

December 10, 2020

Mr. Kome Ajise, Executive Director  
Southern California Association of Governments (SCAG)  
900 Wilshire Boulevard, Suite 1700  
Los Angeles, California 90017

RE: Comment on the City of Costa Mesa's Appeal of Its Share of the Regional Housing Needs Assessment Allocation

Dear Director Ajise,

Public Law Center ("PLC") is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. Our services are provided across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Additionally, PLC provides legal assistance to community organizations. Further, the mission of our Housing and Homelessness Prevention Unit includes preserving and expanding affordable housing.

Thus, I write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Costa Mesa's ("the City") appeal of its allocated share of the regional housing need as part of the Southern California Association of Government's ("SCAG") Draft Regional Housing Needs Assessment ("RHNA") Allocation Plan.

Pursuant to Government Code Section 65584.05, a jurisdiction can only appeal its RHNA allocation based on failure to determine the allocation in accordance with the adopted methodology, failure to consider local planning factors and information affirmatively furthering fair housing ("AFFH"), or significant and unforeseen change in circumstances. Here, the City has appealed on all three bases.

### **Methodology**

An appeal based on methodology addresses SCAG's failure to determine the share of the regional housing need: (1) in accordance with the information described in Section 65584.04, (2) in accordance with the methodology established pursuant to Section 65584.04, and (3) in a manner that furthers, and does not undermine, the intent of the objectives listed in Section 65584(d).<sup>1</sup>

The City argues that SCAG's methodology fails to consider local household growth factors, uses growth projections that are inconsistent with the Connect SoCal Plan, fails to redistribute units from residual need at a regional level or in consideration of regional factors. The City also cites to the February 2020 Freddie Mac report and a September 2020 study by the Embarcadero Institute as evidence of errors in SCAG's RHNA methodology.

Although the City describes these arguments as an appeal based on methodology, the City is actually asking for SCAG to alter the Final RHNA Allocation Methodology adopted by

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<sup>1</sup> Cal. Gov. Code § 65584.05(b)(2).

the Regional Council. On January 13, 2020, the Department of Housing and Community Development (“HCD”) sent SCAG a letter reviewing SCAG’s Draft RHNA Methodology, specifically addressed the objectives stated in Section 65584(d), and found that the methodology furthers each one.<sup>2</sup> This finding demonstrates that HCD reviewed SCAG’s Methodology and found it consistent with relevant statutes. Additionally, a jurisdiction cannot appeal its RHNA allocation based on any criteria other than those listed in Section I.C. of the published 6<sup>th</sup> RHNA Cycle Appeals Procedures.<sup>3</sup> An unfair or inaccurate methodology is not included in that list and therefore, SCAG should not grant the City’s appeal based on these claims.

### **Local Planning Factors and Information Affirmatively Furthering Fair Housing**

A jurisdiction may appeal its RHNA allocation based on local planning factors and information affirmatively furthering fair housing if SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b).<sup>4</sup> The City has made its appeal based on (1) availability of land suitable for urban development or for conversion to residential use,<sup>5</sup> and (2) lands protected from urban development under existing federal or state programs.<sup>6</sup>

The City argues that SCAG failed to adequately address noise impacts and height restrictions from the John Wayne Airport Environs Land Use Plan (“AELUP”), protected land area, lack of vacant and underutilized land, and need for industrial and commercial land as local planning factors that limit its ability to accommodate growth.

However, an appeal based on a jurisdiction’s existing zoning ordinance and land use restrictions is not permitted.<sup>7</sup> The housing element looks toward the future and SCAG must consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.<sup>8</sup> The City is not responsible for obtaining land and developing its assigned RHNA allocation, but simply must identify areas for future housing opportunity. Therefore, SCAG should encourage the City to look at current developments’ future use and not grant the City’s appeal on this basis.

### **Changed Circumstances**

A jurisdiction may appeal its RHNA allocation if it has experienced a significant and unforeseen change in circumstances after April 30, 2019 that merits a revision of the information submitted pursuant to subdivision (b) of Section 65584.04.<sup>9</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>10</sup>

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<sup>2</sup> HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 2 (January 13, 2020).

<sup>3</sup> Cal. Gov. Code § 65584.05(b); 6<sup>th</sup> RHNA Cycle Appeals Procedures, I.D.1.

<sup>4</sup> Cal. Gov. Code § 65584.05(b)(1).

<sup>5</sup> Cal. Gov. Code § 65584.04(e)(2)(B).

<sup>6</sup> This includes land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to nonagricultural uses. Cal. Gov. Code § 65584.04(e)(2)(C).

<sup>7</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>8</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>9</sup> Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

<sup>10</sup> Cal. Gov. Code § 65584.04(b)(3).

Similar to many other jurisdictions, the City bases its appeal due to a significant and unforeseen change in circumstance on the COVID-19 Pandemic. The City claims that COVID-19 restrictions reduced the amount of tourism, hospitality, retail and restaurant employment, which has reduced the need for a substantial change in the jobs/housing balance, reduced employment travel time, and public transit use. We do not doubt that the City has experienced significant economic and employment changes due to the Pandemic. However, jurisdictions across the region and country are experiencing similar drops in tourism and employment. An appeal granted on this basis would have to be granted for every jurisdiction.

If SCAG approves a reduction of the units allocated to the City on this basis, it will have to reallocate those units throughout rest of the region to jurisdictions that are likely experiencing a similar, temporary drop in tourism and employment and changes in job/housing dynamics.<sup>11</sup> While the impact of the COVID-19 pandemic cannot be understated, the duration or lasting nature of those impacts cannot be predicted at this time and may not even last the term of the housing element cycle, as was the case with the previous economic downturn and the 5th Cycle. Furthermore, no source has proclaimed that the COVID-19 pandemic will continue to restrict the population's movement and employment in the same manner for the next eight (8) years. It would be unreasonable to reduce a jurisdiction's RHNA allocation based on current data when it is unlikely tourism and employment rates will be diminished for the entire 6<sup>th</sup> Cycle. Additionally, while the pandemic has changed circumstances for cities, it has also amplified and exacerbated the state's housing crisis. Therefore, SCAG should consider the impact of COVID-19 across the entire region and should not grant the City's appeal on this basis.

### **Conclusion**

Maintaining the City's share of the RHNA allocation as drafted is imperative to increase a diverse housing supply, promote development and socioeconomic equity, improve the relationship between jobs and housing, encourage affordable housing, and affirmatively further fair housing. To promote these objectives, SCAG should consider this information and deny the City's appeal.

Sincerely,

**THE PUBLIC LAW CENTER, BY:**



Alexis Mondares, Housing and Homelessness Prevention Unit, Legal Fellow  
Richard Walker, Housing and Homelessness Prevention Unit, Senior Staff Attorney

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<sup>11</sup> A determination that the pandemic constitutes a change in circumstances justifying a reduction in RHNA would be futile, as all jurisdictions would be eligible for this reduction and the reduced units from all of the jurisdictions would simply be redistributed back to the same jurisdictions resulting in substantially no net change in the allocation.