreement is 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.

(b) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The percentage of households that are overcrowded and the overcrowding rate for a comparable housing market. For purposes of this subparagraph:

(i) The term "overcrowded" means more than one resident per room in each room in a dwelling.

(ii) The term "overcrowded rate for a comparable housing market" means that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation, as determined by the council of governments.

(D) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(E) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs. For purposes of this subparagraph, the vacancy rate for a healthy rental housing market shall be considered no less than 5 percent.

(F) Other characteristics of the composition of the projected population.

(G) The relationship between jobs and housing, including any imbalance between jobs and housing.

(H) The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market. For the purposes of this subparagraph:

(i) The term “cost burdened” means the share of very low-, low-, moderate-, and above moderate-income households that are paying more than 30 percent of household income on housing costs.

(ii) The term “rate of housing cost burden for a healthy housing market” means that the rate of households that are cost burdened is no more than the average rate of households that are cost burdened in comparable regions throughout the nation, as determined by the council of governments.

(I) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the data request.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (I), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments. The methodology submitted by the department may make adjustments based on the region’s total projected households, which includes existing households as well as projected households.

(c) (1) After consultation with the council of governments, the department shall make a determination of the region’s existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (b). The region’s existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department’s determination of the region’s existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (a), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (b). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (b), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (b).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

(d) Statutory changes enacted after the date the department issued a final determination pursuant to this section shall not be a basis for a revision of the final determination.



**Government Code § 65584.02. Existing and projected regional housing needs; alternative manner of determination (Effective: January 1, 2009)**

(a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. This request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

(b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

**Government Code § 65584.03. Subregional entity for allocation of existing and projected housing needs; notification of formation; determination; failure to complete allocation**  
(Effective: January 1, 2005)

(a) At least 28 months prior to the scheduled housing element update required by Section 65588, at least two or more cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties.

(b) Upon formation of the subregional entity, the entity shall notify the council of governments of this formation. If the council of governments has not received notification from an eligible subregional entity at least 28 months prior to the scheduled housing element update required by Section 65588, the council of governments shall implement the provisions of Sections 65584 and 65584.04. The delegate subregion and the council of governments shall enter into an agreement that sets forth the process, timing, and other terms and conditions of the delegation of responsibility by the council of governments to the subregion.

(c) At least 25 months prior to the scheduled revision, the council of governments shall determine the share of regional housing need assigned to each delegate subregion. The share or shares allocated to the delegate subregion or subregions by a council of governments shall be in a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan. Prior to allocating the regional housing needs to any delegate subregion or subregions, the council of governments shall hold at least one public hearing, and may consider requests for revision of the proposed allocation to a subregion. If a proposed revision is rejected, the council of governments shall respond with a written explanation of why the proposed revised share has not been accepted.

(d) Each delegate subregion shall fully allocate its share of the regional housing need to local governments within its subregion. If a delegate subregion fails to complete the regional housing need allocation process among its member jurisdictions in a manner consistent with this article and with the delegation agreement between the subregion and the council of governments, the allocations to member jurisdictions shall be made by the council of governments.

**Government Code § 65584.04. Methodology for distributing existing and projected regional housing need to cities and counties; development; survey of member jurisdictions; public participation; factors; publication of draft methodology and submission to department following public comment period; department action; notice of adoption; coordination with regional transportation plan (Effective: January 1, 2019)**

(a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop, in consultation with the department, a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall further the objectives listed in subdivision (d) of Section 65584.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (e) that will allow the development of a methodology based upon the factors established in subdivision (e).

(2) With respect to the objective in paragraph (5) of subdivision (d) of Section 65584, the survey shall review and compile information that will allow the development of a methodology based upon the issues, strategies, and actions that are included, as available, in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the department that covers communities within the area served by the council of governments, and in housing elements adopted pursuant to this article by cities and counties within the area served by the council of governments.

(3) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(4) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(5) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (e) prior to the public comment period provided for in subdivision (d).

(c) The council of governments shall electronically report the results of the survey of fair housing

issues, strategies, and actions compiled pursuant to paragraph (2) of subdivision (b). The report shall describe common themes and effective strategies employed by cities and counties within the area served by the council of governments, including common themes and effective strategies around avoiding the displacement of lower-income households. The council of governments shall also identify significant barriers to affirmatively furthering fair housing at the regional level and may recommend strategies or actions to overcome those barriers. A council of governments or metropolitan planning organization, as appropriate, may use this information for any other purpose, including publication within a regional transportation plan adopted pursuant to Section 65080 or to inform the land use assumptions that are applied in the development of a regional transportation plan.

(d) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community as well as members of protected classes under Section 12955. The proposed methodology, along with any relevant underlying data and assumptions, an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, how each of the factors listed in subdivision (e) is incorporated into the methodology, and how the proposed methodology furthers the objectives listed in subdivision (e) of Section 65584, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written or electronic request for the proposed methodology and published on the council of governments', or delegate subregion's, Internet Web site. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(e) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship. 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.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and

increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to non-agricultural uses.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to non-agricultural uses.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to non-agricultural uses.

(5) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(6) The percentage of existing households at each of the income levels listed in subdivision (e) of Section 65584 that are paying more than 30 percent and more than 50 percent of their income in rent.

(7) The rate of overcrowding.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of

Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis.

(11) The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.

(12) Any other factors adopted by the council of governments, that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.

(f) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (e) was incorporated into the methodology and how the methodology furthers the objectives listed in subdivision (d) of Section 65584. The methodology may include numerical weighting. This information and any other supporting materials used in determining the methodology, shall be posted on the council of governments', or delegate subregion's, Internet Web site.

(g) The following criteria shall not be a justification for a determination or a reduction in a jurisdiction's share of the regional housing need:

(1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county.

(2) Prior underproduction of housing in a city or county from the previous regional housing need allocation, as determined by each jurisdiction's annual production report submitted pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(3) Stable population numbers in a city or county from the previous regional housing needs cycle.

(h) Following the conclusion of the public comment period described in subdivision (d) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, and as a result of consultation with the department, each council of governments, or delegate subregion, as applicable, shall publish a draft allocation methodology on its Internet Web site and submit the draft allocation methodology, along with the information required pursuant to subdivision (e), to the department.

(i) Within 60 days, the department shall review the draft allocation methodology and report its written findings to the council of governments, or delegate subregion, as applicable. In its written findings the department shall determine whether the methodology furthers the objectives listed in

subdivision (d) of Section 65584. If the department determines that the methodology is not consistent with subdivision (d) of Section 65584, the council of governments, or delegate subregion, as applicable, shall take one of the following actions:

(1) Revise the methodology to further the objectives listed in subdivision (d) of Section 65584 and adopt a final regional, or subregional, housing need allocation methodology.

(2) Adopt the regional, or subregional, housing need allocation methodology without revisions and include within its resolution of adoption findings, supported by substantial evidence, as to why the council of governments, or delegate subregion, believes that the methodology furthers the objectives listed in subdivision (d) of Section 65584 despite the findings of the department.

(j) If the department's findings are not available within the time limits set by subdivision (i), the council of governments, or delegate subregion, may act without them.

(k) Upon either action pursuant to subdivision (i), the council of governments, or delegate subregion, shall provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion, as applicable, and to the department, and shall publish the adopted allocation methodology, along with its resolution and any adopted written findings, on its Internet Web site.

(l) The department may, within 90 days, review the adopted methodology and report its findings to the council of governments, or delegate subregion.

(m) (1) It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.

(2) The final allocation plan shall ensure that the total regional housing need, by income category, as determined under Section 65584, is maintained, and that each jurisdiction in the region receive an allocation of units for low- and very low income households.

(3) 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.

**Government Code § 65584.05. Draft allocation of regional housing needs; distribution; request for revisions and modification; appeal; public hearings; proposed final allocation and adoption of final plan; authority of council of governments** (Effective: January 1, 2019)

(a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments and delegate subregion, as applicable, shall distribute a draft allocation of regional housing needs to each local government in the region or subregion, where applicable, and the department, based on the methodology adopted pursuant to Section 65584.04 and shall publish the draft allocation on its Internet Web site. The draft allocation shall include the underlying data and methodology on which the allocation is based, and a statement as to how it furthers the objectives listed in subdivision (d) of Section 65584. It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional housing need determined pursuant to Section 65584.01 or within subregions, as applicable, the subregion's entire share of the regional housing need determined pursuant to Section 65584.03.

(b) Within 45 days following receipt of the draft allocation, a local government within the region or the delegate subregion, as applicable, or the department may appeal to the council of governments or the delegate subregion for a revision of the share of the regional housing need proposed to be allocated to one or more local governments. Appeals shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation, and shall include a statement as to why the revision is necessary to further the intent of the objectives listed in subdivision (d) of Section 65584. An appeal pursuant to this subdivision shall be consistent with, and not to the detriment of, the development pattern in an applicable sustainable communities strategy developed pursuant to paragraph (2) of subdivision (b) of Section 65080. Appeals shall be limited to any of the following circumstances:

(1) The council of governments or delegate subregion, as applicable, failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04.

(2) The council of governments or delegate subregion, as applicable, failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of Section 65584.

(3) A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted 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.

(c) At the close of the period for filing appeals pursuant to subdivision (b), the council of governments or delegate subregion, as applicable, shall notify all other local governments within the region or delegate subregion and the department of all appeals and shall make all materials submitted in support of each appeal available on a publicly available Internet Web site. Local governments and the



department may, within 45 days, comment on one or more appeals. If no appeals are filed, the draft allocation shall be issued as the proposed final allocation plan pursuant to paragraph (2) of subdivision (e).

(d) No later than 30 days after the close of the comment period, and after providing all local governments within the region or delegate subregion, as applicable, at least 21 days prior notice, the council of governments or delegate subregion shall conduct one public hearing to consider all appeals filed pursuant to subdivision (b) and all comments received pursuant to subdivision (c).

(e) No later than 45 days after the public hearing pursuant to subdivision (d), the council of governments or delegate subregion, as applicable, shall do both of the following:

(1) Make a final determination that either accepts, rejects, or modifies each appeal for a revised share filed pursuant to subdivision (b). Final determinations shall be based upon the information and methodology described in Section 65584.04 and whether the revision is necessary to further the objectives listed in subdivision (d) of Section 65584. The final determination shall be in writing and shall include written findings as to how the determination is consistent with this article. The final determination on an appeal may require the council of governments or delegate subregion, as applicable, to adjust the share of the regional housing need allocated to one or more local governments that are not the subject of an appeal.

(2) Issue a proposed final allocation plan.

(f) In the proposed final allocation plan, the council of governments or delegate subregion, as applicable, shall adjust allocations to local governments based upon the results of the appeals process. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, or, as applicable, total 7 percent or less of the subregion's share of the regional housing need as determined pursuant to Section 65584.03, then the council of governments or delegate subregion, as applicable, shall distribute the adjustments proportionally to all local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments or delegate subregion, as applicable, shall develop a methodology to distribute the amount greater than the 7 percent to local governments. In no event shall the total distribution of housing need equal less than the regional housing need, as determined pursuant to Section 65584.01, nor shall the subregional distribution of housing need equal less than its share of the regional housing need as determined pursuant to Section 65584.03.

(g) Within 45 days after the issuance of the proposed final allocation plan by the council of governments and each delegate subregion, as applicable, the council of governments shall hold a public hearing to adopt a final allocation plan. To the extent that the final allocation plan fully allocates the regional share of statewide housing need, as determined pursuant to Section 65584.01 and has taken into account all appeals, the council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. The council of governments shall submit its final allocation plan to the department within three days of adoption. Within 30 days after the department's receipt of the final allocation plan adopted by the council of governments, the department shall determine whether or not the final allocation plan is consistent with the existing and projected housing need for the region,

as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(h) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(i) Any time period in subdivision (d) or (e) may be extended by a council of governments or delegate subregion, as applicable, for up to 30 days.



Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017  
February 4, 2019

To: Regional Housing Needs Assessment Subcommittee (RHNA)

INTERIM  
EXECUTIVE DIRECTOR'S  
APPROVAL

From: Joann Africa, Chief Legal Counsel  
(213) 236-1928  
[africa@scag.ca.gov](mailto:africa@scag.ca.gov)

Subject: RHNA Subregional Delegation Guidelines

**RECOMMENDED ACTION:**

Recommend approval by the CEHD Committee of the RHNA Subregional Delegation Guidelines.

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

*Per State housing law, two or more geographically contiguous jurisdictions may form a RHNA subregion. A RHNA subregion is delegated the responsibility of developing its own RHNA methodology and a RHNA allocation for each jurisdiction within the subregion. It is also responsible for conducting its own appeal process. SCAG is offering financial assistance to delegating subregions. Jurisdictions have until June 28, 2019 to notify SCAG of the intent to form a RHNA subregion.*

**BACKGROUND:**

A. Understanding what is a “subregional entity” under the RHNA law

Under the law, SCAG may delegate to a “subregional entity” the responsibility of preparing a Regional Housing Need Allocation for the jurisdictions within a particular subregion. Specifically, California Government Code Section 65584.03 provides as follows:

“...[A]t least two or more cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that

county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties.”

It is important to note that the definition of a “subregional entity” for RHNA purposes is broader than what is generally considered a “subregion” by SCAG. Specifically, a combination of two or more geographically contiguous local governments may serve as a subregional entity for RHNA purposes and therefore, the meaning of “subregional entity” is not limited to the 15 organizations that SCAG considers as subregions for SCAG’s planning purposes. In addition, because of the requirement that the local governments be “geographically contiguous,” some subregional organizations whose member cities are not geographically contiguous may not qualify as a subregional entity under RHNA (assuming that the existing member cities want to be included as part of the subregional entity).

