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January 13, 2021

Kome Ajise
Executive Director
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

**Subject: Response to Comments Submitted by the Public Law Center
Regarding the City of Newport Beach Appeal**

Dear Mr. Ajise:

The purpose of this letter is to respond to the December 10, 2020, comment letter provided by the Public Law Center ("PLC") on the City of Newport Beach ("City") Appeal. The PLC comment letter attempts to discredit the City's appeal with various misrepresentations and inaccuracies. The City contends that it has in good faith exercised its right to appeal in compliance with the criteria outlined in Government Code Section 65584.04 and SCAG's published Sixth RHNA Cycle Appeals procedures based on the grounds outlined in its written appeal and as clarified below.

Methodology

Inconsistency with Connect SoCal

PLC states that the City's arguments regarding inconsistency with Connect SoCal are not valid reasons for an appeal pursuant to Government Code Section 65584.04(b). However, Government Code Section 65584.05(b)(2) clearly states that one of the eligible appeal criteria is that SCAG failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to Government Code Section 65584.04. Section 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 allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.*"

SCAG's Connect SoCal Plan is the adopted Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) referenced in Section 65584.04(m). Forecasts for households in Newport Beach through 2045 are estimated to be 41,800 according to the Connect SoCal Plan, which when amortized over Connect SoCal's forecast period (2016-2045), equates to approximately *100 households per year* of growth. The City's Draft RHNA Allocation is 4,834 units for the period of 2021 to 2029, which when amortized over the Housing Element eight-year planning period, equates to approximately *604 households per year* growth. This is a significant discrepancy and an exaggerated assumption that the City would exceed its total 2045 forecast of household growth within the first 6.5 years of the 2021-2029 Housing Element planning period, or at a pace of growth that would reach 2045 forecasted growth 17.5 years too early.

This City's Appeal letter legitimately identifies how the discrepancy between the Draft RHNA allocation and Connect SoCal violates Section 65584.04, which is considered valid criteria for filing the City's Appeal. The City contends that a justifiable and realistic estimate of future growth need should be consistent with realistic projections of household formation contained in SCAG's own projections provided in Connect SoCal Plan.

Consistency with Objectives of Section 65584(d)

PLC recommends that since HCD's letter reviewing SCAG's RHNA Allocation Methodology finds that the methodology furthers each of the objectives of Section 65584(d), SCAG should not grant the City's Appeal based on the appeal criteria of methodology. Despite HCD's finding, the City's Appeal remains valid criteria for an appeal pursuant to Section 65584.04(b).

Furthermore, the adopted RHNA Allocation methodology places heavy emphasis on a housing **goal** of directing new housing growth to job centers and transit rich areas as an attempt to reduce driving distance to work and reduce related greenhouse gas emissions. To address Affirmatively Furthering Fair Housing, the methodology then redistributes a significant share of the RHNA based on jobs and transit from Disadvantaged Communities (DACs) to other jurisdictions in Orange County. For example, the redistribution of units in Orange County from the five DACs accounts for 44,442 units, including 34,403 units from two of the most populous cities in the County: Anaheim (11,236 units) and Santa Ana (23,167 units). However, the methodology does not take into account the **reality** that many cities will be unable to plan for and accommodate the redistributed RHNA for reasons outside their control, such as development authority by other agencies, compliance with other State laws requiring environmental protection and planning for hazards, and the lack of vacant or under-utilized land. Due to these external constraints outside of the control of local agencies, land values for potential redevelopment sites are high and increases the development risks, significantly reducing the feasibility of development, let alone affordable housing projects.

This economic reality is supported by the fact that Santa Ana, despite its designation as a DAC, is indeed a desirable housing development destination due to the availability of jobs, transit, and availability of under-utilized land, and also due to the lack of land subject to environmental and hazard protections. As a result, development costs are lower, development is more feasible, and development projects are able to score better for scarce financial subsidies. Despite Santa Ana's Draft RHNA allocation of only 3,087 units for the Sixth Cycle Planning Period, they have over 10,000 new units approved or under review. This discrepancy strongly illustrates the existence of a flawed methodology focusing entirely on overarching goals, but fails to account for localized development realities that will inevitably result in the inability of local jurisdictions to realistically achieve overstated housing allocations, inability to meet overly inflated housing production goals for the region, and ultimately making achievement of local and regional housing goals developed with minimal consideration of local factors a virtual impossible task.

Specifically, the methodology will fail to achieve the following objectives of Government Code Section 65584(d):

- (1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low-income households.*

As discussed, the methodology fails to increase housing supply and mix of housing types and affordability in all cities and counties within the region in an equitable manner. The redistribution of units from DAC jurisdictions back to other jurisdictions in their respective counties results in an inequitable redistribution of housing throughout the region. Despite DAC jurisdictions having a higher percentage of lower-income residents, the need for new and suitable affordable housing remains, particularly when located near job centers and transit.

- (2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region's greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.*

The methodology places an overarching emphasis on the reduction of greenhouse emission goals by prioritizing RHNA Allocations in areas of jobs and transit; however, the methodology does not properly consider the protection of local environmental resources and the limitation imposed by local, state and federal designations protecting these resources. By disregarding the realities of environmental constraints, such as coastal resource protections, coastal hazards, airport hazards, and State protected open space areas, to the realistic development opportunities of housing, housing growth will be inappropriately shifted to areas where development at such densities will be

infeasible. Accounting for the realities of these environmental constraints and the reasonable equitable prioritizing of housing where it is actually feasible, SCAG's goal of establishing a methodology that achieves the State's goal of greenhouse gas reductions is insufficient and fails to meet its own objectives.

