



CITY OF CORONADO

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February 20, 2020

SANDAG Board of Directors
Attn: Mr. Seth Litchney, Regional Planner
401 B Street, Suite 800
San Diego, CA 92101

Send via Email and USPS: Seth.Litchney@sandag.org

RE: City of Coronado Comments on Appeals of Draft Regional Housing Needs Assessment (RHNA) Allocations

Dear Honorable Board Members:

In accordance with Government Code Section 65584.05(c), the City of Coronado (City) submits the following comments supporting the appeals filed by the Cities of Coronado, Imperial Beach, Lemon Grove and Solana Beach pursuant to Government Code Section 65584.05 for a revision of the shares of the regional housing needs proposed to be allocated under the methodology adopted for the 6th cycle.

To Avoid Constitutional Error, All the RHNA Appeals Must Be Decided Through a Fair Hearing and Impartial Process

RHNA allocations came into being in the Housing Element Act of 1969. Since that time, SANDAG has successfully adopted methodologies for five RHNA cycles that were the result of regional consensus and allocations resulting from those were never appealed before. What brought about the appeals in this 6th round? The passage of AB 805 in 2017 and its disenfranchisement of the will of the majority through a new weighted voting scheme. Because of the multiple failed motions early in the RHNA process for the 6th cycle, the majority will failed to produce just results. Four appeals followed.

These four appeals require SANDAG to take adjudicatory actions, as opposed to the primarily legislative decisions that the Board has made so far in the RHNA process. As quasi-judicial proceedings, SANDAG must employ procedural and substantive safeguards appropriate to such proceedings.

On February 14, 2020, the Executive Committee recognized the need for due process to be afforded in the appeals when it adopted RHNA appeals procedures. However, those procedures fell short of the constitutionally mandated protections by omitting a needed voting policy.

SANDAG General Counsel incorrectly told the Executive Committee that state law required a weighted vote. First, the state (and federal) constitutions are the supreme law of the land. One should attempt to read statutory law so that it is constitutional. If that cannot be done, the constitution controls. Second, AB 805 envisioned that there would be situations where the weighted vote would not be employed. Public Utilities Code section 120102.5(a) provides: “All official acts of the board require the affirmative vote of the majority of the members of the board present. However, after a vote of the members is taken, a weighted vote **may** be called....” (Emphasis added). PUC section 120102.5(f) states the Board shall adopt a policy and procedure to implement the permissive nature of the weighted vote in this section. It is only logical that the circumstances where the weighted vote is not intended to be employed would be where it would be unconstitutional to do so. And that is what SANDAG’s Bylaws provide.

As a matter of constitutional law, the appealing cities and their citizens are entitled to fair hearing employing voting procedures that do not create an unacceptable risk of bias nor disenfranchise the citizens of Imperial Beach, Lemon Grove, Solana Beach and Coronado. SANDAG has an opportunity to remedy that now in deciding the appeals. The procedural mechanism of one vote per city should be employed to ensure that the appeals for revisions to the RHNA allocations are decided fairly and without bias.

When SANDAG amended its Bylaws, Article IV, Section 5, in 2018 to make changes to the voting procedures, the impacts had not been manifested. In practice, regardless of the opposition and overwhelming views of the supermajority of jurisdictions, the weighted vote had its way on any and all issues, in all procedural contexts, thus disenfranchising smaller municipal corporations and their voters. This may be permissible in the legislative arena, but it is fundamentally unfair in adjudicatory contexts. Under AB 805 (Public Utilities Code section 120102.5(f)), the Board can adopt policies and procedures governing different voting mechanisms for different actions. Article IV, Section 5(a) of the Bylaws recognizes that: “After the tally vote of the Board Members is taken, a weighted vote **may** be called by the Board Members of any two Member Agencies **unless otherwise required by law.**” (Emphasis added.) Here, the constitution requires that only a tally vote be taken.

To see why AB 805 weighting cannot be applied to adjudicatory decisions without running afoul of constitutional imperatives like impartiality and due process one need only review the RHNA proceedings thus far. An overwhelming number of jurisdictions disagreed with the City of San Diego in every vote involving the adoption of the draft and final methodology for this 6th cycle. In response, a weighted vote was called. With opposition from 13 or 14 jurisdictions, the City of San Diego was successful in implementing its RHNA agenda through, ignoring what makes sense for the region and disregarding what the RHNA statutory objectives require. The overwhelming feedback from a super majority of other cities was squashed. Actual bias has been demonstrated in the RHNA outcomes. At the Executive Committee discussion on February 14, 2020, Board Member Georgette Gomez said: “the City of San Diego’s going to have a huge issue related to this weighted vote [for the appeal procedures]...we’re going to defend it.” It appears the outcome has been predetermined.