Upon formation, the subregional entity must notify SCAG at least 28 months before the scheduled Housing Element update. In the case of SCAG’s 6<sup>th</sup> cycle RHNA, this means that such formation and notification to SCAG should be completed by June 28, 2019. SCAG anticipates receiving the Regional Housing Need Determination from the State of California Department of Housing and Community Development (HCD) on or about August 2019. Subregional housing targets will be issued shortly afterwards. The subregional entity’s share of the regional housing target is to be consistent with the distribution of households assumed for the comparable time period within the 2020 Regional Transportation Plan/Sustainable Communities Strategy. The final subregional allocation will be submitted to SCAG for approval before SCAG prepares its final RHNA plan. In the event a subregional entity fails to fulfill its responsibilities provided under state law or in accordance with the subregional delegation agreement, SCAG will be required to develop and make the final allocation to members of the subregional entity, according to the regionally adopted methodology.

SCAG staff recognizes that many cities and counties may not be familiar with the delegation process under the RHNA law. Therefore, SCAG staff intends to outreach to SCAG’s local jurisdictions and subregional organizations regarding the delegation process after this discussion with the RHNA Subcommittee.

#### B. Understanding what constitutes “delegation”

As previously noted, after a subregional entity has notified SCAG of its formation and intent to accept delegation of the RHNA process, SCAG and the subregional entity will enter into an agreement outlining the roles and responsibilities of SCAG and the respective subregion. Under the law, by accepting delegation, the subregion would be tasked with all of the responsibilities related to distributing the housing need for the jurisdictions within the subregion. This includes

maintaining the total subregional housing need, developing a subregional allocation methodology that is reviewed by HCD, releasing a draft subregional housing allocation plan by income groups using the adopted subregional allocation methodology, addressing any appeals related to the draft subregional housing allocation, preparing and approving the final subregional housing allocation and conducting the required public hearings. Staff anticipates delegating all of these responsibilities to a subregional entity and describing such responsibility in the delegation agreement with the delegate subregion.

C. Financial Assistance for subregional delegation

The RHNA law does not require that a council of governments provide financial assistance to a subregional entity who accepts RHNA delegation. However, SCAG did provide the subregions in the previous RHNA cycles with financial assistance. SCAG staff intends to budget approximately \$500,000 as financial assistance for subregional delegation. Staff intends to provide \$2500 for each local jurisdiction in a delegate subregion and the payment structure for the financial assistance will be described in the delegation agreement.

D. Understanding the benefits of RHNA Subregional delegation

While there are benefits to accepting RHNA subregional delegation, it is also a difficult and involved process. The following are reasons why accepting delegation would be beneficial to the jurisdictions who undertake the process:

- Different Methodology: Delegate subregions develop their own methodology and are not subject to SCAG's review process.
- RHNA Appeals: Delegate subregions have a separate appeals process from SCAG and are exempt from the SCAG's appeal process.
  - Appeal reallocation: Successful appeals must be reallocated back to the SCAG region but jurisdictions within a delegate subregion are exempt from receiving a reallocation from SCAG. They are only subject to any reallocation from appeals within their own subregion.
  - Protection from outside appeals: While it has not yet been confirmed by HCD, delegate subregions may be protected from appeals filed against their jurisdictions from jurisdictions outside the subregion. Appeal to draft allocations can only be made by jurisdictions within the applicable delegate subregion or HCD.
- Financial Assistance from SCAG: SCAG is offering a financial incentive for a delegate subregion to use to undertake the RHNA process.
- Local Control: A delegate subregion has more local control/self-determination by providing the ability for contiguous jurisdictions to assign RHNA numbers. This allows for an opportunity to strengthen planning integration among neighboring jurisdictions.

- Leadership: Delegations provides an opportunity for the delegate subregion to show leadership and provide for a unified voice representing participating communities on RHNA issues (e.g., methodology, social equity, assignment of need and determination of appeals).

SCAG staff presented on RHNA subregional delegation at the RHNA Subcommittee's December 3, 2019 to solicit input and answer questions. Staff also presented on the matter before the Orange County Council of Governments Technical Advisory Committee on January 8, 2019. Pending action of the RHNA Subcommittee, this item will be presented to the CEHD Committee and Regional Council in the following months. SCAG staff will continue to engage local jurisdictions and subregional entities on RHNA subregional delegation, and will update the RHNA Subcommittee, as needed.

**FISCAL IMPACT:**

Work related to the RHNA process is funded from the Fiscal Year 2018-19 General Fund Budget.

**ATTACHMENT(S):**

1. Item 5 Attachment 1 6th Cycle RHNA Subregional Delegation Guidelines RevDraft 012819
2. Item 5 Attachment 2 6th Cycle RHNA Sample Delegation Resolution 111918
3. Item 5 Attachment 3 6th Cycle Sample RHNA Delegation Agreement JA 012819



## RHNA SUBREGIONAL DELEGATION GUIDELINES

### Meaning of “Subregional Entity” and Notification Deadline

Under State law, the Southern California Association of Governments (SCAG) may delegate to a “subregional entity” the responsibility of preparing a subregional housing need allocation for the jurisdictions within the particular subregional entity, that will be included as part of SCAG’s Regional Housing Needs Assessment (RHNA) Allocation Plan. Specifically, California Government Code Section 65584.03 provides as follows:

“...[A]t least two or more cities and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to [Section 65584.04](#). The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties.”

The subregional entity (also referred to herein as the “delegate subregion”) must notify SCAG at least 28 months before the scheduled Housing Element update of its formation. In the case of SCAG’s 6<sup>th</sup> cycle RHNA, notification by the proposed subregional entity must be provided to SCAG by Friday, June 28, 2019. Submittal of the required adopting resolution, a sample of which is attached herein as Exhibit A, shall occur prior to approval of the Delegation Agreement between SCAG and the subregional entity.

## **Delegation – Scope of Responsibilities**

After a subregional entity has notified SCAG of its formation and intent to accept delegation of the RHNA process, SCAG and the delegate subregion will enter into an agreement that sets forth the process, timing, and other terms and conditions of the delegation of responsibilities by SCAG to the respective subregion. By accepting delegation, the delegate subregion is tasked with all of the responsibilities related to distributing the share of the regional housing need for the jurisdictions within the subregion in accordance with State law (see Cal. Government Code Section 65584 et seq). This includes maintaining the total subregional housing need, developing a subregional allocation methodology that is reviewed by the State of California Department of Housing and Community Development (HCD), releasing a draft subregional housing allocation plan by income groups using the adopted subregional allocation methodology, addressing any appeals related to the draft subregional housing allocation, preparing and approving the final subregional housing allocation and conducting the required public hearings. A sample Delegation Agreement is attached herein as Exhibit B.

SCAG anticipates receiving the Regional Housing Need Determination (regarding the existing and projected need for housing for the SCAG region) from HCD on or about August 2019. Thereafter, SCAG shall issue the share of the Regional Housing Need assigned to each delegate subregion. The total subregional housing need will be based upon such factors outlined in Government Code Section 65584.01(b)(1)(A) to (I), such as the delegate subregion's share of the household growth from January 1, 2021 to December 31, 2029, a healthy market vacancy rate including a healthy rental housing market of no less than five percent, and replacement needs based upon demolitions from all jurisdictions within the delegate subregion.

Prior to assigning the total subregional housing need to any delegate subregion, SCAG will hold a public hearing and may consider requests for revision. If SCAG rejects a proposed revision, it shall respond with a written explanation of why the proposed revised share has not been accepted.

The delegate subregion's share of the regional housing need is to be consistent with the distribution of households assumed for the comparable time period within the 2020 Regional Transportation Plan/Sustainable Communities Strategy. The final subregional allocation will be submitted by the delegate subregion to SCAG for approval before SCAG prepares its final RHNA plan.

In the event a delegate subregional entity fails to fulfill its responsibilities provided under state law or in accordance with the subregional Delegation Agreement, SCAG will be required to develop and make final allocation to members of the subregional entity, according to the regionally adopted method pursuant to Government Code Section 65584 and 65584.04.



**Financial Assistance for Delegation**

SCAG staff intends to budget approximately \$500,000 as financial assistance for subregional delegation. In order to best utilize these limited funds, SCAG will provide \$2,500 for each local jurisdiction in a subregional entity who accepts delegation, based upon dividing \$500,000 into the total number of jurisdictions in the SCAG region (which is approximately 200 since there are 191 cities and 6 counties in the SCAG region). The amount of the respective financial assistance for the subregional entity and its distribution shall be outlined in the Delegation Agreement.

**Proposed Timeline for Subregional Delegation**

The following represents the proposed timeline for RHNA subregional delegation process:

By June 28, 2019	Notice of Intent submitted by Delegate Subregion
By July 31, 2019	SCAG to provide Delegate Subregion with local growth forecast and survey information
By August 31, 2019	State HCD to provide SCAG with Regional Housing Need Determination
By August 31, 2019	Deadline for SCAG and Delegate Subregion to enter into Delegation Agreement (adopting resolutions to be approved beforehand)
By Sept. 30, 2019	SCAG to provide Delegate Subregion with Subregional Housing Need and conduct public hearing
By Oct. 31, 2019	SCAG to release its draft regional housing need allocation methodology; Delegate Subregion releases its draft subregional housing need allocation methodology
By Dec. 31, 2019	HCD reviews and provides findings on SCAG’s draft regional housing need allocation methodology; HCD reviews and provides findings on Delegate Subregion’s draft subregional housing need allocation methodology; SCAG and the Delegate Subregion adopt their respective final regional housing need allocation methodologies prior to the distribution of their respective Draft RHNA Plans
	Last day for Subregional Entity to terminate Delegation Agreement and relinquish its delegation responsibilities
By April 2, 2020	SCAG to release Draft RHNA Plan; Delegate Subregion

releases Draft Subregional Housing Allocation Plan

By July 31, 2020 Appeals (if any) addressed by SCAG and Delegate Subregion

By July 31, 2020 Delegate Subregion to approve its Final Subregional Housing Allocation Plan and submit it to SCAG

By October 31, 2020 SCAG to approve its Final RHNA Plan, which incorporates the Final Subregional Housing Allocation Plan by the Delegate Subregion; Submittal of Final RHNA Plan to State HCD

By November 30, 2020 Deadline for HCD to approve SCAG's Final RHNA Plan

October 31, 2021 Deadline for updates of Local Housing Elements

Attachments to these Guidelines:

Exhibit A – Sample Delegation Resolution

Exhibit B – Sample Delegation Agreement

**Exhibit A to the RHNA Subregional Delegation Guidelines**

**RESOLUTION OF (NAME OF LOCAL JURISDICTION)  
ESTABLISHING SUBREGIONAL ENTITY FOR PURPOSES  
OF DEVELOPING SUBREGIONAL HOUSING ALLOCATION PLAN TO BE INCLUDED IN  
REGIONAL HOUSING ALLOCATION PLAN BY THE SOUTHERN CALIFORNIA ASSOCIATION OF  
GOVERNMENTS**

Whereas, the California Legislature has declared, in Government Code Section 65580, that the availability of housing is of vital state importance, and it is a goal of the State of California to expand housing opportunities and accommodate housing needs of Californians in all economic levels;

Whereas, counties and cities within California, in order to ensure attainment of the State's housing goal, are required under state law to adopt a general plan, which must include a housing element, which identifies and analyzes existing and projected housing needs, and enumerates goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing to meet the needs of all economic segments of the community;

Whereas, Government Code Section 65583(a) requires each such housing element to provide an assessment of the "share" of regional housing needs which must be borne by a local jurisdiction, and an inventory of resources and constraints relevant to the meeting of those needs;

Whereas, the Southern California Association of Governments (SCAG) is a joint powers authority agency representing six counties: Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial; and is mandated by the federal and state law to research and develop long range regional plans related to transportation, growth, waste management, air quality and housing;

Whereas, SCAG, in consultation with the California Department of Housing and Community Development ("HCD" herein), is required to determine the existing and projected need for housing for the SCAG region pursuant to Government Code Sections 65584 et seq. by way of preparation of a Regional Housing Needs Assessment ("RHNA");

Whereas, counties and cities use the RHNA to prepare updates to its respective housing elements;

Whereas, SCAG is preparing the sixth cycle update of the RHNA and intends to submit the RHNA to HCD on or about October 31, 2020. Counties and cities within the SCAG region thereafter are required to prepare and submit their respective updated housing elements to HCD by October 31, 2021; and

Whereas, SCAG is authorized under current state law to delegate the responsibility of allocating the projected housing need for jurisdictions with a subregion to a subregional entity by way of a written agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the (City Council/Board of Supervisors) of the (Name of Local \Jurisdiction):

1. The (Name of Local Jurisdiction) agrees to form a “subregional entity” within the meaning set forth in Government Code Section 65583 with the jurisdictions of \_\_\_\_\_ (collectively referred to herein as “Subregion”). This Subregion desires to accept delegation of the responsibility of allocating the total housing need for the local governments in its Subregion, under the terms and conditions of a written agreement to be entered into between the Subregion and SCAG.

2. The (Name of Local Jurisdiction) authorizes \_\_\_\_\_ to act on behalf of the Subregion for purposes of facilitating the application of this Resolution.

