

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 Irvine'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 Irvine'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 in 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>

### **High Quality Transit Areas**

One of the City's methodology claims regarding High Quality Transit Areas ("HQTAs") is that SCAG should not have identified the three HQTAs to be included in the calculation of its RHNA allocation because the stops are conceptual and not included on the Connect SoCal project list.

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

However, the Department of Housing and Community Development (“HCD”) sent SCAG a letter reviewing SCAG’s Draft RHNA Methodology on January 13, 2020.<sup>2</sup> HCD specifically notes that a jurisdiction’s “existing need is calculated by assigning 50 percent of regional existing need based on a jurisdiction’s share of the region’s population within the high-quality transit areas (HQTAs) based on future 2045 HQTAs.”<sup>3</sup> Thus, although the HQTAs identified within the City are conceptual, considering a future HQTAs site is within the accepted RHNA Methodology. Further, HCD ultimately found that SCAG’s Draft RHNA Methodology furthers each of the five objectives stated in Section 65584(d).<sup>4</sup> This finding contradicts the City’s assertions and SCAG should not grant the City’s appeal on this basis.

### **Residual Allocation Redistribution Due to Disadvantaged Communities**

The City also argues that the California Tax Credit Allocation Committee (“TCAC”)/Department of Housing and Community Development (“HCD”) Opportunity Maps and corresponding Opportunity Index scores should not have been used to identify disadvantaged communities (“DACs”) for RHNA calculations. Because this data was used and other jurisdictions were given DAC exemptions, the City believes it was allocated an unjustly high RHNA allocation.

Although the City describes this argument as an appeal based on a failure to determine the allocation in accordance with the adopted methodology, the City is actually asking for SCAG to alter the Final RHNA Allocation Methodology. 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>5</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>6</sup> Using an alternative data source in the methodology is not included in that list and since the Final RHNA Allocation Methodology was already approved by HCD and adopted by the Regional Council, an appeal seeking to alter that methodology is inappropriate. 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>7</sup> The City made their appeal based on the following factors:

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

<sup>3</sup> HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 1 (January 13, 2020) (emphasis added).

<sup>4</sup> HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 2 (January 13, 2020).

<sup>5</sup> HCD Letter to SCAG Regarding Review of Draft Regional Housing Need Allocation (RHNA) Methodology, 2 (January 13, 2020).

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

<sup>7</sup> Cal. Gov. Code § 65584.05(b)(1).

- Existing and projected jobs and housing relationship.<sup>8</sup>
- The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:
  - Lack of capacity for sewer or water service;<sup>9</sup>
  - The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities;<sup>10</sup>
  - Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis;<sup>11</sup> and
  - County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area and land within an unincorporated area 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 its conversion to nonagricultural uses.<sup>12</sup>
- The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.<sup>13</sup>
- The rate of overcrowding.<sup>14</sup>
- The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.<sup>15</sup>
- The housing needs of individuals and families experiencing homelessness.<sup>16</sup>
- The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of analysis.<sup>17</sup>

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<sup>8</sup> Cal. Gov. Code § 65584.04(e)(1).

<sup>9</sup> Due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period. Cal. Gov. Code § 65584.04(e)(2)(A).

<sup>10</sup> Cal. Gov. Code § 65584.04(e)(2)(B).

<sup>11</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>12</sup> Cal. Gov. Code § 65584.04(e)(2)(D).

<sup>13</sup> Cal. Gov. Code § 65584.04(e)(3).

<sup>14</sup> Cal. Gov. Code § 65584.04(e)(7).

<sup>15</sup> Cal. Gov. Code § 65584.04(e)(9).

<sup>16</sup> If a council of governments has surveyed each of its member jurisdictions pursuant to subdivision (b) on or before January 1, 2020, this paragraph shall apply only to the development of methodologies for the seventh and subsequent revisions of the housing element. Cal. Gov. Code § 65584.04(e)(10).