- (3) *Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.*
- (4) *Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.*
- (5) *Affirmatively furthering fair housing.*

The methodology includes two adjustments to improve the balance between number of low-wage jobs and number of housing units affordable to low-wage workers and address Affirmatively Furthering Fair Housing. The social equity adjustment increases or decreases a jurisdiction's proportion of affordable units depending on a jurisdiction's current income distribution compared to the county. This social equity adjustment is a minimum 150 percent and increases to 180 percent. This adjustment significantly exceeds the prior RHNA methodology social equity adjustment of 110 percent. The second adjustment is the relocation of residential need from DACs. The combination of these two adjustments goes beyond an "improved balance" and is considered by Newport Beach as an "over-correction" that is infeasible and relieves the obligation for all jurisdictions to adequately provide for affordable housing in an equitable manner.

Local Planning Factors and Information Affirmatively Furthering Fair Housing

Lands Preserved or Protected from Urban Development

PLC acknowledges that the City may appeal RHNA allocations based on local planning factors if SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b). PLC further acknowledges that the City has included reasons for an appeal based on the opportunities and constraints pursuant to Section 65584.04(b), including coastal zone limitations, sea level rise and storm inundation, noise impacts and building restrictions from the John Wayne Airport Environs Land Use Plan, protected natural lands, High Fire Severity Hazard Zones, and Seismic Hazard Zones. However, PLC misrepresents and attempts to downplay the significance of these real constraints by stating, "*these factors are extremely limited and leaves a vast area available for future development.*" This statement is demonstrably false when considering Newport Beach's local conditions. PLC further discusses reasons why SCAG should not consider fire risk as a basis for appeal and requests that SCAG should not grant the City's Appeal on this basis but does not discuss why the other constraints

cited should not be considered. The City's Appeal letter clearly demonstrates the significant constraint that high severity fire zones have on the production of housing. These considerations are further supported by state policies and regulations.

As clearly and extensively documented in the City's Appeal letter, over 63 percent of the City is located in the Coastal Zone and subject to the oversight of the California Coastal Commission. This singular factor alone dismisses their unsupported claim that the combination of all environmental factors is extremely limited, but in fact a majority of the City is demonstrably impacted. When accounting for all land subject to identified constraints, over 8,418 acres are identified as being impacted, and of the 29,361 legal parcels in the City, approximately 50 percent of these parcels are subject to one or more of these constraints. The City's RHNA allocation does not fairly or adequately consider these constraints. Therefore, the City has no ability to accommodate the additional unmet existing need component of the RHNA allocations. Furthermore, PLC claims that fire risk should not be considered since the Governor vetoed SB 182 which would have forced lower proportion of housing to jurisdictions in very high fire risk areas. That does not mean SCAG is not permitted to consider fire risks pursuant to Section 65584(d) as a realistic constraint in the appeal process.

Availability of Land Suitable for Urban Development

PLC incorrectly asserts that the City's justification for an appeal is based on the City's existing zoning ordinance and land use restrictions. This assertion is false; in fact, the City's Appeal recognizes that SCAG is not permitted to limit its considerations of suitable housing sites to a jurisdiction's existing zoning and land use policies, and the cities should consider other opportunities for development such as the availability of underutilized land or infill development with increased residential densities. However, the City's Appeal highlights that some jurisdictions do not have complete control of development and zoning and that SCAG should consider a city's ability to rezone or increase densities for residential development when subject to the jurisdiction of other state and federal agencies and their regulations, such as the California Coastal Commission. The Appeal highlights the Banning Ranch development project as a clear example of how the additional considerations subject to the Coastal Commission jurisdiction severely limits the City's independent ability to increase densities and rezone land to accommodate the future housing growth. The City spent four (4) years reviewing the application and approving the project for up to 1,375 residential units, only to have the California Coastal Commission spend another four (4) years of review and ultimately deny the project based on criteria outside of the jurisdictional control of the City.

The City's Appeal, based on Section 65584.04(e)(2)(b), includes justification citing the RHNA allocation does not take into account the development opportunities and constraints associated with severely limited vacant land, and the fact that the City will need to rely almost solely on existing non-vacant residential, commercial, and industrial lands that are already highly utilized. Despite the City's current and future efforts to rezone these properties, the reality is these property owners are not obligated or required by law to redevelop their properties. In many cases, the feasibility of

transitioning to residential use without significant financial subsidies make redevelopment infeasible. In many cases, the existing development on a site that is performing well leaves the property owner with no financial benefit or incentive to redevelop the property, not to mention the fact that existing long-term leases and restrictions imposed by lending institutions act as barriers for the development of property. Therefore, the City will face tremendous difficulty in providing substantial evidence and documentation to HCD that infill sites are realistic and can be redeveloped within the next 8-year planning period as required by State Housing Element law.

Conclusion

The City of Newport Beach is fully committed to accommodating the existing and future needs of its residents, and equitably contributing to the collective local, regional and State needs for housing. However, the Draft RHNA Allocation assigned to Newport Beach is significantly overstated, unrealistic and demonstrably fails to consider information previously submitted to SCAG by the City, results in an allocation that is inconsistent with Connect SoCal in violation of State law, and will fail to achieve the objectives of Government Code Section 65584(d). The City of Newport Beach believes its reasons for filing an appeal are legitimate, supported by evidence and properly filed in compliance with Government Code Section 65584.04.

The City of Newport Beach appreciates your consideration of the comments provided in this letter.

Respectfully Submitted,

*Brad Avery, Mayor
City of Newport Beach*

*cc: City Council Members, City of Newport Beach
Grace K. Leung, City Manager
Aaron C. Harp, City Attorney
Seimone Jurjis, Community Development Director
SCAG RHNA Appeal Board
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