**APPROVED AND ADOPTED** by the (City Council/Board of Supervisors) of the (Name of Local Jurisdiction) on this \_\_\_\_ day of \_\_\_\_\_, 2019.

**DELEGATION AGREEMENT  
CONCERNING HOUSING NEEDS ASSESSMENT  
BETWEEN THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS  
AND (NAME OF SUBREGIONAL ENTITY)**

This Delegation Agreement (“Agreement” herein) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Southern California Association of Governments, a joint powers authority established under California law (hereinafter referred to as “SCAG”), and the (NAME OF SUBREGIONAL ENTITY), a \_\_\_\_\_ (hereinafter referred to as “Subregion”), collectively referred to herein as the “Parties.”

RECITALS

The following recitals are a substantive part of this Agreement, and are incorporated herein by this reference.

A. The California Legislature has declared, in Government Code Section 65580, that the availability of housing is of vital state importance, and it is a goal of the State of California to expand housing opportunities and accommodate housing needs of Californians in all economic levels.

B. Counties and cities within California, in order to ensure attainment of the State’s housing goal, are required under state law to adopt a general plan, which must include a housing element, which identifies and analyzes existing and projected housing needs, and enumerates goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing to meet the needs of all economic segments of the community.

C. Government Code Section 65583(a) requires each such housing element to provide an assessment of the “share” of regional housing needs which must be borne by a local jurisdiction, and an inventory of resources and constraints relevant to the meeting of those needs.

D. SCAG is a joint powers authority agency representing six counties: Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial; and is mandated by the federal and state law to research and develop long range regional plans related to transportation, growth, waste management, air quality and housing.

E. SCAG, in consultation with the California Department of Housing and Community Development (“HCD” herein), is required to determine the existing and projected need for housing for the SCAG region pursuant to Government Code Sections 65584 et seq. by way of preparation of a Regional Housing Needs Assessment (“RHNA”). A copy of Government Code Section 65584 et seq. are attached with this Agreement as Exhibit “A.”

F. Counties and cities use the RHNA to prepare updates to its respective housing elements.

G. SCAG is preparing the sixth cycle update of the RHNA and intends to submit the RHNA to HCD on or about October 31, 2020. Counties and cities within the SCAG region thereafter are required to prepare and submit their respective updated housing elements to HCD by October 31, 2021.

H. SCAG is authorized under current state law to delegate the responsibility of allocating the projected housing need for jurisdictions with a subregion to a subregional entity by way of a written agreement.

J. The Subregion is a “subregional entity” within the meaning set forth in Government Code Section 65583.03 and desires to accept delegation of the responsibility of allocating the total housing need for the local governments in its subregion, under the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

**I. Parties and Purpose.**

- A. The Executive Director of SCAG, or his designee, and the \_\_\_\_\_ of Subregion, or his designee, are authorized to execute this Agreement and carry out the responsibilities of the Parties herein.
- B. The purpose of this Agreement is to establish the responsibilities of the Parties associated with preparation of the sixth cycle update of RHNA as they relate to delegation of the housing allocation process.

**II. Definitions:**

For purposes of this Agreement, the following terms shall be defined as follows:

*“Final Subregional Housing Allocation”* shall mean the final allocation made by Subregion for each city or county with the Subregion, of its share of the Total Subregional Allocation, which shall be issued by the Subregion after conclusion of the appeal process, as described in Section IV, subsections D, below.

*“Final RHNA Plan”* shall mean the final allocation of regional housing need to cities and counties within the SCAG region adopted by SCAG for submittal to HCD.

*“Integrated Growth Forecast”* shall mean the growth scenario established by SCAG for the 2020 Regional Transportation Plan/Sustainable Communities Strategy and ties housing to transportation planning.

*“Subregional Allocation Methodology”* shall mean the methodology to be used by Subregion in distributing the Total Subregional Allocation to the local jurisdictions within the Subregion.

*“Total Regional Allocation”* shall mean the share of the statewide housing need assigned to the SCAG region by HCD.

*“Total Subregional Allocation”* shall mean the share of the Total Regional Allocation assigned to the Subregion by SCAG.

**III. Duties of SCAG:**

For purposes of this Agreement, SCAG shall be responsible for the following duties:

- A. Furnishing Total Subregional Allocation. SCAG shall furnish to Subregion the Total Subregional Allocation.
- B. Furnishing background information regarding Integrated Growth Forecast and planning factors. SCAG shall furnish to Subregion background data and information regarding SCAG’s Integrated Growth Forecast and survey information regarding planning factors such factors outlined in Government Code Section 65584.01(b)(1)(A) to (I), which may be necessary for Subregion’s preparation of its Final Allocation of Local Housing Need.
- C. Review of Subregional Allocation Methodology. Along with HCD, SCAG shall review the Subregional Allocation Methodology to ensure its consistency with the applicable provisions of Government Code Section 65584 et seq., and the terms of this Agreement.
- D. Review of Final Subregional Housing Allocation. SCAG shall review the Final Subregional Housing Allocation established by Subregion in order to ensure its consistency with the applicable provisions of Government Code Section 65584 et seq., and the terms of this Agreement. In the event that the Final Allocation of Local Housing Need established by Subregion is inconsistent with the applicable provisions of Government Code Section 65584 et seq., or the terms of this Agreement, SCAG reserves the right to make the final housing need allocations to counties and cities within the Subregion in accordance with subdivision (d) of Government Code Section 65584.03.

**IV. Duties of Subregion:**

For purposes of this Agreement, the Subregion in accepting delegation shall be responsible for the following duties:

- A. Determination of Subregional Allocation Methodology. Subregion shall develop and adopt a Subregional Allocation Methodology in accordance with the provisions of Government Code Section 65584 et seq., including but not limited to Government Code Section 65584 and 65584.04.
- B. Determination of Final Subregional Housing Allocation. Subregion shall determine the Final Subregional Housing Allocation for each city and/or county contained within the boundaries of the Subregion in accordance with the applicable requirements of Government Code Section 66584 et seq. Subregion's determination of the Final Subregional Housing Allocation shall be consistent with the Integrated Growth Forecast and the Subregional Allocation Methodology. This determination shall be made in a cooperative manner with the affected city or county governments.
- C. Maintain Total Subregional Allocation. In determining the Final Subregional Housing Allocation, the Subregion shall maintain the Total Subregional Allocation. Maintenance of the Total Subregional Allocation shall mean to account for the total housing need originally assigned to Subregion by SCAG. By way of example, this means a downward adjustment in one jurisdiction's allocation as a result of the Subregion's grant of the jurisdiction's appeal shall be offset by an upward adjustment in the allocation(s) of another jurisdiction(s) in the Subregion.
- D. Administer Appeals Process. The Subregion shall administer and facilitate an appeals process for HCD and local jurisdictions within the Subregion seeking to appeal the original local housing need allocation made by the Subregion as part of the draft Subregional Housing Allocation plan. The Subregion shall administer the appeals process in accordance with the applicable provisions of Government Code Section 66584.05. The Subregion shall adjust allocations to local governments based upon the results of the appeals process, and follow the provisions set forth in subdivision (f) of Government Code Section 65584.05 relating to adjustments. Local jurisdictions shall have no separate right of appeal to SCAG.
- E. Compliance with RHNA Subregional Delegation Timeline and Submission of Subregion's Final Subregional Housing Allocation. Subregion shall comply and adhere to the SCAG RHNA Timeline, attached hereto as Exhibit "B." Subregion shall deliver its Final Subregional Housing Allocation to SCAG in time to be included as part of SCAG's public hearing relating to the adoption of SCAG's Final RHNA Plan, unless this Agreement is terminated pursuant to Section VI herein.
- F. Records Maintenance. The Subregion shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement. Subregion shall also maintain a written record of any administrative proceeding conducted



pursuant to this Agreement, whether by tape recording or by other means. Subregion shall make such records available to SCAG upon written request to Subregion. Subregion shall maintain these records for a period of not less than three (3) years after submission of its Final Subregional Housing Allocation to SCAG.

**V. Financial Assistance.**

In consideration for Subregion's agreement to undertake all delegation duties required by this Agreement, SCAG shall provide to Subregion financial assistance in the maximum amount of \_\_\_\_\_ (**fill in amount which is based upon \$2,500 for each local government in the Subregion**), hereinafter referred to as "Financial Assistance". Subregion shall utilize the Financial Assistance solely to implement the terms of this Agreement, including but not limited to, providing staffing (both administrative and technical) to undertake the delegation duties required herein. Subregion shall be responsible for any additional costs required to implement this Agreement that is above the amount of Financial Assistance.

SCAG shall disburse the Financial Assistance to Subregion based upon the following performance milestones:

1. Full Execution of Agreement: Disbursement of 25% of Financial Assistance;
2. Release of draft Subregional Housing Allocation plan: Disbursement of 25% of Financial Assistance;
3. Completion of Appeals Process: Disbursement of 25% of Financial Assistance; and
4. Delivery to SCAG and approval by SCAG of Final Subregional Housing Allocation: Disbursement of 25% of Financial Assistance.

Subregion shall submit sufficient documentation to SCAG to evidence its completion of the above-mentioned performance milestones prior to disbursement of the Financial Assistance. By way of example, in order to evidence completion of the appeals process, Subregion shall submit a written report to SCAG detailing the appeal process, including information relating to the number of appeals and its respective outcomes. SCAG shall have the right to request and review additional information from Subregion in order to approve disbursement of the Financial Assistance.

**VI. Termination of Agreement.**

- A. Termination by Subregion. Subregion shall have the right to terminate this Agreement without cause by giving written notice to SCAG by no later than December 31, 2019, of its intent to terminate. In such event all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG. In the event of termination, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.

- B. Termination by SCAG. SCAG shall have the right to terminate this Agreement with cause, including but not limited to, if SCAG has a reasonable basis to conclude that Subregion shall be unable to fulfill in a timely and proper manner its duties under this Agreement. SCAG shall provide written notice to Subregion of its intent to terminate this Agreement, which shall be effective ten (10) days from the date on the notice. In the event of such termination, all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG in order for SCAG to determine the local allocation of need for all cities and counties within the Subregion. As a result of termination of this Agreement, SCAG reserves the right to distribute the share of regional housing need to cities and counties within the Subregion. In the event of termination by SCAG, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.

**VII. Other Provisions.**

- A. Notices. All notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by U.S. mail, certified, or by reputable document delivery service such as Federal Express. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices shall be delivered as follows:

SCAG:                    Southern California Assn. of Governments  
                                  Attn: Kome Ajise, Director of Planning  
                                  900 Wilshire Blvd, 17<sup>th</sup> Floor  
                                  Los Angeles, CA 90017

Subregion:            (Name of Subregional Entity)  
                                  Attn: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

- B. Prohibition against Assignment/Subcontract. Subregion shall not assign or subcontract any rights, duties or obligation in this Agreement.
- C. Governing Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.
- D. Time is of Essence. Time is expressly made of the essence with respect to the performance of the Parties and of each and every obligation and condition of this Agreement.

- E. Amendments in writing. This Agreement cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.
  
- F. Interpretation; Days. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Agreement, it shall mean and include all subsections and subparts thereof.
  
- G. Exhibits. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.
  
- H. Cooperation between the Parties/Dispute Resolution. SCAG and Subregion are each undertaking the responsibilities of this Agreement for the benefit of their respective members. The Parties agree and acknowledge that it is their best interest to engage in cooperation and coordination with each other in order to carry out its responsibilities herein. In this spirit of cooperation, the Parties agree that neither party will seek any action in law or in equity. Disputes regarding the interpretation or application of any provision of this Agreement shall be resolved through good faith negotiations between the Parties. Changes in exigent circumstances or the RHNA Law may cause a party to conclude that this Agreement should be amended. If the Parties cannot agree on changes to this Agreement, the Parties can terminate this Agreement; in no event shall either Party seek any legal or equitable remedy against the other.
  
- I. Entire Agreement. This Agreement constitutes the entire understanding between the Parties. All prior agreements or understandings, whether oral or written, are superseded. Each Party is entering this Agreement based solely upon the representations set forth herein. This Agreement may be executed in counterpart originals, and when the original signatures are assembled together, shall constitute a binding agreement of the Parties.

[Signature Page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its duly authorized officers, shall become effective as of the date in which the last of the Parties, whether SCAG or Subregion, executes this document.

**SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS  
("SCAG")**

**(NAME OF SUBREGIONAL ENTITY)  
("Subregion")**

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Joann Africa, Chief Counsel

By \_\_\_\_\_  
Counsel for Subregion

Exhibit "A" to RHNA Delegation Agreement

Copy of California Government Code Section 65584 et seq. – to be attached

Exhibit “B” to RHNA Delegation Agreement

By June 28, 2019	Notice of Intent submitted by Delegate Subregion
By July 31, 2019	SCAG to provide Delegate Subregion with local growth forecast and survey information
By August 31, 2019	State HCD to provide SCAG with Regional Housing Need Determination
By August 31, 2019	Deadline for SCAG and Delegate Subregion to enter into Delegation Agreement (adopting resolutions to be approved beforehand)
By Sept. 30, 2019	SCAG to provide Delegate Subregion with Subregional Housing Need and conduct public hearing
By Oct. 31, 2019	SCAG to release its draft regional housing need allocation methodology; Delegate Subregion releases its draft subregional housing need allocation methodology
By Dec. 31, 2019	HCD reviews and provides findings on SCAG’s draft regional housing need allocation methodology; HCD reviews and provides findings on Delegate Subregion’s draft subregional housing need allocation methodology; SCAG and the Delegate Subregion adopt their respective final regional housing need allocation methodologies prior to the distribution of their respective Draft RHNA Plans  Last day for Subregional Entity to terminate Delegation Agreement and relinquish its delegation responsibilities
By April 2, 2020	SCAG to release Draft RHNA Plan; Delegate Subregion releases Draft Subregional Housing Allocation Plan
By July 31, 2020	Appeals (if any) addressed by SCAG and Delegate Subregion
By July 31, 2020	Delegate Subregion to approve its Final Subregional Housing Allocation Plan and submit it to SCAG
By October 31, 2020	SCAG to approve its Final RHNA Plan, which incorporates the Final Subregional Housing Allocation Plan by the Delegate Subregion; Submittal of Final RHNA Plan to State HCD

By November 30, 2020

Deadline for HCD to approve SCAG's Final RHNA Plan

October 31, 2021

Deadline for updates of Local Housing Elements



Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017  
February 4, 2019

To: Regional Housing Needs Assessment Subcommittee (RHNA)

INTERIM  
EXECUTIVE DIRECTOR'S  
APPROVAL

From: Kevin Kane, Associate Regional Planner, Planning Division,  
(213) 236-1878, [kane@scag.ca.gov](mailto:kane@scag.ca.gov)

Subject: An Initial Framework for Developing SCAG's RHNA Regional  
Determination Consultation Package with HCD

**RECOMMENDED ACTION:**

For Information Only - No Action Required

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 1: Produce innovative solutions that improve the quality of life for Southern Californians.

**EXECUTIVE SUMMARY:**

*This report provides an overview of SCAG's past practice and proposes an initial framework for the consultation process with the California Department of Housing and Community Development (HCD) and the Department of Finance (DOF), which is a required element of the RHNA process' determination of the region's housing needs. Analysis is also provided regarding changes to housing law in 2017 and 2018 and their potential impacts on the regional determination. Given past practices in the 5<sup>th</sup> cycle of RHNA, staff review of legislative changes, and preliminary analysis of data, an initial framework is presented for the Subcommittee's review and discussion prior to staff's formal development of regional housing needs consultation package which will be presented to both RHNA and CEHD Committees, and afterwards, engaging in consultation process and discussions with HCD staff regarding the regional determination.*

**BACKGROUND:**

The RHNA process as prescribed by Government Code Section 65584 et. seq., requires a consultation process between SCAG and HCD/DOF before HCD issues its final determination of total housing need for the SCAG region. SCAG staff intends to begin this formal consultation process with HCD/DOF in spring 2019 and provides herein for the RHNA Subcommittee a discussion of an initial framework which is based on past practices and adapted for recent changes in state housing law.

Staff anticipates the Draft regional and county-level 2020 RTP/SCS (Connect SoCal) integrated growth forecasts covering employment, population and households to be completed and presented to CEHD Committee at their March 7, 2019 meeting. Since a component of the RHNA consultation package involves this forecast, a more detailed consultation package based on the initial framework will be forthcoming.



Legislative changes in 2017 and 2018, as well as legislatively-enabled increases in the level of discretion afforded to HCD in applying those changes in determining the SCAG region's total housing need, may lead to a much higher regional RHNA determination than previous cycles that were developed with different interpretations of the law and methodology.

In April 2018, SANDAG received its 6<sup>th</sup> cycle regional determination from HCD, which provided an indicator of HCD practice, taking into account 2017 but not 2018 legislative changes. SCAG staff reviewed HCD's methodology for calculating SANDAG's regional determination, which was accepted by that agency without further consultation or negotiation. SANDAG's assessment of 177,685 units over 8.8 years is a 32% increase in annual housing needs compared to the previous cycle.

However, given (1) additional changes to the regional determination's treatment in state housing law since SANDAG's determination, and (2) the differences in socioeconomic characteristics between SANDAG and SCAG discussed during the December 3, 2018 RHNA Subcommittee meeting, staff's assessment is that if HCD were to apply a similar methodology to the SCAG region, the RHNA determination for the 6<sup>th</sup> cycle could be far more than 32% above SCAG's 5<sup>th</sup> cycle total of 412,137 units.

Much of the difference lies in the fact that the regional determination in prior cycles of RHNA was roughly consistent with SCAG and the DOF forecasts for population and household growth over the projection period, while the expectation for the 6<sup>th</sup> cycle is that HCD's determination of housing need will consider not only projected growth, but will add units based on various ways to measure "existing need", any "backlog" in housing production, unmet housing demand, and similar factors. SCAG staff is not aware of available studies, or the existence of widespread consensus on the measurement of these components of "existing housing need." For example, a 2015 Legislative Analysts' Office report estimates the statewide housing shortfall to be 4.2 million units over 1980-2010 (<https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>) while a highly-publicized 2016 McKinsey report floats the notion of a 3.5 million unit gap (<https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap>).

However, estimates vary widely, and are not subject to the legal and technical rigor required in state housing law. In addition, many non-site and zoning related socioeconomic, demographic and technology trends and challenges have contributed most to those outcomes of existing "housing needs—overcrowding, over payment and others," including but not limited to income distribution, educational attainment, quality of jobs, global investors, monetary policy, demography and life style, technology/innovative platform for share economy.

During the 5<sup>th</sup> cycle of RHNA, SCAG presented its 2012 RTP/SCS integrated growth forecast, associated data, and recommended regional housing needs determination for HCD's consideration. At that time, major items for discussions included difference in projected populations with DOF, headship rates, housing needs on tribal land, a methodology to estimate replacement housing allowance, and an alternative method of using Census data to determine the existing vacant housing stock.

As described above, following the anticipated review of the Draft 2020 RTP/SCS (Connect SoCal) regional level growth forecast by CEHD on March 7, 2019, SCAG will begin to develop the HCD consultation package. SCAG intends to develop the regional housing needs consultation package with HCD following the initial framework, to reflect the best interpretation of the new housing law for the region, building upon past practices in previous RHNA cycles. The objectives are:

- Follow the SCAG 2020 RTP/SCS (Connect So Cal) Integrated Growth Forecasting process, procedure, methodology, and results through bottom-up local review, comment and input.
- Provide the best outcomes for the SCAG region housing needs assessment and determination, meet the requirements of law and with best available data and technical methodology.
- Research the appropriate factors/causes associated with “existing housing needs.”
- Develop policy responses for long term robust and stable supply of sites and zoning for housing constructions.

At this stage, and in order to facilitate in moving this process forward, staff presents below an initial framework for developing SCAG’s RHNA Regional Determination Consultation Package based on SCAG’s past practice and our interpretation of legislative changes to the RHNA process since the 5<sup>th</sup> cycle for discussion by the Subcommittee:

1. **Making a clear distinction between housing need due to projected growth versus existing need.**

SCAG will propose to HCD that a clear distinction be made between housing need due to projected regional growth and that due to existing housing need. In this context, projected need refers to housing need due to expected growth during the 6<sup>th</sup> cycle RHNA projection period, which is from 7/1/2021 through 10/1/2029. This is mostly consistent with past practices and the adopted methodology used for the 5<sup>th</sup> cycle of RHNA, and includes making adjustments based on vacancy and replacement need.

This delineation is important for ensuring consistency with SCAG’s RTP/SCS integrated growth forecasting process and results. This process kicked off in summer 2017 with a meeting of several demographic and economic experts (SCAG’s “Panel of Experts” meeting), which provided a basis for draft 2016-2045 growth figures which were approved by CEHD. In fall 2017, these figures were used as the starting point for SCAG’s Bottom-up local input and envisioning process during which SCAG staff reviewed growth forecast data one-on-one with all 197 jurisdictions. Staff emphasized that, consistent with housing law as of 2017, projected growth in population and households between 2020 and 2030 would be a key determinant of housing needs for the 6<sup>th</sup> cycle of RHNA.

However, changes to state law in 2017 and 2018 have added several elements to the RHNA determination process including consideration of household overcrowding, overpayment, mandatory vacancy standards, and language clarifying that HCD may make adjustments based on both existing and projected households. Taken as a whole, these changes add several factors

traditionally related to existing housing need to the RHNA determination process, to be applied at the discretion of HCD.

Each of these elements requires careful consideration and extensive research to support its translation into an estimate of new construction need and as HCD has yet to provide their interpretation and methodology on how these new changes will be implemented. In particular, given the inclusion of several new data elements in the consideration of regional housing needs (e.g. overcrowding, vacancy, and overpayment rates), SCAG emphasizes that measures of the same quantity of existing housing need may exist in multiple places in the new legislation. For example, the application of a vacancy adjustment to the projected and total housing stock may measure the same housing undersupply as the proposed adjustment based on household overcrowding. Given this, SCAG will emphasize justification that various calculations are indeed distinct and are not “double counting” housing need. SCAG staff will work with HCD to clarify how the new changes are to be implemented during the consultation process.

## 2. Determining projected housing need.

Staff recommends first addressing the housing needs over the RHNA projection period building off the approach used by SCAG and HCD during the 5<sup>th</sup> cycle of RHNA—namely, the delta method, which applies a headship rate and adjustments to projected population growth.

- a. **Household growth** is measured by SCAG’s growth forecast, unless the total regional population forecast for the projection year is not within a range of 1.5 percent of the DOF figure of the same, in which case the DOF figure is used (65584.01(a)). SCAG’s RHNA Reform Subcommittee’s recommendation was to ensure that this tolerance range (which, until the 2017 passage of AB 1086 had been 3%) is applied to the population total rather than the growth over the projection period. This continues to be our interpretation of the law.
- b. **Headship rates** are specified in 65584.01 (b)(1)(D) as *“The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.”* Consistent with past practice, SCAG staff supports using headship rates by age, sex, and race/ethnicity from the most recent American Community Survey (ACS) data, which currently are 2017 1-year sample data. Upon completion of the RTP/SCS integrated growth forecast, SCAG proposes to multiply estimates of 2029 residential population by 2017 headship rates across 5-year age categories, both sexes, and four race/ethnicity categories.
- c. **Vacancy adjustment.** Past practice has been such that the vacancy adjustment increases the need due to projected growth by a healthy market vacancy rate. The rationale is that in order to truly accommodate the projected growth in households, a slightly higher number of housing units is needed. This rate is typically split between owner and renter households based on the existing owner/renter share in the region, with renter vacancy rates being roughly three times higher than those in the for-sale housing market.

65584.01 (b)(1)(D), a part of SB 828 which passed in 2018, specifies that “*the vacancy rate for a healthy rental housing market shall be considered no less than 5 percent.*” In order to adjust the projected housing need to account for adequate vacancy, we propose applying 5% to vacant renter households and separate rate to owned households, based on the current owner/renter share. We propose a healthy owned housing market vacancy rate of approximately 1.5%, consistent with past practice and historical market data for owned housing.

In addition, during the 5<sup>th</sup> cycle, a downward adjustment was made to SCAG’s RHNA determination based on additional housing capacity in the Census Bureau’s “other vacant units” category. While this was understood as a 1-time adjustment due to unique economic and housing market conditions, as affirmed by SCAG’s RHNA Reform Subcommittee, staff will continue to review the longitudinal trend in this data source to ensure the appropriate application of the vacancy adjustment.

- d. Replacement need adjustment.** Consistent with past practice, SCAG plans to estimate future unit losses in the region’s housing stock using a survey question covering past demolitions, natural disasters, and other factors resulting in housing unit loss.
- e. Tribal lands adjustment.** Consistent with past practice, staff proposes to exclude population and household growth identified on Tribal Lands from the rest of the region for SCAG’s RHNA total housing need determination in order to ensure that local jurisdictions can exercise the full responsibility of land use planning. This approach has been previously approved by HCD, and affirmed by SCAG’s RHNA Reform Subcommittee.

While state housing law references housing needs due to household overcrowding and overpayment, we feel that applying a headship rate and income categories to anticipated population growth ensures that the appropriate occupancy and cost per future housing unit.

### 3. Determining existing housing need.

Staff recommends considering housing needs related to overcrowding and overpayment as elements of existing housing need, since they are not directly related to growth over the RHNA projection period. In general terms, staff recommends developing SCAG’s approach using comparable regions as a reference, consistent with new elements in 65584.01. However, SCAG emphasizes that since comparisons versus comparable regions and calculations of existing housing need based on overcrowding or overpayment are new, untested tools, further study by multiple experts is merited, in particular to ensure that “double counting” using similar measures is avoided.

- a. Comparison versus a comparable region.** Perhaps recognizing that Census-derived data on household conditions is reflective of myriad factors in addition to housing market

conditions e.g. demographic composition, unique geography, and cultural and regional preferences, SB 828 added Section 65584.01 (b)(C)(ii): “The term “overcrowded rate for a comparable housing market” means that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation, as determined by the council of governments.”

However, due to SCAG’s sheer size and unique demographic characteristics, this is a greater challenge than other regions in the state. Specifically, using 2017 American Community Survey data for consolidated statistical areas (CSAs), the combined, five-county area of Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties leads the nation in the share of households with above 1.0 resident per room in a dwelling, at 9.8%.

Staff will continue to review research on what constitutes similar regions. It is likely that a set of regions based on one or more socioeconomic characteristics might be considered somewhat comparable; however, since the aforementioned Los Angeles-Long Beach CSA is the nation’s second largest – and nearly double the size of the third largest – a true comparable basis for this measure may not exist.

Staff suggests that one promising avenue is to decompose measures by the same age, sex, and race/ethnicity categories used for population projections in order to “net out” differences in overcrowding or overpayment based on demographic composition.

