

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 Newport Beach'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.

I write on behalf of individuals in need of affordable housing in Orange County to comment on the City of Newport 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).<sup>1</sup>

The City claims that SCAG failed to consider growth projections consistent with the SoCal Connect Plan and failed to consider regional factors when redistributing residual need units. The City also contends that SCAG failed to further the intent of the objectives stated in Section 65584(d)(1) and Section 65584(d)(2) because it failed to look at considerations such as existing uses, development trends, market conditions, realistic development capacity, realistic capacity of non-vacant sites, and the substantial evidence requirement.<sup>2</sup>

---

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

<sup>2</sup> "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

However, the City does not argue that the application of the methodology was flawed. Instead, the City claims that the methodology itself fails and a remedy for these allegations would require SCAG to change its Final RHNA Allocation Methodology that was adopted by the Regional Council. Appeals on these bases are not permitted by Government Code Section 65584.04(b) or SCAG's published 6<sup>th</sup> RHNA Cycle Appeals procedures.<sup>3</sup> Furthermore, 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>4</sup> Thus, SCAG should not grant the City's appeal on this basis.

### **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>5</sup> The City has appealed based on the opportunities and constraints to development of additional housing in each member jurisdiction, including:

- 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; and<sup>6</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>7</sup>

### **Lands Preserved or Protected From Urban Development**

The City claims that SCAG failed to consider its Coastal Zone limitations, sea level rise and storm inundation, noise impacts and building restrictions from the John Wayne Airport Environs Land Use Plan ("AELUP"), protected natural lands, High Fire Severity Hazard Zones, and Seismic Hazard Zones when determining its RHNA allocation.

The areas affected by these factors are extremely limited and leaves a vast area available for future development. SCAG should consider the narrowness of these limitations when addressing these concerns. Regarding fire risk, a jurisdiction may not appeal its RHNA allocation for a reason other than those listed in Government Code Section 65584.05(b) or

---

low- and very low income households." Cal. Gov. Code Section 65584(d)(1); "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." Cal. Gov. Code Section 65584(d)(2).

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

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

<sup>5</sup> Cal. Gov. Code § 65584.05(b)(1).

<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 § 65584.04(e)(2)(B).

Section I.C. of SCAG's published 6<sup>th</sup> RHNA Cycle Appeals Procedures.<sup>8</sup> On August 31, 2020, the California Legislature passed SB 182 to amend Government Code Section 65584.04(e).<sup>9</sup> SB 182 would have required that SCAG 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 fire risk as a basis for appeal and should not grant the City's appeal on this basis.

### Availability of Land Suitable for Urban Development

The City argues that its limited vacant land is precluded from development; that existing, non-vacant residential, commercial/retail, and industrial lands are already developed and highly utilized; and that it faces special difficulty in accommodating density housing.

However, an appeal based on a jurisdiction's existing zoning ordinance and land use restrictions is not permitted.<sup>10</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>11</sup> The City is not responsible for obtaining land to develop 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>12</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>13</sup>

Similar to many other jurisdictions, the City bases its appeal due to a significant and unforeseen change in circumstance on the COVID-19 Pandemic restrictions and their negative effects on tourism and commercial employment. We do not doubt that the City has experienced significant economic impacts due to the Pandemic. However, this is a truly unfortunate circumstance in which all SCAG jurisdictions currently find themselves. 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

---

<sup>8</sup> Cal. Gov. Code § 65584.05(b); 6<sup>th</sup> RHNA Cycle Appeals Procedures, I.D.1.

<sup>9</sup> SB-182, 2020 Leg., 2019-2020 Reg. Sess. (Cal. 2019) (vetoed).

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

<sup>11</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>12</sup> Cal. Gov. Code § 65584.04(b)(3); SCAG, 6<sup>th</sup> RHNA Cycle Appeals Procedures, I.C.3.

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

drop in tourism and employment.<sup>14</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 economic 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:**

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

---

<sup>14</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.