While such bias may be acceptable in the legislative decisions to adopt the methodology, it is intolerable in proceedings that are quasi-judicial in nature. Unlike legislative actions, when an administrative agency makes adjudicative decisions, like on these appeals, due process of law requires a fair tribunal. A fair tribunal is one in which the decision maker is free of bias for or against a party, including its investment in a pre-judged outcome. The voting outcomes on RHNA issues after AB 805's passage show a situation in which experience teaches that the probability of actual bias on the part of the decision maker when a weighted vote is employed is too high to be constitutionally tolerable and would create an unacceptable risk of bias.

The Board can avoid such an unconstitutional outcome by adopting a policy to utilize a tally vote when deciding RHNA appeals. Such a policy is proper under Public Utilities Code section 120102.5(f) and Article IV, Section 5(a) of the Bylaws. It also avoids a circumstance where AB 805 could be challenged in its entirety as unconstitutional. There is no fiscal or administrative burden in applying the tally voting mechanism only. The risk of erroneous deprivation of rights is high through employing the procedure of a weighted vote. In addition, the probable value of employing the procedural safeguard of a tally vote is high. To a certain extent, each member is interested in the outcome of the appeal. An appeal policy of one city, one vote minimizes the risk of error because, but no one member is forcing its agenda and disenfranchising on the rest. Therefore, the procedural safeguard of one city, one vote should be applied in deciding the RHNA allocation appeals.

Comments Supporting the City of Solana Beach's Appeal

As the City of Solana Beach correctly pointed out in its appeal, SANDAG was required to include the statutory factors pursuant to Government Code Section 65584.04 to develop the methodology to allocate regional housing needs. Unlike past RHNA cycles, this time SANDAG ignored the statutory factor under Government Code Section 65584.04(e)(2) regarding "[t]he opportunities and constraints to development of additional housing in each member jurisdiction."

Like Coronado and other small coastal cities in the region, Solana Beach's ability to build housing units is dramatically constrained by the Coastal Act. Solana Beach, like Coronado, is already densely built. The Coastal Act precludes Solana Beach or other cities within the coastal zone to just keep building up. The Coastal Act's requirements for coastal access, coastal views, and protection of visitor-serving uses prevent coastal cities like Solana Beach and Coronado from making residential development the top priority. The out of proportion housing units proposed to be allocated to Solana Beach and Coronado are at odds with the Coastal Act's imperatives. Geographic and regulatory constraints prevent Solana Beach, Coronado and other small cities entirely within the coastal zone from building the units in their draft allocations. Units should be allocated where they can realistically be built without violating other laws and state mandates. SANDAG should take into account legal and land use constraints in revising the draft allocations.

Comments Supporting the City of Lemon Grove's Appeal

The City of Coronado agrees with the City of Lemon Grove that the proposed RHNA methodology is flawed because it assigns housing units based solely on the physical location of a transit station without regard for its proximity to other jurisdictions or the benefits provided to residents of nearby

cities. This flawed and shortsighted approach is emblematic of SANDAG's overriding objective to maintain a simple, one-size-fits-all RHNA methodology.

The City of Coronado also supports Lemon Grove's request for SANDAG to refine the methodology to ensure the final RHNA allocation is equitable and advances the goal of increased housing production. While the jobs-transit-housing foundation of the RHNA methodology is a sound starting point, SANDAG must recalibrate the RHNA formula by accounting for economic, demographic, geographic, and regulatory realities to ensure an equitable allocation that promotes actual housing production.

Comments Supporting the City of Imperial Beach's Appeal

The City of Coronado agrees with the City of Imperial Beach's appeal because SANDAG's flawed RHNA methodology has produced an inequitable allocation which disproportionately assigns housing units to small, built-out coastal cities with significant regulatory constraints and little capacity to accommodate new housing. SANDAG's proposal to increase Imperial Beach's RHNA from 254 units during the prior housing cycle to 1,375 units based on the presence of a single transit station defies established planning principles and will not result in increased housing production.