Furthermore, staff proposes investigation of how much of the difference between SCAG and a comparable region or regions should be converted into new housing construction. Naturally, due to unique regional differences, existing housing needs in the SCAG region—particularly those due to market conditions—may be a certain fraction of the difference between SCAG and other regions.

- b. **Household overcrowding.** SCAG suggests continued analysis and further research regarding the manner in which household overcrowding reflects a market-based under-provision of housing. 2017 and 2018 legislative changes have added, and subsequently revised, language related to overcrowding. Current law (65584.01 (b) (C)) proposes a measure similar to the American Community Survey’s measure of overcrowding as more than 1.0 resident per room in a dwelling. In particular, prior research on housing overcrowding emphasizes that demographic, rather than housing market characteristics are the strongest driver of this indicator—specifically a region’s foreign-born population share.<sup>1</sup>

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<sup>1</sup> Myers, D., Baer, W.C., and Choi, S-Y. 1996. The changing problem of overcrowded housing. *Journal of the American Planning Association* 62:1, 66-84, DOI: 10.1080/01944369608975671.

- c. **The relationship between regional need and cost burdened households requires more clarity.** Following modifications in 2018, 65584.01 (b)(1)(H) introduces a data measure resembling the ACS' measure of cost-burdened households, i.e. those paying above 30 percent of income on housing, considered separately at different levels of household income. Similar to the language for overcrowding, a comparison approach is used whereby this statistic can be compared against other regions in the nation.

While adding housing units to ensure that fewer households are overcrowded makes conceptual sense, it is not yet clear how data on the share of income being put toward housing could be directly translated into an estimate of additional housing unit need. In addition, instances of overcrowding and overpayment are highly correlated, making “double-counting” of the same housing unit need a distinct possibility with the data elements specified in 65584.01(b)(1).

- d. **Vacancy as a measure of existing housing need.** SCAG staff recommends that any use of housing vacancy rates to determine existing housing needs should be distinct from those used to calculate projected housing needs. While aforementioned legislative changes have statutorily defined what constitutes a minimum standard for healthy for-rent vacancy at 5%, we feel that long-range data support a far lower healthy market rate for for-sale housing—approximately 1.5%.

#### 4. SCAG's Initiatives to Support Jurisdictions' Planning for Housing Supply

The new RHNA process which emerged from legislative changes in 2017 and 2018 requires the integration of a substantially higher number of data elements and approaches, many requiring additional analysis and expert research in order to credibly convert into an estimate of a region's projected or existing housing need.

In particular, the RHNA process at this point suited for short-range planning, and we expect certain new elements may present challenges during the subsequent, jurisdictional-level RHNA allocation stage. These include modified standards for the balance between low-wage jobs and affordable housing, the doctrine of Affirmatively Furthering Fair Housing, and the allocation of existing housing needs which are rooted in spatially-varying regional measures of household characteristics. Staff looks forward to additional guidance from HCD and DOF on these challenging issues, in particular since the oversight afforded to state agencies in both the determination and allocation stages of the 6<sup>th</sup> cycle of RHNA is notably higher.

SCAG is committed to successfully meeting the region's housing needs. In particular, staff are in various stages of developing a variety of supportive programs which assist local jurisdictions in planning for long-range housing supply:

- (1) SCAG's Data Map Books, produced for the aforementioned Bottom-up local input and envisioning process, proposed a methodology for identifying potential infill land and solicited input from local jurisdictions. It is likely that some of this potentially developable land inventory could fill future housing need and fulfill RHNA allocations.
- (2) SCAG's Regional Data Platform and General Plan Update Tool. A part of SCAG's Future Communities Initiative, our recent investment in GIS and data aims to provide additional technical assistance to jurisdictions during the next housing element update process and aims to help in the identification of sites and zoning characteristics that would fulfill housing need.
- (3) SCAG's tax increment financing pilot program. In particular, SCAG has funded pilot programs to help jurisdictions navigate the state economic development incentive landscape with a focus on Enhanced Infrastructure Finance Districts (EIFDs), Community Revitalization and Improvement Areas (CRIAs), and federal Opportunity Zones (OZs). Each of these represent mechanisms which have the potential to fund future housing construction.

**FISCAL IMPACT:** Work associated with this item is included in the current FY 18-19 General Fund Budget (800.0160.03:RHNA).

**ATTACHMENT(S):**

1. PowerPoint Presentation: An Initial Framework of SCAG's RHNA Regional Determination Package

# An Initial Framework of SCAG's RHNA Regional Determination Consultation Package

Kevin Kane, PhD  
Associate Regional Planner  
Southern California Association of Governments  
February 4, 2019



## Outline of presentation



- Background of SCAG and HCD/DOF 6<sup>th</sup> cycle RHNA determination consultation process
  - Past practice
  - New issues and challenges for the 6<sup>th</sup> cycle
- Draft framework for consultation
  1. Distinguishing existing versus projected need
  2. Determining projected need (consistent w/ 5<sup>th</sup> Cycle)
  3. Determining existing need
  4. SCAG's proposed approach to statewide housing issues and support for local housing planning





## The consultation process



- Required by California Government Codes 65584, et al.
- SCAG's Integrated (Regional) Growth Forecast
  - Process kicked off in Summer 2017 with SCAG's Panel of Experts meeting
  - 1-on-1 meetings with all 197 local jurisdictions
  - Local Input--received from 90% of local jurisdictions--the main component
  - Plan to present at March CEHD
- *Purpose today: discuss overall framework so staff can confidently develop regional determination consultation package and discuss technical details with HCD*
  - Follow the 2020 RTP/SCS Growth Forecast Process, Methodology, and Outcomes
  - Interpret new RHNA requirements in the best way for the SCAG region
  - Additional research of "existing needs" and how to meet them
  - SCAG's possible approaches to statewide housing issues and support for local housing planning

## 5<sup>th</sup> cycle consultation process



- SCAG presented 2012 RTP/SCS regional growth forecast + related data
- Focused on the few items which were most important to regional determination and have a strong basis
  1. Housing needs on tribal land
  2. Calculating the replacement need
  3. An alternative/additional vacancy calculation based on more specific Census data
- *Items 1 and 3 were re-iterated by the SCAG RHNA Reform Committee*
- Shared required region and jurisdiction-level statistics with HCD—including those related to existing need
- Priority items may be different for 6<sup>th</sup> cycle

## The regional determination in the 6<sup>th</sup> cycle



- 2017: AB 1086 (Daly)
- 2018: AB 1771 (Bloom) and SB 828 (Wiener)
- Several changes relevant to the regional determination:
  - Consider household overcrowding
  - Cost-burdened households
  - Rental vacancy rate statutorily specified (min. 5%)
  - HCD may make adjustments based on existing housing needs **and** projected households
  - Comparison versus a “comparable region”
- No prevailing solutions or best practices, minimal extant research

## SANDAG's 6<sup>th</sup> cycle RHNA determination experience



- SANDAG's 6<sup>th</sup> cycle regional total was received from HCD in April 2018
  - Included 2017, but not 2018 legislative changes
  - Accepted by SANDAG board with no further consultation
  - Regional total 32% higher than 5<sup>th</sup> cycle
- Applied to the SCAG region, this would likely result in a regional total *well above* SCAG's 5<sup>th</sup> cycle total of 412,137
  - Socioeconomic measures different (discussed at 12/3 meeting)
  - 2018 legislative changes in effect

## Consultation process: Initial framework



1. Distinguishing existing versus projected need
2. Determining projected need (consistent w/ 5<sup>th</sup> Cycle)
3. Determining existing need
4. SCAG's proposed approach to statewide housing issues and support for local housing planning

## 1. Distinguish between existing and projected need



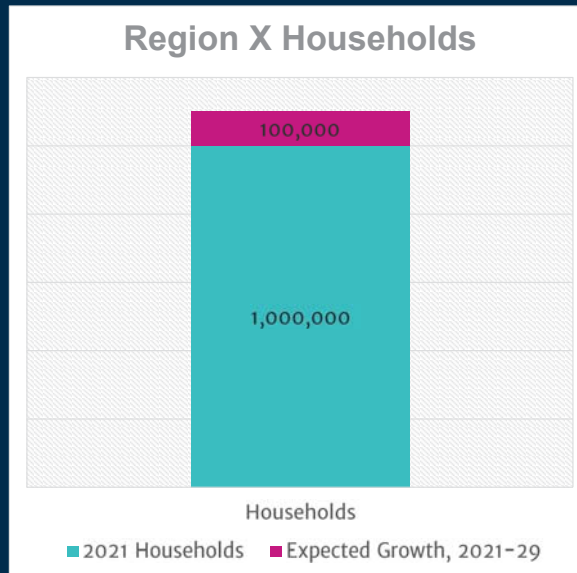
- Distinguish between:
  1. Expected household growth during the 6<sup>th</sup> cycle RHNA projection period (7/1/2021 – 10/1/2029)
  2. Need not due to projected growth
- **Why?**
  1. Consistency with SCAG growth forecast & **Local Input Process**
    - Linked to past practice, projected need
    - Effective trust-building process which kicked off in Summer 2017
    - New laws passed since
  2. Reduce “double-counting” possibility
    - Projected growth: no overpayment or overcrowding exists
    - Proposed statistics may reflect the same housing need
  3. Additional clarity may help during allocation phase
  4. Connection to RHNA's core policy instrument: identifying sites and zoning designations

# Projected vs. Existing Need: A simplified example



## Region X: A simplified example

- 2021: **1 million** households
- 1.2% annual growth rate results in **100,000** expected new households
- 2029 total: **1.1 million** households



## Possible adjustments: what should they be multiplied by?

- Vacancy rate
- Replacement need (percentage)
- Overcrowding rate
- Percent of cost-burdened households

## 2. Determining projected need



1. Population and Household growth
  - Determined by SCAG's forecast, unless our 2029 total population varies more than 1.5% from DOF
2. Headship rates
  - Split by age, sex, and race/ethnicity
  - Use most recent American Community Survey data
3. Vacancy adjustment (projected growth only)
  - Consider owned and rented units separately
  - SB 828-defined "healthy rental market" vacancy minimum of 5% roughly consistent with past practice, add owner
  - Investigate whether to again consider Census' "other vacant units" as additional capacity
4. Housing needs on tribal land
5. Replacement need calculation

### 3. Existing housing need



- Overcrowding and cost-burdenedness generally address existing, rather than projected need
- **No prevailing solutions or best practices, minimal extant research**
  - Linkage between overcrowding, cost-burdenedness, and unmet needs not direct
  - RHNA's core policy tool: identifying site and zoning
  - How to link this to unmet needs, rather than other drivers (e.g. demographic, economic trends)
- “Double-counting” a possibility

### 3: Existing housing need continued



- Comparable region standard for overcrowding & cost burdenedness
  - 65584.01 (b)(C)(ii): *“The term “overcrowded rate for a comparable housing market” means that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation, as determined by the council of governments.”*
  - Comparable regions likely based on socioeconomic/demographic characteristics
  - Several options, including decomposing by age, sex, race/ethnicity
  - If SCAG is above comparable regions, how much (percentage) should we be expected to “converge?”

### 3: Existing housing need continued



- Overcrowding
  - Suggest further research
  - Establish clearer linkage to site and zoning, distinct from demographic drivers
- Cost-burdenedness
  - American Community Survey measure: share of households paying more than 30% of income on housing (split by income category)
  - Unclear how to translate this into additional units
- Existing regional vacancy below healthy market rates
  - Rental rate
  - Owner rate
- Look forward to additional discussion with HCD, who now has increased oversight

### 4. Possible approaches to statewide housing issues and support for local housing planning - continued



- Ongoing SCAG programs:
  1. Infill land methodology proposed, local input solicited
    - SCAG Data Map Books ([www.scagrtpscs.net/Pages/DataMapBooks.aspx](http://www.scagrtpscs.net/Pages/DataMapBooks.aspx))
    - Collaborative research with Orange County Business Council (<http://scag.ca.gov/Documents/RetailLandUseReportInOC.pdf>), upcoming w/SBCCOG
  2. SCAG's Regional Data Platform and General Plan Update Tool
  3. Linking housing supply with available economic development tools
    - SCAG support of jurisdictions' efforts to establish tax increment financing districts (EIFD/CRIA)
    - Monitoring state legislation which can use tools to provide funding to support housing construction
- **Develop a policy response for a long-range, robust housing supply:**
  - One effort: MTC/ABAG's CASA: Committee to House the Bay Area

# Thank you

Kevin Kane, PhD  
kane@scag.ca.gov  
213-236-1828





Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017  
February 4, 2019

To: Regional Housing Needs Assessment Subcommittee (RHNA)

INTERIM  
EXECUTIVE DIRECTOR'S  
APPROVAL

From: MaAyn Johnson, Senior Regional Planner, Compliance and  
Performance Monitoring, (213) 236-1975, [johnson@scag.ca.gov](mailto:johnson@scag.ca.gov)

Subject: RHNA-related Local Planning Factors

**RECOMMENDED ACTION:**

For Information Only – No Action Required

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

**Government Code Section 65584.04(b) requires that SCAG survey its jurisdictions on local planning factors prior to the development of its proposed RHNA methodology. These planning factors cover a range of local planning opportunities and constraints and information collected from the survey that can be used to develop the proposed methodology. Per recent legislation SCAG will also survey jurisdictions on information from local fair housing analyses to affirmatively further fair housing. SCAG staff plans to distribute this survey to jurisdictions in March 2019.**

**BACKGROUND:**

Government Code Section 65584.04(b) requires that SCAG survey its jurisdictions on local planning factors no more than six months prior to the development of its proposed RHNA methodology. Formerly known as “AB 2158 factors” due to the eponymous 2004 State legislation, these factors cover a range of planning opportunities and constraints that will allow the development of a methodology. SCAG is required to review each of these factors in its proposed RHNA methodology.

