

January 14, 2021

Margaret Finlay
RHNA Appeals Board Vice Chair
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, California 90017

Re: **Public Comment on City of Yorba Linda RHNA Appeal Scheduled for
January 15, 2021**

Dear Vice Chair Finlay:

The City of Yorba Linda respectfully submits the following comments after review of the staff report prepared by SCAG staff on the City of Yorba Linda's appeal. The staff report severely distorts both the law and the facts underlying the appeal of the City of Yorba Linda.

Eligibility of Appeal Argument

SCAG Staff Report: "In Issues 1 and 6, Yorba Linda does not contest SCAG's application of the Final RHNA Methodology; rather, Yorba Linda challenges the Final RHNA Methodology itself by asserting that the methodology is inconsistent with the SCS" (*see* page 469, first paragraph).

The staff report also inaccurately claims, "Appeals are only allowed regarding the application of the adopted Final RHNA Methodology to an individual jurisdiction...rather than relative to factors which comprise the adopted Methodology or regional determination itself" (*see* page 473, paragraph 3).

Finally, the staff report mistakenly claims, "Consistency with the SCS is not technically a basis for appeal as set for by the statute" (*see* page 474, paragraph 4).

Yorba Linda Response: SCAG continues to summarize and abbreviate Government Code 65584.05(b)(2) as stating that jurisdictions are only authorized to appeal the application of the RHNA methodology. However, Government Code Section 65584.05(b)(2) states that an eligible appeal includes that SCAG "failed to determine the share of regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04." In other words, this statute actually creates two appeal circumstances:

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- 1) “[SCAG] failed to determine the share of regional housing need in accordance with the information described in...Section 65584.04.”
- 2) “[SCAG] failed to determine the share of regional housing need in accordance with...the methodology established pursuant to Section 65584.04.”

Therefore, SCAG’s argument that this appeal can only be based upon the application of the methodology is incorrect. As such, the City of Yorba Linda’s argument that SCAG failed to determine the share of regional housing need in accordance with the information described in Section 65584.04 is a valid appeal argument.

As such, Government Code 65584.04(m) states, “It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the housing plan [or RHNA] shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.” Therefore, it is incumbent upon SCAG to demonstrate that that the RHNA allocates housing units consistent with the development pattern included in the sustainable communities strategy. This issue will be discussed in a separate section.

RHNA Consistency with Development Pattern of the Sustainable Communities Strategy

SCAG Staff Report: SCAG claims that RHNA is consistent with the development pattern of the sustainable communities strategy because it allocates the “projected need” based on local input from Connect SoCal growth forecasts and then equally applies a transit accessibility factor and job accessibility factor for the “existing need” portion of RHNA throughout the region.

Yorba Linda Response: The development pattern¹ of the sustainable communities strategy states that that growth shall be focused into priority growth areas (PGAs) and avoided in constrained areas to the extent that a local jurisdiction’s growth does not exceed the Connect SoCal 2016-2045 growth forecast (or 900 households for the City of Yorba Linda). The City of Yorba Linda has no PGAs within its jurisdictional boundary and nearly 80% of its jurisdictional boundary is in an identified constraint area per Connect SoCal; however, the RHNA methodology allocated “existing need” with no regard to the City’s absence of PGAs and significant amount of identified constraints. This issue is discussed in greater detail in the section below. Interestingly, Yorba Linda is the only appellant in the SCAG region with no PGAs and a RHNA that exceeds its Connect SoCal 2016-2045 growth forecast.

The City has already demonstrated that approximately 4,200 acres of the City’s boundary is constrained by restricted open space, over 6,700 acres are located in wildland urban interface areas, 3,200 acres are located in very high fire hazard severity zones, and 750 acres are located in

¹ Connect SoCal, Sustainable Communities Strategy

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flood hazard zones established by FEMA. In fact, approximately 20% of the City are located in areas not constrained by the Connect SoCal development pattern. Furthermore, a significant portion of the remaining 20% of the City's boundary contains other significant development constraints, including oil wells, landslide zones, liquefaction zones, and topography constraints.

