

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 Mission Viejo'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 Mission Viejo'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"), and significant and unforeseen change in circumstances. Here, the City has appealed based on application of methodology and changed circumstances.

### **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 seeks to appeal "the starting point of SCAG's adopted RHNA allocation methodology – the likely defective 1.34 million housing units of regional housing need as determined by State [Department of Housing and Community Development]" ("HCD") and argues that an erroneous starting point resulted in an incorrect application of SCAG's methodology.<sup>2</sup> The City asks that SCAG demand a revision of the 1.34 million units assigned to the region and adapt SCAG's RHNA Allocation Methodology and RHNA Allocation Calculator accordingly. The City attempts to bolster this appeal with data from a February 2020 Freddie

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

<sup>2</sup> Mission Viejo RHNA Appeal Letter, Attachment A, 3-6 (October 26, 2020).

Mac report and the Embarcadero Institute, which provide an alternate amount of housing needed and a list of errors HCD allegedly made when calculating SCAG's RHNA allocation.

However, the City's appeal is not based on SCAG's failure to determine the share of the regional housing need, but is a critique of the region's overall RHNA allocation as determined by HCD. Such an appeal is not within the scope of a methodology appeal under Government Code Section 65584.05(b)(2), nor is it permitted by Government Code Section 65584.05(b) or SCAG's published 6<sup>th</sup> RHNA Cycle Appeals Procedures. Furthermore, in response to SCAG's objection of its 1.34 million assigned units in September 2019, HCD elected to maintain SCAG's RHNA allocation after engaging with each of the points of objection that SCAG raised. Therefore, based on relevant statutes and HCD's response to SCAG's letter, SCAG should not grant the City's appeal on this basis and does not even have the authority to alter the regional allocation issued by HCD.

### **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>3</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>4</sup>

The City's changed circumstances appeal reviews California's pre-pandemic economy, the 2020 Regional Transportation Plan/Sustainable Communities Strategy, and growth forecasts that informed the assignment of the region's 1.34 million unit allocation. The City then overviews the COVID-19 pandemic's effect on state unemployment rates and projections of rising numbers of residential building permits before making another broad claim that the allocation of the region's 1.34 million units is flawed.

Here, the City fails to articulate how the jurisdiction has specifically been affected by changed circumstances, does not provide adequate documentation of such an effect, and does not provide a statement as to why such an effect should result in a revision that is necessary to further the intent of the objectives listed in Government Code Section 65584(d).<sup>5</sup> Without such information, SCAG should not consider this argument and deny the City's appeal on this basis.

### **HCD's Violation of Housing Law in Determining SCAG's RHNA Allocation**

The City rearticulates its opposition of the 1.34 million-unit RHNA allocation SCAG has received and characterizes this challenge as an appeal based on methodology. The City claims HCD violated housing law when it failed to adhere to provisions in Government Code Section 65584.01 and 65584.01(a).

However, the City has already attempted to make this argument above. Again, an appeal based on such a claim is not within the scope of a methodology appeal under Government Code

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

<sup>4</sup> Cal. Gov. Code § 65584.04(b)(3).

<sup>5</sup> Appeals are required to be based on comparable data available for all jurisdictions and the accepted 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.

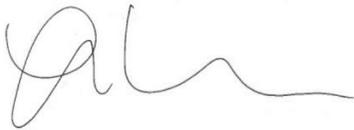
Section 65584.05(b)(2), nor is it permitted by Government Code Section 65584.05(b) or SCAG's published 6<sup>th</sup> RHNA Cycle Appeals Procedures. Additionally, SCAG has already challenged its 1.34 million-unit allocation and HCD denied this challenge. Therefore, based on relevant statutes and HCD's response to SCAG's letter, SCAG should disregard the City's appeal on this basis.

**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:**

A handwritten signature in black ink, appearing to read 'Alexis Mondares', 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