Subsequent to receiving their draft RHNA allocation, jurisdictions may file an appeal to their own draft allocation or the allocation of another jurisdiction within the region. Per Government Code Section 65584.05, an appeal may be filed based on the claim that SCAG did not adequately consider the information submitted under the proposed methodology planning factor survey.

There are fourteen (14) specific planning factors listed that are required to be included in the proposed methodology survey. The full language of each factor is listed in the appendix for the attached draft survey.



- (1) Existing and projected jobs and housing relationship, particularly low-wage jobs and affordable housing
- (2) Lack of capacity for sewer or water service due to decisions made outside of the jurisdiction's control
- (3) Availability of land suitable for urban development
- (4) Lands protected from development under Federal or State programs, including to protect open space, farmland, and environmental habitats and resources
- (5) County policies to preserve agricultural land
- (6) Distribution of household growth assumed for regional transportation planning and opportunities to maximize use of public transportation
- (7) Agreements between a county and cities to direct growth to incorporated areas of the county
- (8) Loss of low income units through contract expirations
- (9) Percentage of households that pay more than 30% and more than 50% of their income on rent
- (10)The rate of overcrowding.
- (11)The housing needs of farmworkers.
- (12)Housing needs generated by the presence of a university campus within the jurisdiction
- (13)Loss of units during a declared state of emergency that have yet to be rebuilt at the time of this survey.
- (14)The region's greenhouse gas emission targets provided by the California Air Resources Board.

SCAG may also elect to adopt other factors to include in the survey provided that the additional factors either (1) further one of the objectives of State housing law or (2) does not undermine the objectives, is applied equally to all household income levels, and that it is necessary to address significant health and safety conditions. SCAG staff is seeking input from the RHNA Subcommittee prior to the planned March 2019 survey release of any additional factors that are needed to be included in the local input survey.

While jurisdictions can provide input on local planning conditions as part of the survey, there are several criteria that **cannot** be used to determine or reduce a jurisdiction's RHNA allocation, per Government Code Section 65584.05 (g):

- (1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by the jurisdiction
- (2) Underproduction of housing units as measured by the last RHNA cycle allocation
- (3) Stable population numbers as measured by the last RHNA cycle allocation

As part of an integrated approach to long-range transportation and land use planning, SCAG surveyed jurisdictions on local planning factors in its Bottoms-up Local Input and Envisioning Process. For convenience, survey answers received by SCAG are pre-populated for each jurisdiction that submitted them. However, jurisdictions are encouraged to review these answers and provide any additional edits, as needed. Moreover, several factors added by recent legislation, including jobs-housing balance/fit, households that overpay in rent, rate of overcrowding, loss of units from a state of emergency, and regional greenhouse gas emission targets, have been added since the conclusion of the local input process.

Because a number of local planning factors are not confined solely within a jurisdiction's boundaries, SCAG will distribute the survey to subregions to seek input on how these factors may impact multiple jurisdictions or subregions. The subregional survey on local planning factors is attached to this report.

While SCAG will review all survey submissions, the intent of the survey is not to reduce the RHNA need for jurisdictions but rather to review housing data and trends and to develop an accurate RHNA methodology. Once the proposed methodology is adopted, it will be applied to the regional housing need determination as provided by the California Department of Housing and Community Development (HCD) to determine each jurisdiction's draft RHNA allocation. Jurisdictions may refer to the local planning factors as a basis for an appeal to a draft RHNA allocation if they decide to file an appeal.

#### Affirmatively Furthering Fair Housing (AFFH)

In addition to local planning factors, the survey must now also review and compile fair housing issues, strategies, and actions of jurisdictions in respect to affirmatively furthering fair housing. Per Assembly 1771 (Bloom), SCAG is required to survey this information, as available, that are included in "an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the department....and in housing elements" within the SCAG region.

AB 1771 added "affirmatively furthering fair housing" as a fifth objective to the four original RHNA objectives along with a general definition of AFFH, which closely mirrors the definition outlined by the U.S Department of Housing and Urban Development (HUD):

*(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.*

Jurisdictions are required by HUD to conduct an Assessment of Fair Housing as an assessment tool as part of their requirement to receive certain HUD grants. However, in early 2018 HUD has suspended this obligation for most jurisdictions until after 2020 due to the need for additional time and technical assistance to adjust to recent requirement updates. Because of this and the indication that not all jurisdictions are HUD grant recipients with familiarity with these requirements, it is expected that survey submission for affirmatively furthering fair housing will be limited.

However, Senate Bill 1000 (Leyva) requires that jurisdictions include an environmental justice component in their respective General Plan updates, either as its own chapter or integrated with other chapters. Environmental Justice is an analysis of the distribution of planning-related impacts to low-income and minority communities and strategies to address any inequitable distributions. SCAG will survey its local jurisdictions on these impacts and strategies as they relate to housing, particularly the displacement of lower-income households, as part of the RHNA survey.

After collecting survey responses, SCAG is required to report the results of the survey online and describe common themes and effective strategies employed by jurisdictions, including “common themes and trends related to avoiding the displacement of lower-income households.” The report must also identify significant barriers to address affirmatively furthering fair housing at the regional level and may recommend strategies or actions to overcome those barriers. The survey and the report may also be used for *Connect SoCal* (2020 Regional Transportation Plan/Sustainable Communities Strategy). Due to the new RHNA requirements of stronger integration with social equity issues, SCAG staff is planning to update the Environmental Justice Working Group (EJWG) after the survey distribution and again after the survey results have been collected.

#### Replacement Need Survey

In addition to local planning factors and AFFH, SCAG plans to also survey jurisdictions on replacement need. Demolition data, which are units that are destroyed due to complete rebuilding or natural disasters and reported by each jurisdiction to the State, is one of the data points used during the regional determination process with HCD. In prior RHNA cycles, units that were replaced after demolition were “credited” at the regional determination level and in the local RHNA allocation. While there is no guarantee that the consultation process with HCD, which will begin in Spring 2019 and conclude by August 2019, will include units that have been replaced, SCAG is surveying its jurisdictions on replaced units in the event that this data can be considered during that process.

#### Timeline

All information submitted in the surveys will be reviewed by the RHNA Subcommittee during the development of the proposed RHNA methodology. SCAG staff anticipates distributing the survey to all jurisdictions and posting the survey on its website no later than March 2019 after a final review from the RHNA Subcommittee. Surveys will be due to SCAG by April 30, 2019. SCAG staff will update the RHNA Subcommittee, Community, Economic & Human Development (CEHD) Committee, Technical Working Group (TWG), and the EJWG on the survey results, as needed.



**FISCAL IMPACT:**

Work associated with this item is included in the current FY 18-19 General Fund Budget (800.0160.03: RHNA).

**ATTACHMENT(S):**

1. AFFH Survey
2. Local Planning Factor Survey subregion
3. Local Planning Factor Survey
4. Local planning factors

Affirmatively Furthering Fair Housing (AFFH) Survey

SCAG is surveying cities and counties on affirmatively furthering fair housing\* as part of its development of the Regional Housing Needs Assessment (RHNA) proposed methodology. Please answer the questions below about your local approach to AFFH and housing elements and submit your answers no later than April 30, 2019 to [housing@scag.ca.gov](mailto:housing@scag.ca.gov).

**Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing**

1a. Does your jurisdiction have an analysis for fair housing choice?

Yes	
No	

1b. If you answered yes to question 1a, please email your analysis to [housing@scag.ca.gov](mailto:housing@scag.ca.gov).

**Housing Elements and Environmental Justice/SB 1000**

2. When did you jurisdiction last update the General Plan?

Year	
------	--

3a. Does your General Plan have an environmental justice/social equity chapter or integrate environmental justice/social equity, per SB 1000?

Yes	
No	
In process	

3b. If you answered yes or in process to question 3a, how does your General Plan integrate or plan to integrate environmental justice?

A) An environmental justice chapter	
B) Throughout the General Plan in each chapter	
C) Both	

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\* Per Government Code 65584(e), affirmatively furthering fair housing is defined as “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.”

What specific barriers does your jurisdiction experience in regard to:

Displacement of lower income households	
Historical racial segregation	
Other fair housing impediments	

Regional Housing Needs Assessment (RHNA) Local Planning Factor Survey for Subregions

The RHNA process requires that SCAG survey its jurisdictions on local planning factors (formerly known as “AB 2158 factors”) prior to the development of a proposed RHNA methodology, per Government Code 65584.04 (b). However because a number of planning factors are not confined to single jurisdictions, SCAG is also collecting any available information on the planning factors at the subregional level in concurrence with the individual jurisdiction survey. Information collected from this survey will be included as part of the proposed RHNA methodology.

Per Government Code Section 65584.04 (g), there are several criteria that **cannot** be used to determine or reduce a jurisdiction’s RHNA allocation:

- (1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by the jurisdiction
- (2) Underproduction of housing units as measured by the last RHNA cycle allocation
- (3) Stable population numbers as measured by the last RHNA cycle allocation

The planning factors in the table below are abbreviated. For the full language used, please refer to Government Code Section 65584.04 (e) or the attached reference list.

Please review and submit the survey by 5 p.m. April 30, 2019 to [housing@scag.ca.gov](mailto:housing@scag.ca.gov).

Planning Factor	Impact on Other Jurisdictions within Subregion
<p>[UPDATED] Existing and projected jobs and housing relationship, particularly low-wage jobs and affordable housing</p>	
<p>Lack of capacity for sewer or water service due to decisions made outside of the jurisdiction's control</p>	
<p>Availability of land suitable for urban development</p>	



<p>Lands protected from development under Federal or State programs</p>	
<p>County policies to preserve agricultural land</p>	
<p>Distribution of household growth assumed for regional transportation planning and opportunities to maximize use of public transportation</p>	
<p>Agreements between a county and cities to direct growth to incorporated areas of the county</p>	

Loss of low income units through contract expirations	
[NEW] Percentage of households that pay more than 30% and more than 50% of their income on rent	
[NEW] Rate of overcrowding	
Farmworker housing needs	

<p>Housing needs generated by the presence of a university campus within the jurisdiction</p>	
<p>[NEW] Loss of units during a declared state of emergency that have yet to rebuilt at the time of this survey</p>	
<p>[NEW] The region's greenhouse gas emission targets provided by the California Air Resources Board</p>	
<p>Other factors as adopted by SCAG</p>	

## Local Planning Factors Full List\*

- (1) Each member jurisdiction's existing and projected jobs and housing relationship. This shall include an estimate, based on readily available data, of 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.
- (2) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.
- (3) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to non-agricultural uses.
- (4) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area, and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to non-agricultural uses.
- (5) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.
- (6) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county, and land within an unincorporated area zoned or designated for agricultural protection or presentation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.

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\* Per Government Code Section 65584.04 (e)

- (7) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- (8) The percentage of existing households at each of the income levels listed in subdivision (e) of Section 65584 that are paying more than 30 percent and more than 50 percent of their income in rent.
- (9) The rate of overcrowding.
- (10) The housing needs of farmworkers.
- (11) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- (12) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis.
- (13) The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.
- (14) Any other factors adopted by the council of governments that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.

### Regional Housing Needs Assessment (RHNA) Local Planning Factor Survey

The RHNA process requires that SCAG survey its jurisdictions on local planning factors (formerly known as “AB 2158 factors”) prior to the development of a proposed RHNA methodology, per Government Code 65584.04 (b). Information collected from this survey will be included as part of the proposed RHNA methodology.

If your jurisdiction submitted information on planning factors as part of the local input process (conducted between October 2017 and October 2018), your data has been pre-populated in the table. Please review the data and let SCAG know if your jurisdiction would like to submit any edits to this information. Please keep in mind that recent housing-related legislation has updated some of the factors listed and were not included in the prior survey.

Per Government Code Section 65584.04 (g), there are several criteria that **cannot** be used to determine or reduce a jurisdiction’s RHNA allocation:

- (1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by the jurisdiction
- (2) Underproduction of housing units as measured by the last RHNA cycle allocation
- (3) Stable population numbers as measured by the last RHNA cycle allocation

The planning factors in the table below are abbreviated. For the full language used, please refer to Government Code Section 65584.04 (e) or the attached reference list.

Please review and submit the survey by 5 p.m. April 30, 2019 to [housing@scag.ca.gov](mailto:housing@scag.ca.gov).

Planning Factor	Impact on Jurisdiction
<p>[UPDATED] Existing and projected jobs and housing relationship, particularly low-wage jobs and affordable housing</p>	
<p>Lack of capacity for sewer or water service due to decisions made outside of the jurisdiction's control</p>	
<p>Availability of land suitable for urban development</p>	

<p>Lands protected from development under Federal or State programs</p>	
<p>County policies to preserve agricultural land</p>	
<p>Distribution of household growth assumed for regional transportation planning and opportunities to maximize use of public transportation</p>	
<p>Agreements between a county and cities to direct growth to incorporated areas of the county</p>	



Loss of low income units through contract expirations	
[NEW] Percentage of households that pay more than 30% and more than 50% of their income on rent	
[NEW] Rate of overcrowding	
Farmworker housing needs	

<p>Housing needs generated by the presence of a university campus within the jurisdiction</p>	
<p>[NEW] Loss of units during a declared state of emergency that have yet to rebuilt at the time of this survey</p>	
<p>[NEW] The region's greenhouse gas emission targets provided by the California Air Resources Board</p>	
<p>Other factors as adopted by SCAG</p>	

## Local Planning Factors Full List\*

- (1) Each member jurisdiction's existing and projected jobs and housing relationship. This shall include an estimate, based on readily available data, of 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.
- (2) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.
- (3) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to non-agricultural uses.
- (4) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area, and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to non-agricultural uses.
- (5) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.
- (6) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county, and land within an unincorporated area zoned or designated for agricultural protection or presentation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.

