



1-1-2009

Regional Housing Needs Assessment and Boundary Changes: Responsibility Comes With the Territory

Kevin C. Menes

Pacific McGeorge School of Law

Follow this and additional works at: <http://digitalcommons.mcgeorge.edu/greensheet>

Recommended Citation

40 McGeorge L. Rev. 386

This Article is brought to you for free and open access by the Law Review at Pacific McGeorge Scholarly Commons. It has been accepted for inclusion in Greensheets by an authorized administrator of Pacific McGeorge Scholarly Commons. For more information, please contact msharum@pacific.edu.

Regional Housing Needs Assessment and Boundary Changes: Responsibility Comes With the Territory

Kevin C. Menes

Code Section Affected

Government Code § 65584.07 (amended).
AB 242 (Blakeslee); 2008 STAT. Ch. 11.

I. INTRODUCTION

The California Legislature has declared that the “availability of housing is of vital statewide importance” and is “a priority of the highest order.”¹ This lofty commitment is grounded in the recognition that state and local governments have the responsibility to provide adequate housing for Californians of all economic backgrounds.² The Legislature’s goals are qualified by the expressed recognition that local government resources may not be sufficient to provide for all low-income housing needs.³ Nonetheless, affordable housing remains a primary local planning concern.⁴

In 2004, the Legislature enacted Chapter 696, which, among other things, put in place the current scheme under which cities and counties must assess and allocate responsibility for regional housing needs.⁵ This is known as the regional housing needs assessment (RHNA) process.⁶ In 2007 the Legislature added Government Code section 85584.07 (section 85584.07) to the RHNA scheme to guide the reallocation of responsibility for housing needs in the event of a territorial change, such as an annexation or new city incorporation.⁷ Most recently, the Legislature enacted Chapter 11, which encompasses a series of technical revisions to section 65584.07 as requested by the Department of Housing and Community Development (HCD).⁸ Specifically, Chapter 11 sets deadlines for transferring responsibility after a territorial change, specifies when such transfers become effective, and requires timely updating of the general plan to reflect a transfer.⁹

1. CAL. GOV'T CODE § 65580(a) (West 1997 & Supp. 2009).

2. *Id.* § 65580(d).

3. *Id.* § 65583(b)(2); *see also id.* § 65584(a)(2) (West Supp. 2009) (“[I]t is recognized . . . that future housing production may not equal the regional housing need established for planning purposes.”).

4. *See id.* § 65863.6 (West 1997) (requiring local planning agencies to consider the impact on the availability of affordable housing when enacting any new zoning ordinance).

5. *Id.* §§ 65584-65584.09 (West Supp. 2009).

6. *See id.* (describing generally the housing need assessment process).

7. *Id.* § 65584.07.

8. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 3 (Apr. 9, 2008).

9. *Id.*

II. LEGAL BACKGROUND

Existing law requires each city and county in California to adopt a general plan encompassing long-term policy goals for the physical development of the city or county.¹⁰ The general plan is considered the “charter for future development” of an area,¹¹ and must contain seven elements, including a housing element.¹² The housing element is the most detailed of the seven,¹³ and must be updated every five years in accordance with a staggered statutory schedule.¹⁴ Substantively, the housing element must identify the current and future housing needs of each economic segment, identify adequate sites with appropriate zoning to serve those needs, and ensure that land-use regulations engender housing development.¹⁵

Before a scheduled revision of the housing element, the substantive requirements are addressed through the RHNA process, by which each locality is assigned its fair share of responsibility for the regional housing need.¹⁶ First, the HCD works with the regional councils of governments (COGs) to determine the aggregate need in the region.¹⁷ The COG or HCD then allocates a fair share of the region’s need to each locality within the region.¹⁸ The COG, or HCD for regions without COGs, may also delegate this duty to a “subregion” to allocate fair shares among members of that subregion (thus, a city’s fair share may be allocated by the county instead of a COG or HCD).¹⁹ The methodology used to determine both the regional need and each locality’s fair share may vary between regions, but existing law specifies a number of factors that must be taken into consideration.²⁰

In 2007, the California Legislature enacted a bill establishing the process for transferring responsibility for the housing need between a city and county in the event of either a city’s annexation of county land or the incorporation of a new city.²¹ In such cases, the city and county can mutually agree on revisions to their respective RHNA allocations, or if no agreement is reached, either party may

10. CAL GOV’T CODE § 65300 (West 1997).

11. *Leshner Commc’ns, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 540, 802 P.2d 317, 329 (1990).

