



LEGAL OVERVIEW

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RHNA SHARING WORKSHOP
SILICON VALLEY COMMUNITY FOUNDATION MEETING
WEDNESDAY, FEBRUARY 15, 2017

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RHNA SHARING IN CURRENT LAW

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- COUNTY TO CITIES I (G.C. 65584.07(a))
 - Between adoption of RHNA by ABAG and due date of housing element
 - Only from county to cities in county
 - Must transfer lower, moderate, and above moderate RHNA in same proportion (e.g., 5% reduction in each income level)
 - “Shall” be approved if meet conditions

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RHNA SHARING IN CURRENT LAW

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- COUNTY TO CITIES II (G.C. 65584.07(d))
 - Upon annexation
 - If a DA, transfer must be based on DA; units cannot have already been assigned to city
 - Mutually acceptable agreement must be accepted by ABAG and HCD
 - City must amend housing element within 180 days

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RHNA SHARING IN CURRENT LAW

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- COUNTY TO CITIES III - NAPA COUNTY PROVISION (G.C. 65584.6) (EXPIRED 6-30-07)
 - 15% of current lower income share for \$\$ but no more than 40% of lower income units actually built in the county
 - City receives no credit; must have certified housing element; must have sites for additional units; must build 20% of very low income RHNA
 - Detailed HCD review

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RHNA SHARING IN CURRENT LAW

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- SUBREGIONAL ENTITIES (G.C. 65584.03)
 - Can effectively transfer RHNA among cities and the county

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OTHER RHNA ALTERNATIVES

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- PRESERVATION AND CONVERSION (G.C. 65583.1(c))
 - Up to 25% of lower income RHNA
 - Must ID in housing element; enter into agreement between beginning of 'projection period' and 2 years after due date (1-14 to 1-17)
 - City must have constructed at least some lower income housing in previous housing element period

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FAIR HOUSING ISSUES

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- DISPARATE IMPACT (Fair Housing Act & FEHA)
 - Any action that increases, reinforces, or perpetuates segregated housing patterns
 - **May** be justified if **necessary** to achieve other legitimate goals; which could not be served by practice with less discriminatory effect

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FAIR HOUSING ISSUES

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- “AFFIRMATIVELY FURTHERING FAIR HOUSING”
 - Must take affirmative steps if receiving federal funds (CDBG and HOME)
 - Applicable to most communities over 50,000 population and “urban counties”
 - Goals are to: overcome patterns of segregation; foster inclusive communities; increase housing choice

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LIMITS ON FUND EXPENDITURES

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- IMPACT FEES BASED ON NEXUS STUDIES (COMMERCIAL AND RENTAL)
 - Must be used to mitigate impacts of the development (employees who need affordable housing)
 - Joint nexus studies looked at countywide impacts
 - Existing examples of regional impact fees

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LIMITS ON FUND EXPENDITURES

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- IN LIEU FEES AND FEES FROM DEVELOPMENT AGREEMENTS
 - Would depend on provisions in local ordinances and each development agreement
 - In general, could be more difficult to spend outside the city

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LIMITS ON FUND EXPENDITURES

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- HOUSING SUCCESSOR PROGRAM INCOME (H & S 34176.1(c)(2); SB341)
 - May be shared only among housing successors; max \$1M per year
 - Only for rental transit priority projects, supportive, farmworkers & special needs projects serving 60% median & below
 - Certified housing elements; not in area 50% very low income unless near transit

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LIMITS ON FUND EXPENDITURES

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- 'BOOMERANG' FUNDS (H & S 34191.30; AB2031)
 - ▣ Allows communities to bond their 'boomerang' funds
 - ▣ But – must be spent within the jurisdiction

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SOME OBSERVATIONS

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- Advocates very resistant to allowing cities to buy out of lower income obligations
- If bills pass, have provisions making them unworkable
- Usually trading must be done before element adoption
- Transferring city must have built affordable housing

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SOME OBSERVATIONS

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- Can't increase segregation or concentrate poverty
- Nexus fees may be easiest to transfer

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2004 Napa County RHNA Transfer

(1999-2006 Housing Element Planning Period)

PROBLEM: Napa County could not obtain certification of its Housing Element (2003)

- Insufficient housing sites (already accounted for 15% in cities (102 units in City of Napa), second units, known sites, potential sites, etc.)
- Constrained by voter initiatives
- County needed to transfer 1,058 units

UNIQUE TO NAPA: At that time, 15% of Napa County's RHNA allocation for very low and low income housing could be met in the cities (since expired)

- Only county in California
- "World-famous vineyards"
- Housing Trust Fund to assist affordable housing