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\* Per Government Code Section 65584.04 (e)

- (7) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- (8) The percentage of existing households at each of the income levels listed in subdivision (e) of Section 65584 that are paying more than 30 percent and more than 50 percent of their income in rent.
- (9) The rate of overcrowding.
- (10) The housing needs of farmworkers.
- (11) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- (12) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis.
- (13) The region's greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.
- (14) Any other factors adopted by the council of governments that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.

# Local Planning Factors Survey

Ma'Ayn Johnson, AICP

Compliance and Performance  
Monitoring



## Local Planning Factors



- Existing and projected jobs and housing relationship, particularly low-wage jobs and affordable housing
- Lack of capacity for sewer or water service due to decisions made outside of the jurisdiction's control
- Availability of land suitable for urban development
- Lands protected from development under Federal or State programs, including to protect open space, farmland, and environmental habitats and resources



## Local Planning Factors



- County policies to preserve agricultural land
- Distribution of household growth assumed for regional transportation planning and opportunities to maximize use of public transportation



- Agreements between a county and cities to direct growth to incorporated areas of the county
- Loss of low income units through contract expirations

## Local Planning Factors



- Percentage of households that pay more than 30% and more than 50% of their income on rent
- The rate of overcrowding
- The housing needs of farmworkers
- Housing needs generated by the presence of a university campus within the jurisdiction



# Local Planning Factors



- Loss of units during a declared state of emergency that have yet to rebuilt at the time of this survey
- The region's greenhouse gas emission targets provided by the California Air Resources Board
- Other factors adopted by the COG

# Survey of Local Planning Factors



- Preliminary survey as part of local input process
- Input on factors at jurisdictional level and subregional level



## Use of Local Planning Factors



- Local ordinances, policies, or voter-approved measures cannot be used to justify a lower RHNA allocation
- SCAG must discuss each planning factor in its methodology
- Jurisdictions may appeal a draft RHNA allocation based on local planning factors

## Affirmatively Furthering Fair Housing (AFFH)



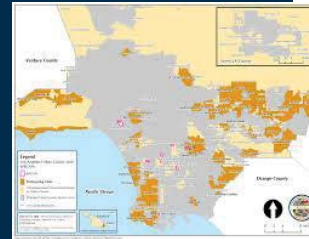
- New State housing objective
  - *“Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics”*
- Survey requirement
- Additional input from stakeholders



# Affirmatively Furthering Fair Housing (AFFH)



- Survey will be attached to planning factor survey
  - Analysis of fair housing choice
  - Housing Elements/SB 1000



# Replacement Need Survey



- Demolished units are reviewed as part of regional determination process
- Survey to jurisdictions on demolished units that were replaced



## Timeline



March 2019

- Survey distribution

April 30, 2019

- Surveys due

September 2019

- RHNA Proposed Methodology hearing

## For more information

[www.scag.ca.gov](http://www.scag.ca.gov)

Email: [housing@scag.ca.gov](mailto:housing@scag.ca.gov)





Southern California Association of Governments  
900 Wilshire Boulevard, Suite 1700, Los Angeles, California 90017  
February 4, 2019

To: Regional Housing Needs Assessment Subcommittee (RHNA)

INTERIM  
EXECUTIVE DIRECTOR'S  
APPROVAL

From: Joann Africa, Chief Legal Counsel  
(213) 236-1928  
[africa@scag.ca.gov](mailto:africa@scag.ca.gov)

Subject: Legal Action Filed by HCD Against the City of Huntington Beach

**RECOMMENDED ACTION:**

Information Only – No Action Required.

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

*On January 25, 2019, the California Department of Housing and Community Development (HCD) filed a lawsuit against the City of Huntington Beach based on its allegation that the City is avoiding its statutory obligations under State housing law. HCD is requesting a writ of mandate from the Court ordering the City to bring its 5<sup>th</sup> cycle Housing Element into substantial compliance with State’s Housing Element law and that the Court issue a declaration that the City’s current Housing Element does not comply with State law.*

**BACKGROUND:**

The following represents a summary of the facts based on HCD’s complaint:

- September 2013 – HCD found the City’s 2013 Housing Element in compliance with state law. The City’s Housing Element relied heavily on sites within the Beach and Edinger Corridors Specific Plan (BECSP) to meet the City’s need of housing affordable to lower-income households.
- May 2015 – The City amended the BECSP, reducing the number of sites available by half, changing development standards and requiring additional parking.
- June 2015 – HCD notified the City that amendments to the BECSP changed the premises upon HCD’s certification of the City’s 2013 Housing Element and the City had to amend its Housing Element to receive compliance.

- July 2015 – The City began working with HCD to amend its 2013 Housing Element. The Kennedy Commission, a non-profit advocacy group based in Orange County, sued the City citing that the amended BECSP violated state law since it was not consistent with the City’s General Plan.
- November 2015 – A Superior Court judge ruled in the Kennedy Commission case that that the City’s amendment to the BECSP violated State housing law and voided the amended BECSP.
- January 2016 – After the City worked to revise its Housing Element, HCD found the draft amendment to City’s Housing Element in compliance.
- March 2016 – The City unanimously rejected the amendment to the City’s Housing Element.
- November 2017 – On appeal, the City raised for the first time in the Kennedy Commission case that it was a charter city. The appellate court overturned the 2015 Superior Court judgment, concluding that as a charter city, the City was exempt from certain general plan consistency requirements under State housing law. The appellate court noted that the City never affirmatively adopted the consistency requirements as part of the City’s charter. The appellate court remanded the question regarding the validity of the amended BECSP back to the Superior Court.
- November 2018 – HCD issued the City notice of non-compliance and failure to act for failing to approve an amended housing element.
- December 2018 – The City responded to HCD stating that “it will set forth a plan to obtain recertification from HCD” after the Kennedy Commission lawsuit is resolved. HCD views the City’s response as a lack of commitment to bring the 2013 Housing Element into compliance with State law.

On January 25, 2019 HCD filed lawsuit against the City in accordance with Govt. Code Section 65585 (codified under AB 72, Santiago, 2017), which provides that HCD shall notify the Attorney General’s Office when it finds that a city is in violation of State law when the jurisdiction’s Housing Element or amendment to the Housing Element, or any action or failure to action, does not comply with State law.

HCD is seeking a writ of mandate from the Court ordering the City to bring the 2013 Housing Element into substantial compliance with State’s Housing Element law, as well as declaratory relief that the 2013 Housing Element which includes the amended BECSP does not substantially comply with the State’s Housing Element Law. According to HCD’s complaint against the City, a copy of which is attached, “the time for empty promises has come to an end. The City should not be allowed to avoid its statutory obligations any longer.”

**FISCAL IMPACT:**

Work related to the RHNA process is funded from the Fiscal Year 2018-19 General Fund Budget.

**ATTACHMENT(S):**

Copy of Petition for Writ of Mandate and Complaint for Declaratory Relief filed by HCD against the City of Huntington Beach

1 XAVIER BECERRA  
Attorney General of California  
2 DANIEL A. OLIVAS  
Senior Assistant Attorney General  
3 JAMEE JORDAN PATTERSON  
Supervising Deputy Attorney General  
4 KIMBERLY R. GOSLING (SB No. 247803)  
JEREMY BROWN (SB No. 269159)  
5 Deputy Attorneys General  
600 West Broadway, Suite 1800  
6 San Diego, CA 92101  
Telephone: (619) 738-9519  
7 Fax: (619) 645-2271  
E-mail: Kimberly.Gosling@doj.ca.gov  
8 *Attorneys for Petitioner and Plaintiff*  
*Department of Housing & Community Development*

***NO FEE PURSUANT TO  
GOVERNMENT CODE § 6103***

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ORANGE  
12 CENTRAL JUSTICE CENTER

13  
14 **California Department of Housing and  
Community Development,**  
15  
16 Petitioner and Plaintiff,  
17  
18 **v.**  
19 **City of Huntington Beach; City Council of  
Huntington Beach; and Does 1-50,**  
20  
21 Respondents and  
Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR  
DECLARATORY RELIEF**

22 **INTRODUCTION**

23 1. California’s housing crisis has reached historic proportions. As the Legislature has  
24 found, “[t]he lack of housing . . . is a critical problem that threatens the economic, environmental,  
25 and social quality of life in California,” and the housing that *does* exist is the most expensive in  
26 the country. (Gov. Code, § 65589.5, subd. (a)(1)(A), (B).) This crisis is “hurting millions of  
27 Californians, robbing future generations of the chance to call California home, stifling economic  
28

1 opportunities for workers and businesses, worsening poverty and homelessness, and undermining  
2 the state’s environmental and climate objectives.” (*Id.*, subd. (a)(2)(A).)

3 2. The failure of local governments to plan for the necessary housing supply has been a  
4 key factor contributing to this crisis. To overcome this failure, the Legislature for years has  
5 required local governments to include housing elements in their general plans. These housing  
6 elements must, among other things, ensure that adequate housing is available to meet each  
7 region’s housing needs for Californians of all income levels, including low and very low incomes.  
8 Not all local governments have complied with this requirement. Respondent/Defendant the City  
9 of Huntington Beach is one such city.

10 3. Petitioner/Plaintiff Department of Housing and Community Development (HCD)  
11 brings this action against the City of Huntington Beach and the City Council of Huntington Beach  
12 (collectively, the “City”) to remedy this violation. It requests that the Court issue a writ ordering  
13 the City to bring its housing element into compliance with State law, and issue a declaration that  
14 the City has abrogated its planning obligations.

15 **PARTIES**

16 4. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among  
17 other things, HCD is responsible for developing housing policy and building codes, for regulating  
18 manufactured homes and mobile home parks, and for enforcing state housing laws—including  
19 laws regarding housing elements—in a manner that meaningfully and positively impacts the  
20 provision of housing in all communities across the State.

21 5. The City of Huntington Beach is a municipal corporation formed and existing under  
22 the laws of the State of California, of which it is a political subdivision.

23 6. The City Council of Huntington Beach is the elected governing body of the City of  
24 Huntington Beach. It is the legislative body charged under Government Code section 65300 with  
25 responsibility for adopting a general plan, including a housing element, for the physical  
26 development of the City of Huntington Beach.

27 7. HCD is unaware of the true names and capacities of respondents and defendants  
28 DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious names

1 pursuant to Code of Civil Procedure section 474. HCD alleges on information and belief that  
2 each such fictitiously named Doe Respondent is responsible or liable in some manner for the  
3 events and happenings referred to herein, and HCD will seek leave to amend this Petition and  
4 Complaint to allege their true names and capacities after the same have been ascertained.

5 **VENUE AND JURISDICTION**

6 8. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
7 sections 187, 1060, and 1085.

8 9. Venue is proper in this Court because the City is located in Orange County and the  
9 violations of law alleged herein occurred in Orange County.

10 **BACKGROUND AND FACTUAL ALLEGATIONS**

11 **Housing Elements and the Planning Process**

12 10. The Legislature has declared that “[t]he availability of housing is of vital statewide  
13 importance, and the early attainment of decent housing and a suitable living environment for  
14 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)  
15 California law requires that all local governments adequately plan to meet the housing needs of  
16 everyone in the community, at all economic levels.

17 11. To meet this requirement, every city and county must adopt and periodically update a  
18 housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*)  
19 The law mandating this adoption and periodic update is known as “Housing Element Law.” (*Id.*,  
20 § 65580, *et seq.*) California’s Housing Element Law acknowledges that, for the private market to  
21 adequately address the housing needs and demand of Californians, local governments must adopt  
22 plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing  
23 development, especially for a locality’s lower-income households and workforce. As a result,  
24 housing policy in California rests largely on the effective implementation of the housing element  
25 contained in the local general plan.

26 12. The housing element is a roadmap for housing development in a given community.  
27 The housing element must identify and analyze existing and projected housing needs, and must  
28 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled



1 programs for the preservation, improvement, and development of housing.” (Gov. Code,  
2 § 65583.) The housing element must also “identify adequate sites for housing” and “make  
3 adequate provision for the existing and projected needs of all economic segments of the  
4 community.” (*Ibid.*) Each housing element is also subject to review by HCD, as discussed  
5 below.

6 13. A local jurisdiction’s housing element must be updated periodically to ensure  
7 compliance with California’s Housing Element Law. (Gov. Code, § 65588.) Jurisdictions can  
8 opt to update their housing elements every five years or every eight years. (See *id.*, subd. (e)(3).)  
9 Each five- or eight-year cycle is known as a “planning period.” (See *id.*, subd. (f)(1).)

