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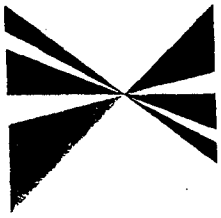

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11.14.06

February 15, 2007

Ms. Lynn Jacobs, Director
California Department of Housing & Community Development
1800 Third Street
Sacramento, CA 95814

Re: Indian Tribal Nations and State Housing Law Applicability

Dear Director Jacobs:

As you are aware, the Southern California Association of Governments (SCAG) is currently engaged in developing a Regional Housing Needs Allocation (RHNA) Plan. The Draft Plan was approved for distribution by SCAG's Regional Council on February 1, 2007.

SCAG appreciates the support and assistance of HCD staff in helping to address and resolve issues as they arise in the process of preparing the RHNA. It is in furtherance of this collaboration that we wish to go on record in support of HCD's suggestion on how to address an issue that was brought to our attention by the Coachella Valley Council of Governments (CVAG) on behalf of Riverside County, and the cities of Palm Springs, Cathedral City, Desert Hot Springs and Rancho Mirage. The issue relates to Indian Tribal Nations' and the question of whether Tribal Nations' populations and housing needs are required to be addressed in the RHNA.

SCAG brought this issue to the attention of Cathy Creswell and Linda Wheaton in November and December, 2006. Several telephone conversations and conference calls have taken place. Last week, on February 6, 2007, a meeting on this issue was held in Palm Springs in which both HCD and SCAG participated. Other participants in the February 6th meeting included John Wohlmuth, Executive Director of CVAG; Douglas Kuczynski, Research Analyst in the Demographic Research Unit of the State Department of Finance; William Gayk, Director of the Riverside County Center for Demographic Research, and Tom Davis, Chief Planning and Development Officer for the Agua Caliente Band of Cahuilla Indians.

It is our understanding that all parties agree there is no legal basis upon which the state or region can allocate regional housing needs to Indian Tribal Nations. Indian Tribal Nations are sovereign states, dependent on, and subordinate to, only the Federal government, not the States." *California v.*

Cabazon Band of Mission Indians, 480 U.S. 202, 207 (1987). While subject to federal law, Tribal Nations are exempt from city and county land use regulations and state environmental regulations.

Taking into consideration available information, as well as the guidance articulated by HCD staff in the various discussions referenced above, SCAG agrees with a suggestion made by HCD at the February 6th meeting. That is: to allow HCD to work with the affected jurisdictions in the Housing Element preparation phase to determine whether or not their housing elements will have to address the tribal population housing needs within their jurisdictions. The jurisdictions and the tribe's representative have expressed a willingness to explore the issue collaboratively and thoroughly, in order to arrive at the most equitable determination.

Accordingly, SCAG is finalizing the following approach in order to complete our statutory requirements for preparation of the 4th cycle RHNA:

1. Regional Total

Indian Tribal Nations' population and housing needs were inadvertently included in the state's determination of the regional population total, the determination of expected household growth, and the resulting calculation of construction needs. SCAG believes that the most appropriate course of action to remedy this situation would have been for State HCD to reduce the regional total commensurate with Tribal Nations' population and housing need, but understands HCD's concerns regarding this approach at this late stage in the RHNA process. This adjustment, had we been able to proceed in this manner, would have allowed SCAG to make appropriate reductions in affected jurisdictions' construction needs in the RHNA Plan.

2. Requests for Revision and Appeals Process

For any Requests for Revisions or Appeals submitted based on this issue, SCAG will recommend to the RHNA Appeals Board that it would be inappropriate and unfair to redistribute new construction needs that emanate from Tribal Nation populations to jurisdictions in the Coachella Valley, or Riverside County or the region, based upon guidance from HCD.

3. RHNA Allocations and Local Housing Elements

While it may be unfair to jurisdictions to include Tribal Nations' population and construction needs as part of their RHNA Allocation, SCAG recognizes that they have no legal authority to regulate land use on tribal trust lands. Since HCD finds that the regional total cannot be adjusted at this stage of the process, then SCAG has no discernable means of remedying the situation in the Final RHNA Plan.
Thus, SCAG concurs with HCD and supports HCD's proactively addressing this issue in the local housing element review process by engaging jurisdictions who can demonstrate to HCD and DOF's satisfaction that this situation pertains to them.

Thank you again for helping SCAG to clarify and resolve this matter. We are committed to working with HCD, DOF, CVAG, the Tribal nations and affected jurisdictions as needed to help define the actual population and housing need totals that may need to be addressed during the housing element review process. William Gayk and Tom Davis also indicated their willingness to provide information and demographic data that will help in addressing this issue in this and future RHNA cycles.

Sincerely,

Hasan Ikhrata
Director, Planning and Policy Department

cc: Cathy Creswell, California Department of Housing & Community Development
Linda Wheaton, California Department of Housing & Community Development
Glen Campora, California Department of Housing & Community Development
Douglas Kucznski. California Department of Finance
John Wohlmuth, Coachella Valley Association of Governments
Tom Davis, Agua Caliente Band of Cahuilla Indians
William Gayk, Riverside County Center for Demographic Research
Lynn Harris, Manager of Community Development, Southern California Association of Governments