

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 Laguna Beach's Appeal of Its Share of the Regional Housing Needs Assessment Allocation

Dear Director Ajise,

The 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. We provide services across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Specifically, the mission of our Housing and Homelessness Prevention Unit includes preserving and expanding affordable housing.

I write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Laguna Beach'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 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).¹

The City argues that SCAG underestimated the housing need in the region's disadvantaged communities because certain jurisdictions underreported their existing housing needs to yield a lower RHNA allocation. The City claims that the alleged underreporting resulted in increased RHNA allocations for other jurisdictions. However, the City does not specify which jurisdictions underreported and does not provide evidence to support this claim.²

¹ Cal. Gov. Code § 65584.05(b)(2).

² Appeals are required to be based on comparable data available for all jurisdictions and the accepted planning methodology, be supported by adequate documentation, and include a statement as to why the revision is necessary to further the intent of the objectives listed in Section 65584(d). Cal. Gov. Code § 65584.05.

The City also argues that HCD overestimated the State's need when it allocated 1.34 million units to SCAG. The City compares SCAG's RHNA allocation with estimates from a recently published Freddie Mac report and asserts that an accurate estimate would result in an allocation of only 153 housing units to Laguna Beach.

Although the City characterized this argument as HCD's failure to determine the share of the regional housing need in a manner that furthers, and does not undermine, the intent of the objectives listed in Government Code Section 65584(d), the City is actually asking that SCAG adjust HCD's determination of the region's overall RHNA allocation. This argument is not based on a reason enumerated in Government Code Section 65584.05(b)(2), nor is it permitted by Section 65584.05(b), or SCAG's published 6th RHNA Cycle Appeals Procedures and SCAG has no authority to alter the regional allocation from HCD. Therefore, based on relevant statutes, its own guidance, and a lack of evidence, SCAG should not grant the City's appeal on these bases.

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).³ The City has made its appeal based on (1) availability of land suitable for urban development or for conversion to residential use,⁴ (2) lands protected from urban development under existing federal or state programs,⁵ and (3) high housing cost burdens.⁶

Constraints to Development

The City argues that its limitations to development such as steep hillside terrain, narrow vehicle/emergency access roads, land protected by federal and State programs, and unbuildable and/or land-locked vacant parcels reduce the amount of buildable land. The City also claims that most of its buildable land is either already developed or inaccessible.

However, the City uses these factors to disguise what is actually an appeal based on a jurisdiction's existing zoning ordinance and land use restrictions, which is not permitted.⁷ 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.⁸ 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.

³ Cal. Gov. Code § 65584.05(b)(1).

⁴ Cal. Gov. Code § 65584.04(e)(2)(B).

⁵ 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).

⁶ Cal. Gov. Code § 65584.04(e)(6); Cal. Gov. Code § 65584.04(e)(7).

⁷ Cal. Gov. Code Section 65584.04(e)(2)(B).

⁸ Cal. Gov. Code Section 65584.04(e)(2)(B).

High Housing Cost Burden

The City argues that constructing affordable housing is especially difficult because of its high land values and expensive construction costs resulting from the terrain and fire risk. However, the City misinterprets the meaning of this local factor. The “high housing cost burden” category listed in SCAG’s 6th RHNA Cycle Appeals Procedures references the percentage of existing households at each of the income levels listed in Section 65584(e) that are paying more than 30 percent and more than 50 percent of their income in rent, not the actual cost of constructing units.⁹

Additionally, the City is not responsible for actually developing the units assigned to it. The City is only required to create opportunities to develop a diverse housing stock, and then allow the private market to confront high land values and expensive construction. Thus, the City should be encouraged to fulfill its obligation to consider policies that create development opportunities for all income levels. Due to this misinterpretation and the City’s obligations to zone, not build, SCAG should not consider this factor.

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 65584.04.¹⁰ Only the jurisdiction where the change occurred may appeal its RHNA on this basis.¹¹

In its appeal based on both local planning factors and changed circumstances, the City asserts that its CalFire designation as a “High Fire Hazard Severity Zone” should be a justification for a reduced RHNA allocation. However, a jurisdiction may not appeal its RHNA allocation for a reason other than those listed in Government Code Section 65584.05(b) or Section I.C. of SCAG’s published 6th RHNA Cycle Appeals Procedures.¹² Additionally, on August 31, 2020, the California Legislature passed SB 182 to amend Government Code Section 65584.04(e).¹³ SB 182 would have required SCAG to take into account the amount of land within a jurisdiction’s very high fire risk area and allocate a lower proportion of housing to a jurisdiction if it is likely that the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites to meet its housing need allocation. However, the Governor vetoed SB 182 on September 30, 2020. In accordance with the statutorily permitted bases of appeal and this veto, SCAG should not consider a very high fire risk as a basis for appeal 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

⁹ Cal. Gov. Code § 65584.04(e)(6).

¹⁰ Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

¹¹ Cal. Gov. Code § 65584.04(b)(3).

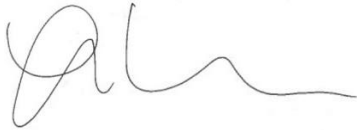
¹² Cal. Gov. Code § 65584.05(b); 6th RHNA Cycle Appeals Procedures, I.D.1.

¹³ SB-182, 2020 Leg., 2019-2020 Reg. Sess. (Cal. 2019) (vetoed).

fair housing. To promote these objectives, SCAG should consider this information and deny the City's appeal.

Sincerely,

THE PUBLIC LAW CENTER, BY:

A handwritten signature in black ink, appearing to be 'AM', written in a cursive style.

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