10 14. The process of updating a housing element begins with HCD’s determination of a  
11 Regional Housing Need Allocation (RHNA) for the region for a given planning period. (Gov.  
12 Code, § 65584, subd. (a)(1).) The RHNA is segmented by income levels. To arrive at the  
13 RHNA, HCD starts with demographic population information from the California Department of  
14 Finance and uses a formula to calculate a figure for each region’s planning body, known as a  
15 “council of governments” (COG). Each COG also uses its own demographic figures to calculate  
16 the regional housing need. Each COG coordinates with HCD to arrive at a final figure, taking  
17 into account factors not captured in the calculations. This final figure is the RHNA. (See *id.*,  
18 § 65584.01.)

19 15. Once the RHNA is set, the COG is responsible for allocating the housing need among  
20 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local  
21 government must then prepare a housing element that, among other things, identifies adequate  
22 sites to accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*,  
23 §§ 65583, 65583.2.) Sites must be suitable for residential development and must be made  
24 available during the planning period. (*Id.*, § 65583.2, subd. (a).) If a sufficient quantity of  
25 adequate sites is not currently available, the housing element must commit to identifying and  
26 rezoning additional sites within three years from the date of adoption. (*Id.*, §§ 65583, subd.  
27 (c)(1), 65583.2, subd. (h).) The housing element must also accommodate any unmet portion of  
28 the RHNA from the prior planning period. (*Id.*, § 65584.09, subd. (a).)

1           16. Each housing element must also evaluate governmental constraints on the  
2 development of housing for all income levels, and must show local efforts to remove  
3 governmental constraints that impede the local government’s ability to meet its share of the  
4 RHNA. (Gov. Code, § 65583, subd. (a)(5).)

5           17. Each local government must submit a draft housing element to HCD before adoption.  
6 (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue findings as to  
7 whether the draft substantially complies with Housing Element Law. (*Id.*, subds. (b)(3), (d).)  
8 After adopting the final housing element, the local government must again submit the element to  
9 HCD, and HCD must again review and report its findings to the local government. (*Id.*, subds.  
10 (g), (h).)

11           18. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code  
12 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by  
13 a local government that it determines is inconsistent with an adopted housing element or section  
14 65583 of California’s Housing Element Law. This includes failure to implement program actions  
15 included in the housing element. HCD may revoke housing element compliance if the local  
16 government’s actions do not comply with state law.

17           19. AB 72 also authorizes HCD to notify the Office of the Attorney General of California  
18 that the local jurisdiction is in violation of state law for noncompliance with, among other things,  
19 California’s Housing Element Law.

20           20. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take  
21 any of the actions authorized by AB 72 after issuing written findings to the local government “as  
22 to whether the action or failure to act substantially complies with [California’s Housing Element  
23 Law],” and providing a reasonable time, no longer than 30 days, for the local government to  
24 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) HCD has satisfied this requirement here, and  
25 has issued letters to the City dated June 23, 2015, and November 14, 2018, both of which noted  
26 the City’s failure to comply with Housing Element Law. The City’s response to the  
27 November 14, 2018 letter is discussed below.

28

1                                   **The Huntington Beach Housing Element and**  
2                                   **The Beach and Edinger Corridors Specific Plan**

3           21. The City’s current planning period runs from 2013 to 2021. In 2013, the City  
4 submitted a draft housing element for this planning period to HCD for review. HCD found that  
5 the draft met the statutory requirements of California’s Housing Element Law.

6           22. The City adopted the housing element on September 16, 2013 (the “2013 Housing  
7 Element”), and HCD then reviewed it. On November 12, 2013, HCD found that the adopted  
8 2013 Housing Element was in substantial compliance with California’s Housing Element Law.

9           23. The compliance finding was based on the identification of sufficient housing  
10 development capacity to meet the City’s RHNA, and effective programs to facilitate development  
11 of housing affordable to lower-income households. Notably, the housing element’s inventory of  
12 sites and programs relied heavily on capacity within the Beach and Edinger Corridors Specific  
13 Plan (BECSP). In fact, the housing allocation necessary to meet the needs of the City’s lower-  
14 income households and workforce was entirely accounted for on sites within the BECSP.

15           24. On May 4, 2015, however, the City adopted amendments to the BECSP that changed  
16 the maximum number of allowable units in the BECSP to an amount less than the City’s  
17 remaining RHNA. The adoption of these amendments fundamentally altered the inventory of  
18 available sites, constituting a *de facto* change to the 2013 Housing Element’s available sites  
19 calculation. The BECSP amendments changed development standards, reducing unit density by  
20 requiring additional parking and restricting development flexibility by requiring a conditional use  
21 permit. These actions posed constraints to the development of housing, particularly on sites  
22 identified in the land inventory to meet the City’s remaining lower-income housing need.

23           25. On June 23, 2015, HCD sent the City a letter notifying the City that the amendments  
24 to the BECSP changed the premises upon which HCD’s prior certification of the 2013 Housing  
25 Element was based, thereby nullifying that prior certification.

26           26. HCD also explained in its June 23, 2015 letter that a housing element must be  
27 amended when a local government decision changes substantive provisions of the housing  
28 element upon which HCD relied in determining substantial compliance. Housing element drafts

1 and amendments must be submitted to HCD for review and commentary before formal adoption.  
2 HCD therefore advised the City to immediately submit an amended housing element to HCD to  
3 review for compliance with California’s Housing Element Law.

4 27. Shortly after HCD’s June 23, 2015 letter, the City began working in consultation with  
5 HCD to prepare an amended and legally compliant housing element.

6 28. On July 31, 2015, while the City was working with HCD to amend the 2013 Housing  
7 Element, the City was sued by affordable housing advocates and two individual plaintiffs who  
8 argued that the BECSP Amendment was invalid due to its inconsistency with the 2013 Housing  
9 Element. (See *The Kennedy Commission v. City of Huntington Beach*, Case No. 30-2015-  
10 00801675, currently pending in the Superior Court of the State of California, County of Los  
11 Angeles (hereinafter, “*Kennedy*”).) In its defense against the lawsuit, the City vigorously argued  
12 that it was “actively working to amend its housing element to meet its RHNA goals.” (*Id.*, City’s  
13 Opposition to Petition for Writ of Mandate, filed Oct. 29, 2015, at p. 1.) The City affirmatively  
14 represented to the Court that it had held hearings, consulted with HCD and others, and submitted  
15 a draft amendment to HCD. (*Ibid.*) The City also told the Court that, as a result of this  
16 interactive process, the lawsuit was unnecessary and would soon be moot. (*Ibid.*) According to  
17 the City, “[t]he Court may simply observe that the City is moving quickly to fulfill its statutory  
18 obligations and withhold writ relief pending the City’s adoption of a new housing element.” (*Id.*,  
19 at p. 12.)<sup>1</sup>

20 //

21 //

22 \_\_\_\_\_  
23 <sup>1</sup> On January 20, 2016, the Superior Court in *Kennedy* issued a writ of mandate  
24 commanding the City to cease enforcing, administering, or implementing the BECSP amendment.  
The Court stated that Government Code section 65454 required the BECSP to be consistent with  
the City’s general plan. The City immediately appealed.

25 On May 26, 2016, the Court of Appeal issued an order staying the writ of mandate. On  
26 October 31, 2017, the Court of Appeal reversed the Superior Court and remanded the matter on  
the basis that charter cities are exempt from the consistency requirement of Government Code  
section 65454, and the consistency requirement did not apply since the City never affirmatively  
adopted it. (*The Kennedy Com. v. City of Huntington Beach* (2017) 16 Cal.App.5th 841, 851-59.)

27 The Court of Appeal denied the petitioners’ request for rehearing on November 20, 2017,  
28 and the California Supreme Court denied the petitioners’ petition for review on January 17, 2018.  
The case is now proceeding on remand to the Superior Court.

1           29. On January 29, 2016, HCD found that the draft amendment prepared by the City  
2 would satisfy the requirements of California’s Housing Element Law when adopted and  
3 submitted to HCD.

4           30. Despite the fact that HCD had found the draft amendment to be legally compliant,  
5 despite every indication from the City to HCD that it was actively working to bring the housing  
6 element into compliance, and despite the City’s numerous representations to the *Kennedy* Court  
7 to the same effect, the City council voted unanimously to reject the amendment—General Plan  
8 Amendment No. 15-001—at a March 7, 2016 hearing. Until that time, HCD had every reason to  
9 believe, based on the City’s interactions with HCD staff and its representations to the Court, that  
10 the City intended to adopt the amendment.

11           31. On November 14, 2018, HCD issued a notice of noncompliance in which it found that  
12 the City’s housing element remained out of compliance with article 10.6 of Government Code  
13 title 7, division 1, chapter 3 (“Article 10.6”); that the City failed to act in compliance with  
14 Government Code section 65583 when it failed to approve an amended housing element; and that  
15 the City violated Article 10.6 by failing to take action to bring the housing element into  
16 compliance with applicable statutory requirements since the City Council’s vote on March 7,  
17 2016.

18           32. On December 6, 2018, the City sent HCD a letter responding to the November 14,  
19 2018 notice of noncompliance. The City did not commit to complying with its legal duty to  
20 immediately bring the 2013 Housing Element back into substantial compliance. The City instead  
21 proposed further delay, stating that it “will set forth a plan to obtain recertification from HCD”  
22 only after the *Kennedy* lawsuit is resolved. The time for empty promises has come to an end.  
23 The City should not be allowed to avoid its statutory obligations any longer.

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1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (Code Civ. Proc., § 1085)**

3 **[Against All Defendants]**

4 33. HCD incorporates by reference each and every allegation of the preceding  
5 paragraphs.

6 34. Under California’s Housing Element Law, the City must ensure that its general plan  
7 contains a legally compliant housing element.

8 35. The City has completely abdicated this duty. Based on the events alleged in  
9 paragraphs 10 through 32 above, the City’s 2013 Housing Element violates Housing Element  
10 Law, and the City has failed to enact an amendment bringing the 2013 Housing Element into  
11 substantial compliance. Indeed, by refusing to adopt General Plan Amendment No. 15-001 on  
12 March 7, 2016, and by, on information and belief, making no meaningful effort since then to draft  
13 and adopt another amendment that would bring the 2013 Housing Element into substantial  
14 compliance, the City has publicly and unequivocally violated its duty to comply with California  
15 law.

16 36. These actions and failures to act by the City are arbitrary, capricious, entirely lacking  
17 in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, an  
18 abuse of discretion, and a failure to act as required by law.

19 37. Accordingly, a writ of mandate should issue ordering the City to bring the 2013  
20 Housing Element into substantial compliance with California’s Housing Element Law (Gov.  
21 Code, § 65580, *et seq.*) and to ensure that the 2013 Housing Element meets the City’s regional  
22 housing needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.

23 38. HCD has a beneficial interest in the issuance of such a writ, given its authority and  
24 mandate to enforce substantial compliance with California’s Housing Element Law. Likewise,  
25 the public at large, as well as the lower income residents and workforce in the City, have a  
26 significant interest in ensuring that the City complies with the law.

27 39. HCD has exhausted all required administrative remedies, or is excused from  
28 exhausting its remedies due to the futility of pursuing such remedies, among other things.

1 40. HCD has no plain, speedy, or adequate remedy in the ordinary course of law. The  
2 only remedy provided by law for HCD to obtain relief is this Petition for Writ of Mandate  
3 pursuant to Code of Civil Procedure section 1085.

4 **SECOND CAUSE OF ACTION**

5 **Declaratory Relief (Code Civ. Proc., § 1060)**

6 **[Against All Defendants]**

7 41. HCD incorporates by reference each and every allegation of the preceding  
8 paragraphs.

9 42. There is a controversy between HCD and the City as to whether the 2013 Housing  
10 Element substantially complies with California’s Housing Element Law (Gov. Code, § 65580, *et*  
11 *seq.*). Based on the events alleged in paragraphs 10 through 32 above, HCD believes that the  
12 2013 Housing Element does not substantially comply. Further, based on information and belief,  
13 the events alleged in paragraphs 10 through 32, and the administrative record herein, HCD alleges  
14 that the City is aware that 2013 Housing Element does not substantially comply and has failed to  
15 take any meaningful action to substantially comply.

16 43. It is necessary and appropriate for the Court to render a declaratory judgment that sets  
17 forth the parties’ legal rights and obligations with respect to whether the 2013 Housing Element  
18 substantially complies with California’s Housing Element Law. Among other things, such a  
19 judgment would inform the parties’ conduct in connection with future contemplated amendments  
20 to the City’s housing element, including those that occur routinely at the beginning of each  
21 housing cycle.

22 44. HCD therefore requests a declaration that the 2013 Housing Element does not  
23 substantially comply with California’s Housing Element Law (Gov. Code, § 65580, *et seq.*).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, HCD prays as follows:

- 3 1. For a writ of mandate ordering the City to bring the 2013 Housing Element into  
4 substantial compliance with California's Housing Element Law (Gov. Code, § 65580, *et*  
5 *seq.*) and to ensure that the 2013 Housing Element meets the City's regional housing  
6 needs goals by the end of the 2013 – 2021 planning period, as determined by HCD.  
7 2. For a declaration that the City's 2013 Housing Element does not substantially comply  
8 with California's Housing Element Law (Gov. Code, § 65580, *et seq.*).  
9 3. For costs and attorneys' fees.  
10 4. For any other relief the Court may deem appropriate.

11  
12 Dated: January 25, 2019

Respectfully Submitted,

13 XAVIER BECERRA  
14 Attorney General of California  
15 JAMEE JORDAN PATTERSON  
16 Supervising Deputy Attorney General

17 

18 KIMBERLY R. GOSLING  
19 Deputy Attorney General  
20 *Attorneys for Petitioner and Plaintiff*  
21 *Department of Housing & Community*  
22 *Development*

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