Through its persistent endeavor to maintain a simple, one-size-fits-all RHNA methodology, SANDAG has repeatedly dismissed logical recommendations to improve the formula to ensure a more balanced and equitable allocation. Without necessary refinements, the proposed RHNA allocation would assign housing units to cities based solely on the physical location of transit stations and jobs without any consideration to economic, demographic, geographic, or regulatory conditions that drive housing production. If SANDAG is committed to increasing the region's housing stock, it must take a more comprehensive approach to the RHNA process.

Corrections to Population Figures

In deciding all the appeals, the Board needs take into account the fact that the regional population is actually decreasing and not increasing as previously thought. According to SANDAG Chief Economist and Chief Analytics Officer, Ray Major's February 6, 2020 letter to the Board, the California Department of Finance's ("DOF's") updated the population projections for the county in January 2020. Mr. Major stated that DOF's "new forecast indicates a 6.6% decrease in our total regional population when compared to the previous" forecasts.¹

The figures that the Department of Housing and Community Development used to determine the RHNA for this 6th cycle were based on an increase in the regional population. We now know that to be false. Mr. Major has indicated that SANDAG staff is following up with HCD about how the DOF population projections may impact the RHNA allocations. This further serves to underscore the need to understand the data that SANDAG is relying on in making the allocations and ensure that it is as up to date and accurate as possible. It makes no sense to allocate increased housing units to jurisdictions whose populations are actually decreasing. The Board must consider DOF's projected 6.6% population decrease into account when deciding these appeals. SANDAG needs

¹ See Attachment 1.

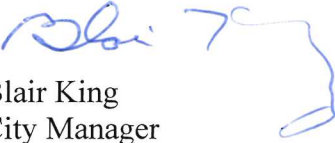
to also use the most current data and be consistent in all its decisions related to population, jobs, housing and transportation numbers.

Concluding Comments

With respect to all the appeals, a weighted vote may be a demonstration of political might but employing it in the RHNA appeal context will not result in the creation of more actual housing units. The City of Coronado respectfully requests that SANDAG uphold the constitution and decide the appeals in a fair and impartial quasi-judicial proceeding by adopting a policy under Public Utilities Code section 120102.5(f) that the weighted vote shall not be applied to adjudicatory appeals of draft RHNA allocations or in another other circumstance under which the application of weighted voting would result in an unacceptable risk of bias or a violation of due process.

In addition, SANDAG should grant the appeals of the Cities of Solana Beach, Imperial Beach, Lemon Grove, and Coronado to account for constraints to development imposed by economic, demographic, geographic, and regulatory limitations and applicable law, like the Coastal Act, by modifying the methodology to yield a more equitable and proportionate allocation with a greater prospect of realizing actual housing production.

Respectfully Submitted,


Blair King
City Manager
City of Coronado

cc: Hasan Ikhata, Executive Director, SANDAG
Mayor and Members of the City Council, City of Coronado
Coleen Clementson, Director of Regional Planning, SANDAG



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February 6, 2020

File Number 2300400

Dear: SANDAG Board of Directors

Subject: California Department of Finance Population Projections

Approximately every three years the California Department of Finance releases updated population projections for each county in the state. The Department of Finance (DOF) released new population projections in January 2020 (v2019.01.10.2020). This new forecast indicates a 6.6 % decrease in our total regional population when compared to the previous DOF 2017 (v2017.02.02.2018) projected population forecast. In 2017, DOF estimated that the region's January 1, 2050 population would be 3,989,372. The new population projections for 2020 set the region's January 1, 2050 population at 3,728,056. This represents a decrease of 261,316 by 2050 as compared to the previous forecast.

As you know, the projections are used by SANDAG in the regional growth forecast, the activity-based transportation model, and the *TransNet* revenue forecast. Additionally, the state Department of Housing and Community Development uses DOF population projections, in part in determining the Regional Housing Needs Assessment (RHNA) that SANDAG oversees regionally for the state. Housing and Community Development Department used the 2017 (v2017.02.02.2018) projections for the current RHNA process.

SANDAG staff has reached out to the DOF to understand the technical assumptions and methodology used in the new 2020 projections. Staff is also seeking guidance from Housing and Community Development Department on how the new population projections may or may not affect the current RHNA process. Staff is currently working to determine the impact of the updated population projections on the forecasting and modeling products that we use in our work. We expect to have an update at the February 14, 2020 Board of Directors meeting.

Sincerely,

Ray Major

Chief Economist and Chief Analytics Officer

RMA/pla/mpo

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