Correspondence
Bd. 9/15/26, Item 14

Lopez, Maria [COB]

From: Dao, Marie <maried@cityofbrea.gov>
Sent: Wednesday, September 2, 2026 2:25 PM
To: COB_Response
Cc: Killebrew, Jason; Griffith, Kristin; Terence R. Boga
Subject: Public Comment Letter - Agenda Item No. 26-001455
Attachments: City of Brea Comment Letter - Agenda Item No. 26-001455.pdf

Good afternoon,

On behalf of Brea Assistant City Manager/Community Development Director, Jason Killebrew, I would like to submit the attached public comment letter regarding Agenda Item No. 26-001455 for the Orange County Board of Supervisors meeting scheduled for September 15, 2026.

If you have any questions, please do not hesitate to contact me at (714) 671-4461.

Thank you,

MARIE DAO

Senior Management Analyst
Community and Economic Development | Administration-Housing

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Brea Civic & Cultural Center | 1 Civic Center Circle | Brea, California 92821

Facility Operating Hours

September 2, 2026

Orange County Board of Supervisors and Orange County Housing Authority
Attn: Clerk of the Board
400 West Civic Center Drive, Sixth Floor
Santa Ana, CA 92702

Subject: September 15, 2026 Agenda Item #26-001455
Loan and Project-Based Vouchers for Mercury Senior Apartments

Dear Chairman Chaffee, Members of the Board of Supervisors, and Orange County Housing Authority,

This letter is written in addition to the previous letter dated August 5, 2026, regarding the loan and project-based vouchers for the Mercury Senior Apartments Project ("Mercury Project").

On August 19, 2025, the Brea City Council approved regulatory agreements with C&C Development Co., LLC ("C&C") for the development of the 85-unit Mercury Project, located at the southeast corner of Mercury Lane and Berry Street ("Project Site"). The Mercury Project serves as the off-site affordable housing obligation for the Greenbriar Residential Development Project.

On May 7, 2026, the City of Brea ("City") became aware that the County of Orange ("County") proposed transferring nine (9) units of its Regional Housing Needs Allocation ("RHNA") obligation to the City in exchange for financial assistance for the Mercury Project, consisting of a $1,375,000 loan from County Housing Successor Agency ("HSA") funds and eight (8) Project-Based Vouchers ("PBVs"). The proposed transfer would be memorialized in a Memorandum of Agreement ("MOA") between the City and County. The County's policy requiring a transfer of RHNA credit from the host city is set forth in Section 2.08 of the 2026 Supportive Housing Notice of Funding Availability ("2026 NOFA").

On May 20, 2026, City staff requested technical assistance from the California Department of Housing and Community Development ("HCD") regarding the appropriateness of the County's policy, as the City had concerns regarding the legal basis for the proposed RHNA transfer.

On August 24, 2026, HCD issued a letter (attached) to the County Board of Supervisors ("BOS") concluding that the County's practice of requiring cities to accept RHNA transfers as a condition of receiving County affordable housing funding does not comply with California Housing Element Law. Specifically, HCD found that the County's 2026 NOFA improperly requires RHNA transfers during the current planning period. Additionally, the proposed MOA for the 7^{th} RHNA cycle does not meet statutory requirements regarding proportionality, timing, or the County's authority to require a future transfer.

Considering HCD's determination and the timing of the Mercury Project, the City respectfully requests that the BOS and Orange County Housing Authority approve the use of the County's HSA funding and PBVs for the Mercury Project without requiring an MOA or RHNA transfer with the City.

The City appreciates the County's partnership and continued efforts to expand affordable housing opportunities in Brea. We look forward to working collaboratively with the County to advance the Mercury Project and provide much-needed affordable housing in our community.

Should you have any questions or an interest to discuss this matter further, please do not hesitate to contact Senior Management Analyst, Marie Dao, at (714) 671-4461 or at maried@cityofbrea.gov.

Sincerely,

Jason Killebrew
Assistant City Manager/Community Development Director

CC: Brea City Council
Kristin Griffith, City Manager, City of Brea
Terence Boga, City Attorney, City of Brea
Justin Kirk, Deputy Director, OC Development Services, County of Orange
Julia Bidwell, Director, OC Housing & Community Development, OC Community Resources, County of Orange
Dylan Wright, Director, OC Community Resources, County of Orange
Brandon Yung, Housing Policy Analyst, Housing and Community Development, State of California

Encl: California Department of Housing and Community Development Letter of Technical Assistance regarding Orange County RHNA Transfer

STATE OF CALIFORNIA – CALIFORNIA HOUSING AND HOMELESSNESS AGENCY GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

August 24, 2026

Board Chair Doug Chaffee; Vice Chair Katrina Foley; and Board Members Janet Nguyen, Vicente Sarmiento, and Donald Wagner
400 W. Civic Center Drive
Santa Ana, CA 92701

Dear Orange County Board of Supervisors:

RE: Orange County RHNA Transfer – Letter of Technical Assistance

The purpose of this letter is to assist Orange County (County)[1] with the provision of Housing Element Law governing Regional Housing Needs Allocation (RHNA) transfer between the County and cities within the County.[2] Specifically, the County is requiring RHNA transfers from the County to city governments as a condition of housing development projects receiving funding from the County's 2025 Supportive Housing Notice of Funding Availability (NOFA) conflicts with Housing Element Law.[3]

Background

HCD understands that the County's adopted NOFA policies[4] require RHNA transfers between the County and cities within the County as a condition of the funding for projects located within those cities. This letter identifies problems with both the adopted 2026 NOFA and the County's draft Memorandum of Agreement (MOA). The purpose of this transfer approach is to help the County meet its RHNA when it allocates funding for housing development projects outside the unincorporated County. For instance, the County's 2026 Supportive Housing NOFA states that "for development located in cities which are funded with County local revenue… the County will require acceptance of the transfer of a RHNA share from the County's allocation to the City's allocation based on the number of County restricted units." The city government, where an applicant housing development project is located must opt into this RHNA transfer as a condition

[1] Although Orange County and the Orange County Housing Authority are distinct entities, this letter uses the term "County" for both entities, interchangeably. According to the August 25, 2026, staff report for the Project funding item, the legal entity taking action is the Board of Supervisors and the Housing Authority.
[2] Gov. Code § 65584.07.
[3] Gov. Code § *65580 et seq.*
[4] The County's 2026 Supportive Housing NOFA is available here: https://www.ochcd.org/sites/hcd/files/2026-03/2026%20NOFA%2003.06.26.pdf.

of the project receiving County funds. The NOFA states: “The applicant is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development.”

Recently, an 85-unit, affordable housing development located at the Southeast corner of Berry Street and Mercury Lane in the City of Brea (the “Project”) applied for County funding. Subsequently, the City of Brea submitted a request for technical assistance to HCD regarding the RHNA transfer policy.

Analysis

Issue 1: RHNA transfers during the current planning period

Housing Element Law provides several scenarios whereby counties and cities can transfer RHNA, such as the incorporation of a new city [5] or a city annexing county land.[6] Outside of these situations, local governments are not authorized to transfer RHNA with other jurisdictions for the current planning period. The County’s NOFA policy 2.08 states:

> *“The County will require acceptance of the transfer of RHNA share from the County’s allocation to the City’s allocation or credits toward the County’s existing RHNA obligation if the development occurs during the Planning Period (following adoption of a Housing Element), based on total number of County assisted units.”*

The NOFA is in direct conflict with Housing Element Law as the County’s mandate requires RHNA transfers for County-funded projects located within incorporated cities and appears to do so for the same planning period during which a project takes place. The NOFA, as written, does not follow any of the scenarios authorized pursuant to Government Code Section 65584.07 and therefore must not be a basis to condition funding on RHNA transfers.

Issue 2: The County’s draft Memorandum of Agreement does not meet the statutory requirements for transfers to be applied for the next RHNA cycle (i.e. 7th Cycle)

HCD is aware that the County provided a draft Memorandum of Agreement (MOA) to the Project applicant. The MOA imposes requirements on the Project beyond purpose described in the NOFA and instead requires the City of Brea to accept RHNA transfers prior to the start of the 7th housing element cycle.[7] Specifically, the draft MOA states: “For the 2029-2037 Planning Period… upon SCAG’s adoption of a final RHNA, the

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[5] Gov. Code § 65584.07, subd. (c).
[6] Gov. Code § 65584.07, subd. (d).
[7] Local governments within the Southern California Association of Governments are currently within the “6th cycle” housing element planning period. The 6th cycle ends and the 7th cycle begins in 2029. For more information, see HCD’s RHNA webpage, available here: https://www.hcd.ca.gov/rhna.

County and City shall jointly apply to SCAG to transfer the nine (lower income) units from the County's RHNA allocation to the City."

The draft MOA misrepresents the County's authority to transfer RHNA. Government Code Section 65584.07 subdivision (a) specifies the only scenarios whereby a County may reduce its RHNA during the period between the adoption of a final RHNA and the start of a planning period (the period between SCAG's adoption of a final RHNA and the 7th cycle housing element due date). However, the draft MOA is unlawful and inadvisable for the following reasons:

a. **The County's RHNA transfer requirement attempt fails to meet the proportionality requirement for moderate and above moderate-income units.** Government Code Section 65584.07, subdivision (a)(3)(B) provides that the "County's share of lower income low-, very low, extremely low, and acutely low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced." This proportionality requirement serves to ensure that a county does not pursue transfers simply as a way to remove its obligation to plan for affordable housing.[8] The MOA, as written, does not obligate any identified number of moderate and above moderate-income units to be reduced in proportion to the nine County-assisted units that the County attempts to claim credit for. Furthermore, the Southern California Association of Governments (SCAG) may only approve the pre-7th cycle RHNA transfer if it determines that the proportionality requirement was met.[9] Consequently, the draft MOA violates Housing Element Law.