<sup>17</sup> Cal. Gov. Code § 65584.04(e)(11). This applies to loss of units during a state of emergency occurring since October 2013 and have not yet been rebuilt or replaced by the time of the development of the draft RHNA methodology, or November 7, 2019. SCAG, 6th RHNA Cycle Appeals Procedures, I.C.2.j.

- The region’s greenhouse gas emissions targets provided by the State Air Resource Board pursuant to Section 65080.<sup>18</sup>
- Information based upon the issues, strategies, and actions that are included, as available, in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the California Department of Housing and Community Development, and in housing elements adopted within SCAG’s jurisdiction.<sup>19</sup>

The City claims that SCAG failed to consider these factors and that they limit its potential development. The City explains that, to meet its RHNA allocation, it would have to rezone employment centers, consider parcels that contain new housing stock that will not be redeveloped in the near future, plan around environmental conservation and open space areas, consider soil contamination and methane gas emissions, and attempt to avoid fire risk. Further, the City contends that meeting its RHNA allocation would place a strain on the jurisdiction’s existing transportation infrastructure, risk overcrowding, and increase vehicle miles traveled and greenhouse gas emissions. The City also notes that the current General Plan and Open Space Element encourages the maintenance of agriculture in undeveloped areas until the time of development and in areas not available for development. Additionally, the City’s three universities are currently conducting distanced learning due to COVID-19 and housing necessary for their students is limited.

While these are all factors that present challenges for the City in finding adequate sites, an appeal based on a jurisdiction’s existing zoning ordinance and land use restrictions is not permitted.<sup>20</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>21</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>22</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>23</sup>

The City asks for a reduction of 2,500 units because of the effects of the COVID-19 pandemic. The City described the changed circumstances it has experienced as a result of the pandemic, including increased telecommuting, a rising unemployment rate, less airport employment, distanced learning for local universities, and public desire for housing with open

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<sup>18</sup> Cal. Gov. Code § 65584.04(e)(12).

<sup>19</sup> Cal. Gov. Code § 65584.04(b)(2); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.2.i.

<sup>20</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>21</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>22</sup> Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

<sup>23</sup> Cal. Gov. Code § 65584.04(b)(3).

space. Due to these changes, the City asks that SCAG reduce its RHNA allocation. We do not doubt that the City has experienced significant impacts due to the Pandemic. However, an appeal granted on this basis would have to be granted for every jurisdiction.

SCAG should consider that jurisdictions across the region and country are experiencing similar drops in tourism and employment and shifts in housing/job relationships. 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 shifts in commuting dynamics.<sup>24</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. 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.

### **Regional Determination of 1.34 Million Units Violates State Law and is Inconsistent with Sustainable Communities Strategy**

The City argues that HCD's assignment of 1.34 million units to the region violated State law and will result in inconsistency with Sustainable Communities Strategy and Connect SoCal. However, appeals based on such claims are not permitted by Government Code Section 65584.05(b) or SCAG's published 6<sup>th</sup> RHNA Cycle Appeals Procedures. Additionally, SCAG has already challenged its 1.34 million-unit allocation and HCD denied this challenge. Therefore, based on relevant statutes and HCD's response to SCAG's letter, SCAG should disregard the City's appeal on this basis as SCAG has no authority to alter the regional allocation from HCD.

### **Conclusion**

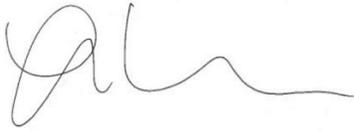
Maintaining the City's share of the RHNA allocation as drafted is imperative to increase a diverse housing supply, promote development and socioeconomic equity, improve the relationship between jobs and housing, encourage affordable housing, and affirmatively further fair housing. To promote these objectives,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

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<sup>24</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.

Sincerely,

**THE PUBLIC LAW CENTER, BY:**

A handwritten signature in black ink, appearing to be 'AM', with a long horizontal flourish extending to the right.

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