Steps in the Napa County RHNA Transfer Process

Transfer Process Overview



1 Local review and signed agreements (MOUs)

2 ABAG and HCD approval and certification of three updated housing elements by HCD

Technical Analysis

Identify housing sites and future capacity

- Long-and short-term housing sites potential
- Scenarios for future development

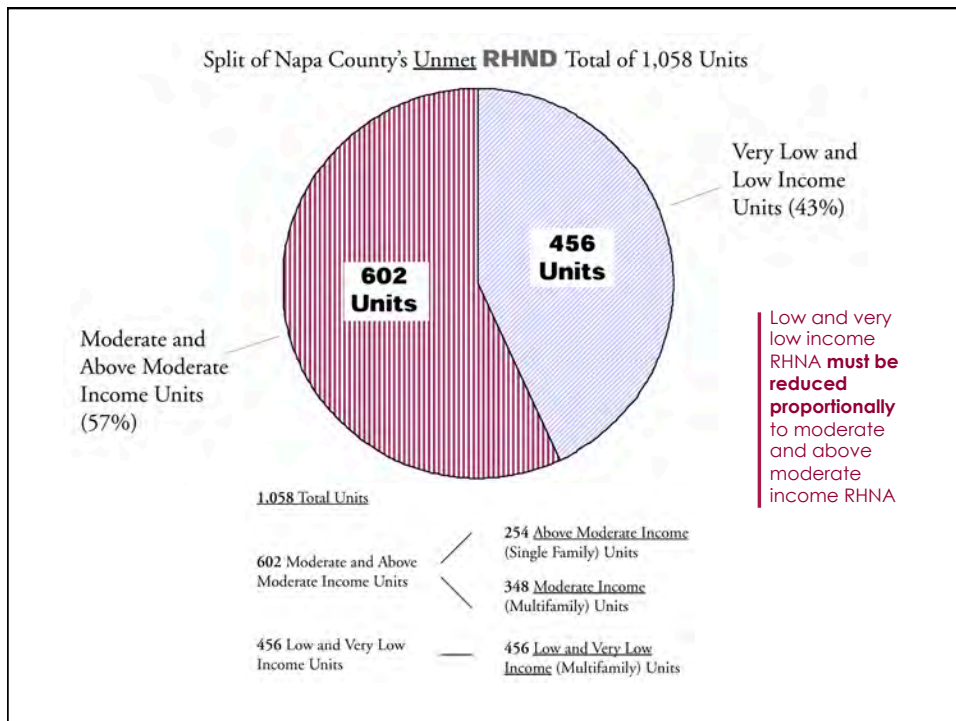
Establish affordability levels for sites (before default densities)

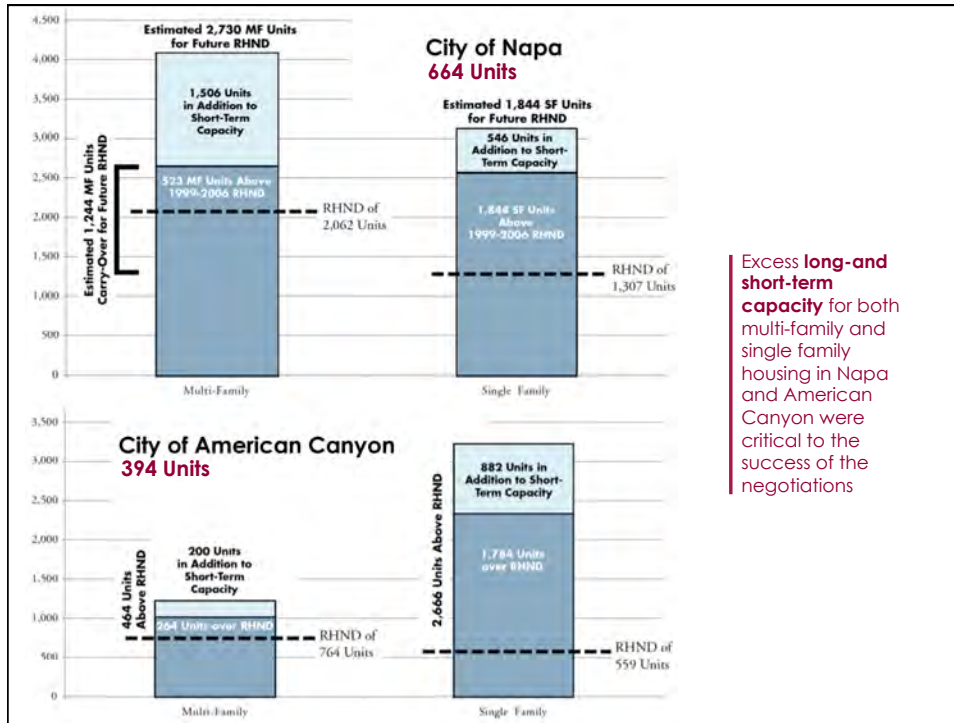
Support ABAG RHNA factors

- Commuting patterns, market demand for housing and employment opportunities
- Type and tenure of housing, suitable sites and public facilities
- Special needs housing (farmworker housing need, assisted housing)

Ensure a proportional transfer of the County's RHNA to the cities for very low and low income units (43%) and moderate and above moderate income units (57%)