Clearly, Yorba Linda has demonstrated that it represents an outlier with the application of the methodology based on consistency with the development pattern of the sustainable communities strategy. Granting an appeal to the City of Yorba Linda would not establish a precedent for any other jurisdiction in the region as Yorba Linda is truly the only exception to this argument based on the arguments set forth in the City's written appeal and subsequent public comment letters.

"Existing Need" vs "Projected Need"

SCAG Staff Report: As determined by HCD, a large share of the region's housing need is based on factors other than future household growth and can be characterized as the "existing need" of the existing population (*see* page 472, paragraph 3).

Yorba Linda Response: HCD never separated projected need and existing need in their regional determination of 1.34 million housing units. SCAG continues to cite the January 13, 2020, letter from HCD as HCD's establishment of an "existing need" of 836,857 and a "projected need" of 504,970.² This letter simply acknowledges that SCAG (not HCD) separated the "existing need" and "projected need." Therefore, for SCAG to continue to assert that HCD separate the existing need from the projected need is factually incorrect.

The reality is that HCD established a regional determination of 1,341,827 housing units, which is comprised of its growth projections with several adjustment factors related to vacancy rates, replacement need, overcrowding, and cost-burdened households.

SCAG Staff Report: SCAG states that legislative changes in 2018 added two new factors (overcrowding and housing cost burden) which are not included in the Connect SoCal Growth Forecast "because they are not direct inputs to the growth forecasting process and are independent of employment and population projections." SCAG further states that these two factors "reflect additional latent housing needs in the current population (i.e., "existing need") and do not result in a change in regional population" (*see* page 474, paragraph 1).

Yorba Linda Response: According to HCD's regional determination on October 15, 2019³, HCD determined an overcrowding adjustment of 459,917 housing units and a cost burden adjustment of 117,505 housing units for a total of 577,422 housing units of "existing need." In

² January 13, 2020 Letter from HCD to SCAG

³ October 15, 2019 Letter from HCD to SCAG

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contrast, SCAG claims in Connect SoCal⁴, and its certified PEIR⁵, that the “existing need” is 836,857 housing units and is comprised of two factors: overcrowding and housing cost burden. Therefore, SCAG has either incorrectly calculated an “existing need” that is **nearly 260,000 housing units higher** than the source data from which they claim it is derived or they have misrepresented what is included as “existing need.”

On the other hand, SCAG calculated a “projected need” of 504,970. However, SCAG’s PEIR for Connect SoCal states that the “projected need” includes the sum of “household growth, vacancy need, and replacement need.” Based on HCD’s regional determination, the projected household growth is as follows:

1) Projected household growth	551,499
2) Vacancy adjustment	178,896
3) Replacement adjustment	34,010
TOTAL PROJECTED NEED	764,405

Clearly establishing the inputs of the methodology for “existing need” and “projected need” is absolutely critical. The City of Yorba Linda contends that SCAG failed to correctly calculate the RHNA inputs for “projected need” and “existing need” to be consistent with Connect SoCal and its PEIR. This is important because the “existing need” makes up 98.5% of the City’s total RHNA. Since the “existing need” was improperly calculated by approximately 260,000 housing units, the City’s RHNA should be reduced by approximately 1,100 housing units on this argument alone.

Development in Non-Constrained Areas

SCAG Staff Report: SCAG states that it “recognizes there are many environmental and other constraints to the development on portions of the land in the City of Yorba Linda. However, this does not preclude additional residential development (*i.e.*, infill) outside of such constrained areas” (*see* page 481, paragraph 4).