12. CAL. GOV’T CODE § 65302 (West 1997 & Supp. 2009) (requiring that all general plans include the following seven elements: land use, circulation, housing, conservation, open space, noise, and safety).

13. Ben Field, *Why Our Fair Share Housing Laws Fail*, 34 SANTA CLARA L. REV. 35, 38 (1993).

14. CAL. GOV’T CODE § 65588(e).

15. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 2 (Apr. 9, 2008).

16. CAL. GOV’T CODE §§ 65584-65584.09 (West Supp. 2009).

17. *Id.* § 65584(b).

18. *Id.*

19. *Id.* § 65584.03.

20. *Id.* § 65584 (West 1997) (listing these factors as market demand for housing, employment opportunities, availability of suitable sites and public facilities, commuting patterns, type and tenure of existing housing, loss of existing affordable housing, and housing needs of farm workers).

21. *Id.* § 65584.07(d).

request a revision by the entity that made the initial allocations.²² Either way, the aggregate housing need may not be reduced, nor may other jurisdictions' allocations be altered.²³ The entity that made the initial RHNA allocation must also make a revision determination within six months of a request, and must base its revision on the same methodology used in the initial allocation.²⁴

III. CHAPTER 11

Chapter 11 makes minor changes to the provisions in the California Planning and Zoning Law governing the transfer of regional housing needs between a county and city in the event of an annexation or incorporation.²⁵ Specifically, cities and counties must now submit their agreed upon RHNA transfer, or their request for a reevaluation of the existing allocation (when no agreement has been reached) to the HCD and/or the regional COGs within ninety days of an incorporation or annexation.²⁶ Chapter 11 also clarifies that RHNA transfers, which were executed after the HCD and/or COGs has made the final allocation, but before the date by which those cities and counties must update their general plan's housing element, must be included in the next statutorily-scheduled update.²⁷ Newly incorporated cities receiving RHNA transfers are now required to amend their housing element and identify sites where the transfer may be implemented within thirty months.²⁸ Cities receiving RHNA transfers as a result of an annexation of unincorporated land must update their housing elements and identify suitable sites within 180 days.²⁹ Mutually agreed-upon RHNA transfers are now effective immediately.³⁰

Chapter 11 clarifies that only those regional authorities (COGs) that were involved in the initial allocation of housing needs will be involved in the consideration of reevaluation requests.³¹ Also, Chapter 11 creates in the applicable regional authorities the power to grant a waiver of the ninety-day deadline for submission of agreed-upon transfers or transfer requests "if the waiver would be consistent with the objectives of housing element law."³²

22. *Id.* § 65584.07(c)(1), (d)(1).

23. *Id.* § 65584.07(c)(2), (d)(2)(A) (amended by Chapter 11).

24. *Id.*

25. *Id.* § 65584.07 (amended by Chapter 11).

26. *Id.* § 65584.07(c)(2), (d)(2)(A) (amended by Chapter 11).

27. *Id.* § 65584.07(b)(1) (amended by Chapter 11).

28. *Id.* § 65584.07(b)(2) (amended by Chapter 11).

29. *Id.* § 65584.07(b)(4) (amended by Chapter 11).

30. *Id.* § 65584.07(c)(2) (amended by Chapter 11).

31. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 3 (Apr. 9, 2008).

32. *Id.*; *see also* CAL. GOV'T CODE § 65584.07(c)(2), (d)(2)(A) (amended by Chapter 11) (listing provisions concerning the waiver).