- Affordability split of units by affordability levels
- Proportional split between Napa and American Canyon





Excess long-and short-term capacity for both multi-family and single family housing in Napa and American Canyon were critical to the success of the negotiations

Summary — Two Track Local Process

Local Track A: TECHNICAL/ LEGAL ANALYSIS by Staff

- Make the RHNA numbers work for all
- Achieve HCD/ABAG approval



Local Track B: NEGOTIATIONS by Decision-Makers

- Reach agreement to accept the County's remaining RHNA
- Reach agreement on the value of the RHNA transfer



End Results

- Local transfer agreement finalized
- Updated Housing Elements prepared and adopted
- Updated Housing Elements certified by HCD

Basics of the Local Transfer Agreement

Napa County

- 1,058 units transferred
- 456 very low/low
- 602 units moderate and above moderate

City of Napa (664 Units)

- Construct new parking garage on County land for employees and new retail, hotel, and office development in the area (shared the cost)
- Agreed to pay a certain amount per incremental unit that was permitted and built, above and beyond City of Napa's original RHNA for extra service costs
- First right of refusal on County-owned buildings, should they be put on the market for sale

Both Cities Received

- Limit on certain uses (retail, for example) in **Airport Industrial Area (AIA)**; mostly benefited Napa
- Gave both cities input into AIA land use decisions

City of American Canyon (394 Units)

- Extend Devlin Rd to take pressure off Hwy 29
- Allow certain properties to be annexed
- Agreed to pay a certain amount per incremental unit that was permitted and built, above and beyond City of American Canyon's original RHNA for extra service costs
- Support the creation of a By-Pass road through unincorporated Ag land to take pressure off Hwy 29

AB 3042

The Death and Life of Great California Bills

AB 3042 (2006)



- Allows payments for transfer of RHNA
- Must be consistent with regional growth plan
- Same region (e.g. ABAG)
- Public hearing

Support



- City of Lakewood
- Marin County

Oppose



Amendments

Original

- Allows payments for transfer of RHNA
- Must be consistent with regional growth plan
- Same region
- Must transfer all income levels
- Public hearing

Revised

- Cities must be close to each other (same county or same commute/10 miles)
- Must transfer all income levels
- Will not cause racial, ethnic, or economic segregation.
- One transfer per city per cycle
- No more than 30% of RHNA
- Sunset clause (2018)

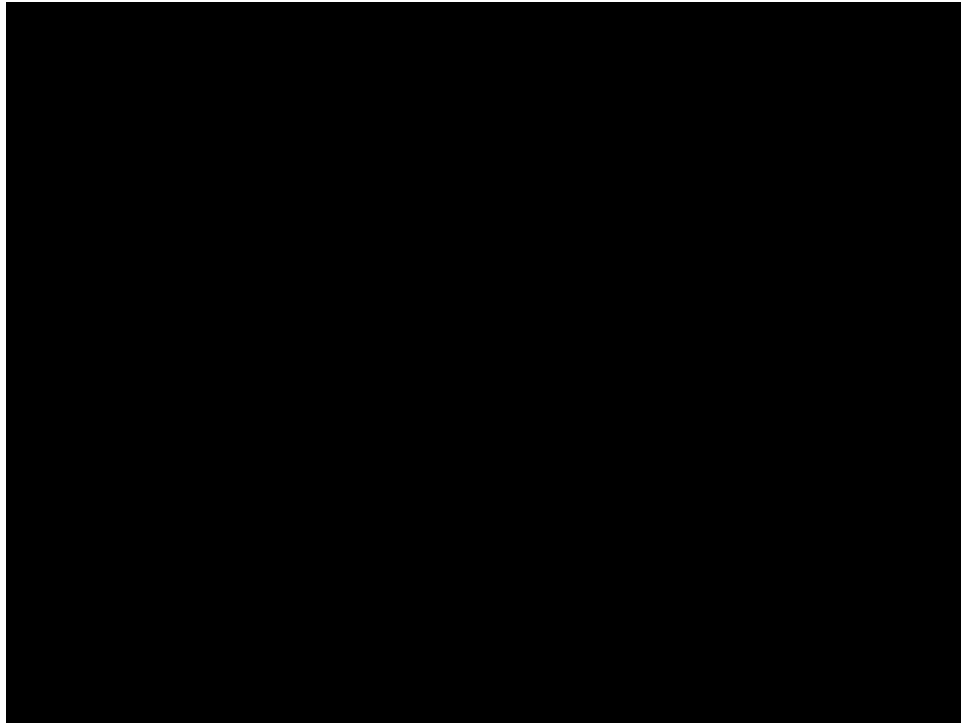
Support



- City of Lakewood
- Marin County

Oppose





Discussion Questions

- What are the pros and cons of reducing Housing Element obligations in exchange for financial contributions?
- What is possible under current law, now and during the pre-RHNA period?
- What are potential ways of changing the law?