Yorba Linda Response: SCAG’s comment glosses over the fact that **nearly 80%** of the City’s jurisdictional boundary is located within constrained areas identified within Connect SoCal, and that the City has not provided sufficient analysis of the remaining 20% to accommodate the RHNA that was assigned without regard for these constraints. Based on its own independent GIS analysis from 2018, and as outlined in the City’s local planning factor survey⁶, the City determined the following:

⁴ Connect SoCal, Appendix 2 (Public Participation and Consultation), pages ii-iv

⁵ Connect SoCal PEIR, Section 3.11 Land Use Planning, page 3.11-33

⁶ Local Planning Factor Survey

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“The majority of land suitable for urban development in the City of Yorba Linda has already been developed and the City is nearing build-out conditions. As of today, there are approximately 15 vacant properties (totaling less than 10 acres) remaining in the City that have not been developed, entitled, or are in the process of entitlement that are available for urban development. The majority of these properties are undeveloped single-family parcels averaging approximately 0.5 acres in size. The only remaining large vacant or underutilized property is a 26-acre vacant parcel that is restricted through a development agreement for public use purposes. Over the past housing cycle, the City has either constructed or entitled urban development on nearly 80 acres of vacant or underutilized properties.”

Additionally, in 2020, the City conducted an additional independent GIS opportunity/constraint analysis and confirmed its findings by using SCAG’s Housing Element Parcel Tool (HELPR)⁷. For its own analysis, the City evaluated all properties that are not constrained by Connect SoCal that could potentially be used for accommodating its RHNA of 2,411. For SCAG’s HELPR tool, the City utilized a variety of preset filters to evaluate the properties located outside of Connect SoCal’s constraint areas and all properties outside environmentally sensitive areas.

Of the City’s over 20,402 parcels within its jurisdictional boundary, there are only 4,227 parcels (21% of all parcels) that qualify under these filters. However, a deeper analysis must be done on these parcels to determine their feasibility for accommodating RHNA as the majority of these parcels are already developed with residential uses. It is also important to note that AB 1397 significantly limits which parcels would be considered eligible for housing element sites inventory purposes. HCD has put together a Housing Element Site Inventory Guidebook⁸ which outlines sites that qualify as “developable sites” to accommodate RHNA within the housing element planning period.

For example, HCD’s Guidebook states that if a jurisdiction must rely on non-vacant sites to accommodate 50 percent or more of its RHNA, which the City of Yorba Linda will need to do, the jurisdiction must provide findings and substantial evidence that these non-vacant sites will be used in order to comply with AB 1397, which requires that jurisdictions demonstrate realistic development capacity of non-vacant sites to be used for purposes of RHNA. This documentation includes, but is not limited to:

- The lease for the existing use expires early within the planning period;
- The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses;

⁷ See <https://maps.scag.ca.gov/helpr/>

⁸ HCD’s Housing Element Site Inventory Guidebook

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- There is a development agreement that exists to develop the site within the planning period;
- The entity operating the existing use has agreed to move to another locality early enough within the planning period to allow residential development within the planning period;
- The property owner provides a letter stating its intention to develop the property with residences during the planning period.

The City of Yorba Linda has taken all non-vacant sites through a rigorous test to determine whether these sites would be eligible for housing element purposes in order to demonstrate that it has considered “the opportunities **and** constraints to development of additional housing in each member jurisdiction.”⁹

Within the non-constrained areas, over 95% of the parcels are already developed with existing single-family homes. While the City could potentially upzone the density of these single-family neighborhoods, due to AB 1397, it is highly unlikely that HCD would allow the City to count these parcels as having “realistic development capacity” to accommodate its RHNA without having evidence from multiple adjacent property owners of their intent or desire to subdivide and/or sell their properties.

Additionally, regarding accessory dwelling units (ADUs), HCD has made it very clear that they will only allow jurisdictions to “use the trends in ADU construction since January 2018 to estimate new production” in counting towards meeting RHNA requirements. The City of Yorba Linda historically has seen no more than 7 ADUs constructed annually since 2018. Therefore, at best the City would be able to count 56 ADUs towards meeting its 2,411 RHNA allocation.