Finally, a city or county requesting a reevaluation of RHNA by the COGs concerned must notify the HCD.³³

IV. ANALYSIS

A large part of the impetus for Chapter 11 was the HCD's concern over the 2007 law.³⁴ Specifically, it was not entirely clear that the process described in that law was to be the sole means of RHNA transfers, leaving open the possibility of ad hoc arrangements between jurisdictions. HCD was also concerned about the lack of clear deadlines for the revision of localities' housing elements.³⁵

The California Rural Legal Assistance Foundation (CRLAF) supported Chapter 11, and submitted to the author a list of proposed amendments that were in large part adopted.³⁶ Highlighting the problems with last year's bill—which did not clearly specify that its terms were to be the sole method of RHNA transfers—the CRLAF pointed out that since 2007, cities and counties in practice had simply “engaged in ad hoc transfers that were outside the procedure laid out by statute.”³⁷ According to the CRLAF, this resulted in at least one situation where both jurisdictions involved in an incorporation or annexation failed to meet the reallocated need.³⁸

The final step in the RHNA process, and perhaps the most important step, is revising the housing elements of the localities involved to reflect the change in their respective fair shares of responsibility for the housing need.³⁹ Without these revisions, the land-use planning decisions of these localities likely will not account for housing needs due to the fact that other interests may prevail.⁴⁰ As the CRLAF stated in a letter to Assemblymember Blakeslee, without timely revision

33. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 4 (Apr. 9, 2008).

34. See Letter from Jolena Voorhis, Deputy Dir. for Legislation, Dep't of Hous. and Cmty. Dev., to Members of Cal. State Senate (Apr. 10, 2008) (on file with the *McGeorge Law Review*) (“HCD had concerns over some of the provisions of AB 1019 and the author agreed to work these concerns out in clean-up legislation this year.”).

35. See Letter from Brian Augusta, Staff Att’y, Cal. Rural Legal Assistance Found., to Sam Blakeslee, Assembly Member, Cal. State Assembly (Mar. 5, 2008) [hereinafter CRLAF Letter] (on file with the *McGeorge Law Review*) (“[T]he statute does not expressly state that its terms are the sole procedure by which a city and county can affect [RHNA] transfer[s].”).

36. See *id.* (“Establish a clear deadline for this revision, by requiring to be accomplished within one year of the date of annexation or incorporation.”).

37. See *id.* (“1. Make clear that any city and county seeking to transfer its share of the RHNA as a result of an incorporation or annexation must adhere to the procedures in the law; 2. Make clear that both jurisdictions must revise their housing elements to reflect the change; and 3. Establish a clear deadline for this revision, by requiring to be accomplished within one year of the date of annexation or incorporation.”).

38. *Id.*

39. See CAL. GOV'T CODE § 65584.07(b)(1)-(4) (amended by Chapter 11) (setting deadlines for the revision of housing elements).

40. See *id.* § 65863.6 (West 1997) (requiring local planning agencies to consider the impact on the availability of affordable housing when enacting any new zoning ordinance, a practice which is the central function of local planning agencies).

of housing elements, the housing units purportedly transferred from one locality to another are “in essence lost.”⁴¹

V. CONCLUSION

Technical revisions like Chapter 11 continue to redefine how California implements its commitment to providing affordable housing.⁴² Cities and counties, as well as citizens in need of housing, will benefit from a more clearly defined RHNA transfer process. Delineating a timeline by which the transfers must be completed reemphasizes that city and county governments must make the housing need a priority. Though the annexation related provisions of the new law will probably prove more important than those pertaining to the rare case of a new city incorporation,⁴³ it makes sense to cover both with one enactment. Some may question the wisdom of enacting 2007’s Chapter 165 with its confusing language and incorrect cross-references,⁴⁴ but looking forward, Chapter 11 is an important small step toward California’s affordable housing goals.⁴⁵

41. CRLAF Letter, *supra* note 35.

42. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 3 (Apr. 9, 2008) (“This bill makes a number of minor changes to the laws relating to a RHNA transfer between a county and a city in the event of an annexation or incorporation.”).

43. See California Integrated Waste Management Board, New City Incorporations, <http://205.225.229.1/LGCentral/Reporting/NewCity/List.htm> (last visited Jan. 9, 2008) (on file with the *McGeorge Law Review*) (listing the 22 new city incorporations since January 1, 1990).

44. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 242, at 4 (Apr. 9, 2008) (noting that, according to it’s author’s office, AB 242 (enacted as Chapter 11) resulted from the author’s commitment to the Department of Housing and Community Development to “clean up” last year’s Chapter 165).

45. See generally *id.* (discussing the “minor changes” that Chapter 11 makes to existing law).