b. **RHNA transfers made pursuant to Government Code Section 65584.07, subdivision (a) may only occur between the time period after SCAG adopts a final RHNA and the due date of the housing element**. The MOA requires a developer seeking County funding to compel cities where the development takes place to obligate the respective city government to a future agreement to accept RHNA transfers (approximately two years in the future).[10] This approach conflicts with the subdivision's plain requirement that a county and city "agree to increase its share or their shares in an amount equivalent to the reduction"[11] during the

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[8] See AB 679 Assembly Committee on Housing and Community Development Analysis for April 27, 2011: "The proportionality requirement is consistent with the overall goal of housing element law to ensure that every jurisdiction plans for housing across all income levels and serves to ensure that a county does not pursue transfers simply as a way to remove its obligation to plan for affordable housing."
[9] Gov. Code, § 65863, subd. (a) states: "the council of governments… shall reduce the share of regional housing needs of a county if all of the following conditions are met."
[10] In Pacific Hills Corp. v. Duggan (1962, 199 Cal. App. 2d 806), the court held that a purported "agreement to agree" about a future conveyance of property was unenforceable due to its indefinite and vague terms. The court emphasized that the contract lacked mutuality and binding obligation.
[11] Gov. Code, § 65863, subd. (a)(1).

specified timeframe. Rather, the draft MOA provides the County and City the *option* (using the term "may") of applying to SCAG for a 7th cycle RHNA transfer for a non-specified unit count in the future. Therefore, the draft MOA does not constitute a valid agreement for the purpose of Government Code Section 65584.07, subdivision (a).

c. **The County is inappropriately using Orange County Housing Authority funding programs to pursue RHNA transfers.** The Project applicant is seeking funding from the Orange County Housing Authority (OCHA). Specifically, the applicant is seeking a $1.375M loan from OCHA acting in its capacity as a Housing Successor Agency, and Project Based Vouchers (PBV) from OCHA as a federally designated Public Housing Authority (PHA).[12] HCD notes that the City of Brea does not have its own PHA, and relies upon the Orange County Housing Authority for participation in the Section 8 assistance program.[13] OCHA, acting as a PHA, serves all cities and unincorporated areas of Orange County except for the cities of Anaheim, Garden Grove and Santa Ana; these cities each operate a separate Housing Choice Voucher Program through their local PHA.[14] It appears that OCHA is attempting to use its role as an administrator of federal housing programs – including for the City of Brea – to reduce its RHNA obligation. Additionally, the County should assess the permissibility of conditioning Redevelopment Successor Agency funding on RHNA transfers in light of state law governing Redevelopment Agencies.[15]

Affirmatively Furthering Fair Housing (AFFH) Law

AFFH Law[16] requires all California public agencies, including counties, "to administer their programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with [this] obligation...."[17] AFFH means:

> "…taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated

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[12] August 25, 2026, Orange County Housing Authority board meeting agenda item 29 staff report is available here: https://ocagendaext.oc.gov/meetingitemfiles/773dffb5-4344-4cdf-affb-c479fac5205c.
[13] City of Brea August 16, 2022, adopted Housing Element Table HE-48 Policy/Program 8.
[14] Orange County Housing Authority Section 8 September 18, 2023 application notice, available here: https://www.ochousing.org/Public%20Notices.
[15] HSC, § 33000 et seq.
[16] Gov. Code, § 8899.50.
[17] *Id.* at subds. (a)(2)(B), (b)(1), (2).

> and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[18]

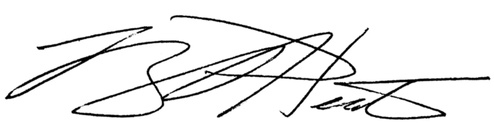
Moreover, the "duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development."[19] The County is advised to examine its practices and actions to AFFH, specifically the matter at hand — conditioning affordable housing funding on RHNA transfers considering its obligation to AFFH.

Conclusion

The County's 2026 NOFA Policy, as written, fails to meet the requirements for RHNA transfers established in Government Code Section 65584.07. Additionally, the subject MOA does not meet the requirements for a RHNA transfer pursuant to Government Code Section 65584.07, subdivision (a). HCD recognizes the importance of timely approval for the Project and encourages the County to process the funding application without delay while also not conditioning funding on RHNA transfers, either during the current planning period or the subsequent one.

HCD would also like to remind the County that HCD has enforcement authority over the Housing Element Law, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a county's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.[20] HCD will monitor the County's decision on the Project. If you have questions or need additional technical assistance, please contact Brandon Yung at brandon.yung@hcd.ca.gov.

Sincerely,



Brian Heaton
Section Chief, Land Use Policy
Housing Accountability Unit

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[18] *Id.* at subd. (a)(1).
[19] *Id.*
[20] Gov. Code § 65585, subd. (j).