The City has no vacant parcels that would qualify as eligible housing element sites. SCAG’s HELPR tool verifies the accuracy of this opportunity/constraint.

SCAG’s HELPR tool confirms that there are 27 publicly-owned parcels in the non-constrained portions of the City. The City has analyzed these properties and has determined the following:

- Based on conversations with the Yorba Linda-Placentia Unified School District, there are no plans or interest from the school district to sell or redevelop any of their properties for potential housing.
- The US Postal Service has no interest in relocating or redeveloping its site for housing purposes.

⁹ Government Code Section 65584.04(e)(2)

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- The Yorba Linda Water District has no plans to sell or redevelop any of its existing property for potential housing.
- The vacant City-owned parcel located at the southeast intersection of Imperial Highway/Lemon Dr has already been entitled as an In-n-Out restaurant is slated to begin construction this year.

SCAG's HELPR tool confirms that there are 22 parcels that could be further evaluated that are potential redevelopment opportunities, where the improved assessed value to land assessed value is less than 1. City staff has analyzed each of these sites and has determined that none of the properties would qualify at this time as meeting the requirements outlined in HCD's Guidebook for the use of non-vacant properties in accommodating RHNA. Specifically, the following properties were analyzed:

- Medical complex at southwest corner of Bastanchury/Prospect – This approximately 3-acre parcel is already developed with an existing medical complex. This facility is near 100% occupancy and the property owner has not expressed any interest in redeveloping the site. There is some potential for housing development on a less than one acre portion of the property that is currently being used as a strawberry field and fruit stand.
- Commercial Center at Imperial Highway/Bastanchury/Valley View – This 2-acre site contains an existing retail center with 100% occupancy. The property owner has already submitted an application to add a gas station to the shopping center; therefore, it is highly unlikely that this would be considered as an eligible site.
- There are two commercially-zoned properties located at the northwest corner of Yorba Linda Blvd/Rose Dr. Each parcel is just under 0.5 acres, which would necessitate a much higher level of scrutiny to demonstrate realistic development capacity to HCD in order to count these parcels as eligible sites. Furthermore, the properties are currently occupied with commercial tenants and would necessitate intent to sell or redevelop to be considered as an eligible site.
- There are several parcels identified at the northwest and southwest corners of Yorba Linda/Richfield.
 - o The southwest corner is a 0.43-acre parcel that consists of a gas station and auto repair facility. Due to its size, it would necessitate a much higher level of scrutiny to demonstrate realistic development capacity to HCD in order to count these parcels as eligible sites and is highly unlikely to be considered eligible.
 - o The northwest corner consists of two parcels with a combined total of just over one acre. Both parcels contain an existing retail use and are long-standing businesses in the City. These sites could potentially be considered for housing development, but the City is not aware of any intent to redevelop or sell from the property owners. It is also important to note that these two parcels are under

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separate ownership, which makes it even more challenging to demonstrate realistic development capacity.

- CVS/Post Office (Imperial Highway/Eureka) – This 4.77-acre site includes a US Post Office and it is highly unlikely that the Federal Government would be willing to allow for residential development on this site.
- Packing House Shopping Center (SWC of Imperial Highway/Yorba Linda) – This 6.88-acre parcel contains an existing shopping center. The property owner recently was entitled for significant improvements to the commercial center and is preparing plans to submit for additional changes to the retail center. It is highly unlikely that this property would qualify as an eligible housing site.
- Yorba Station Shopping Center (NWC of Imperial Highway/Yorba Linda) – This 7.66-acre parcel contains an existing shopping center. The City has approached this property owner multiple times about potential redevelopment of the property; however, the owner has remained uninterested. While this could potentially be an eligible site, it would require the property owner to provide realistic development capacity over the RHNA planning period and would require the City to upzone the property to over 300 units per acre, which would be completely infeasible, and would likely not qualify for AB 1397 purposes.
- Yorba Canyon Center – SCAG’s HELPR tool identifies a portion of this shopping center as a potential redevelopment opportunity; however, this shopping center recently went through a major façade improvement renovation. Given the recent significant investment made to the commercial center, it is highly unlikely that the property owner would be interested in redevelopment at this time. As such, it is highly unlikely that HCD would consider this an eligible site.
- Firestone Village Shopping Center (Yorba Linda/Lakeview/Imperial Highway) – This 1.12-acre commercial shopping center is near 100% occupancy. While this property could be considered for potential redevelopment opportunities, it is highly unlikely that the City would be able to meet the realistic development capacity requirements from HCD to qualify as an eligible site.
- There are several potential sites in Savi Ranch (the City’s primary business park and employment center) that could potentially be rezoned to allow for residential development.
 - One parcel could potentially qualify as a hotel conversion and could potentially accommodate approximately 120 housing units.
 - One 1.78-acre parcel is located in a row of big box commercial establishments. It is currently occupied by West Coast Living and is located in between Dick’s Sporting Goods and Bed Bath & Beyond. It is highly unlikely that this parcel alone could be redeveloped for residential purposes. As such, it is highly unlikely that HCD would consider this site as having realistic development capacity under AB 1397.

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- o One 0.81-acre parcel is currently occupied by a recently established KFC restaurant with a drive-thru. The tenant recent went through significant expense renovating this building; therefore, it is highly unlikely that this site would be considered eligible by HCD.
- o One 1.83-acre parcel is currently occupied by a consignment center. This site could potentially be considered for housing development; however, given its proximity within the shopping center, it is not likely that this site would be considered as an eligible site with realistic development capacity without combining with other adjacent properties. Furthermore, it is highly unlikely that the other adjacent properties would be considered eligible for redevelopment purposes due to the reasons described above.

In summary, the City has identified a few potential opportunities for redevelopment on a small portion of the commercial sites located in non-constrained areas. This would require further conversation with the existing property owners and commitment from them in order to demonstrate to HCD that there is realistic development capacity for these parcels. Furthermore, it would be impossible to plan for anywhere close to 2,411 new housing units using this strategy.

Risk of Wildfires

SCAG Staff Report: SCAG mentions the City's 2008 Freeway Complex Fire and simply states that wildfire risk was previously taken into consideration for determining the City's "projected need" and that the City does not provide evidence that any of these constraints have changed.

Yorba Linda Response: SCAG staff fails to make any mention of the Blue Ridge Fire, which broke out on October 26, 2020, and burned nearly 14,000 acres, resulted in the evacuation of 4,000 properties and 10,000 people, completely destroyed one home, and damaged 10 other structures. Furthermore, SCAG staff fails to mention the history of wildfires in the City of Yorba Linda as outlined in its appeal. By doing so, SCAG fails to demonstrate the significant constraint and risk that wildfire serves within the City of Yorba Linda.

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Lastly, the City is informed and believes that a serious violation of procedural due process, as decided by the California Supreme Court, may be occurring during this appeal process. As elucidated by the State's high court in *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731:

When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. [citation] A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. [citations] Violation of this due process guarantee can be demonstrated not only by proof of actual bias, but also by showing a situation "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." [citation]

(*Id.*, at p. 737.) Significantly, state law (applying both federal and state administrative procedures act provisions) *requires* that an employee or agent (such as a contract attorney) engaged in the performance of investigative or prosecuting functions for an agency's staff in a case *may not*, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review body (such as an administrative appeal board). (*Id.*, at pp. 737-741.)

Here, it is the City's understanding on information and belief that SCAG's contract agency counsel not only engaged in the prosecuting functions relating to the RHNA process by advising SCAG staff, but is concurrently advising the RHNA appeals board during the administrative appeals. This appears to be in contradiction to California Supreme Court precedent.

The City of Yorba Linda appreciates the Board's consideration of this information in its determination of the City's appeal.

Sincerely,



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City Attorney

TOL:dl

cc: Yorba Linda City Council
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SCAG RHNA Appeals Board