

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 Rancho Santa Margarita'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 Rancho Santa Margarita ("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 based on alleged failure to consider 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).¹ The City has appealed based on (1) the availability of land suitable for urban development or for conversion to residential use, of underutilized land, and of opportunities for infill development and increased residential densities² and (2) 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.³

Availability of Land Suitable for Urban Development or For Conversion to Residential Use Existing Uses

The City argues that it is a master planned community with its land being 71% unsuitable for development and 20% of its land being recently developed residential. Additionally, its other

¹ Cal. Gov. Code § 65584.05(b)(1).

² Cal. Gov. Code § 65584.04(e)(2)(B).

³ Cal. Gov. Code § 65584.04(e)(3).

buildings and shopping centers are also recently constructed and its open space is protected by easements and covenants for public use, scenic preservation, and environmental protection. To accommodate its RHNA allocation, the City would have to convert commercial and business park uses to residential or mixed use.

However, the City cannot appeal based on a jurisdiction's existing zoning ordinance and land use restrictions.⁴ 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.⁵ 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.

Inconsistency with Connect SoCal

The City believes that these actions would affect its designation as a Neighborhood Mobility Area, increase greenhouse gases due to more vehicle miles traveled, and ignore absolute and variable growth constraints, all of which are contrary to the Connect SoCal plan. However, a jurisdiction cannot appeal its RHNA allocation based on any other criteria other than those listed in Section I.C. of the published 6th RHNA Cycle Appeals Procedures.⁶ Because inconsistency with Connect SoCal is not included in those lists, SCAG should not consider the City's appeal on this basis.

Very High Fire Risk Designation

The City also contends the very high fire hazard severity zone designated within the jurisdiction should be considered as a development restraint. The City argues that SB 182 will add this as a factor to be considered in 2022, which demonstrates that fire risk is an important consideration.

It is accurate that the California Legislature passed SB 182 on August 31, 2020 and that SB 182 would have amended Government Code Section 65584.04(e)(13) to require 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, SB 182 was vetoed by the Governor on September 30, 2020. In accordance with this veto, SCAG should not consider very high fire risk areas as a basis for appeal when deciding the City's request.

Distribution of Household Growth Assumed for Purposes of Comparable Regional Transportation Plans

Consistency with Connect SoCal

The City argues that state law requires RHNA to be consistent with the local regional transportation plan, Connect SoCal. The City again contends that the RHNA is inconsistent with Connect SoCal because it is more than double the Connect SoCal growth forecast. Although the

⁴ Cal. Gov. Code Section 65584.04(e)(2)(B).

⁵ Cal. Gov. Code Section 65584.04(e)(2)(B).

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

City's RHNA allocation is higher than the Connect SoCal growth forecasts, the term "inconsistency" means incompatibility.⁷ SCAG is asking the City go beyond Connect SoCal to zone for more housing opportunities, a task that is not "incapable of association or harmonious coexistence"⁸ with Connect SoCal, as the City could meet its Connect SoCal growth forecast while simultaneously meeting its RHNA obligation. Even if the RHNA and Connect SoCal were incompatible, again, a jurisdiction cannot appeal its RHNA allocation based on any other criteria other than those listed in Section I.C. of the published 6th RHNA Cycle Appeals Procedures.⁹ Because inconsistency with Connect SoCal is not included in those lists, SCAG should not consider the City's appeal on this basis.

Next, the City acknowledges that SCAG cannot limit its consideration of available housing locations to the City's existing General Plan and Zoning, then, asks SCAG to do so anyway because the City's existing General Plan is consistent with Connect SoCal. The City cannot appeal based on a jurisdiction's existing zoning ordinance and land use restrictions.¹⁰

One-Size-Fits-All Approach

The City argues that SCAG used a one-size-fits-all methodology when determining existing need, which is inconsistent with Connect SoCal. Specifically, the City claims the job accessibility factor does not take into account open space and fire hazard areas as are factors that must be considered by SCAG when allocation RHNA based on Section 65584.04(e)(2)(B). This section states:

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. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

Section 65584.04(e)(2)(B) does not reference open space or fire hazard areas as relevant factors. Perhaps the City intended to reference Section 65584.04(e)(2)(C), which states:

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, including land zoned or designated for agricultural

⁷ Merriam-Webster Dictionary, *Definition of inconsistent*, accessed December 10, 2020, <https://www.merriam-webster.com/dictionary/inconsistent>.

⁸ Merriam-Webster Dictionary, *Definition of incompatible*, accessed December 10, 2020, <https://www.merriam-webster.com/dictionary/incompatible>.

⁹ Cal. Gov. Code § 65584.05(b); 6th RHNA Cycle Appeals Procedures, I.D.1.

¹⁰ Cal. Gov. Code Section 65584.04(e)(2)(B).

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.

Although this section includes open space, fire hazard areas are not included by statute, as discussed above. Additionally, the City does not argue that its open space was improperly considered. Rather, the City argues that these factors should have been included in SCAG's methodology and applied to the job accessibility factor.

The City also argues that the redistribution of residual need units from Disadvantaged Communities ("DACs") should take into local development restraints into consideration and results in an unattainable RHNA allocation. The City claims these units exacerbates the issue that its existing need allocation is higher than its Connect SoCal household growth. Again, SCAG would need to change its methodology to remedy these alleged issues, which is not within the scope of the permitted appeals methodology or local planning factors and should not be considered by SCAG.

Maximizing Use of Public Transportation

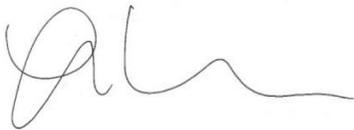
The City points out that the Orange County Transportation Authority (OCTA) provides limited services to the jurisdiction and the surrounding areas and that the nearest Metrolink station is 9.4 miles away. Further, the City does not operate any public transportation on its own. The City essentially argues that a lack of public transportation should result in a lower RHNA allocation. However, the statute refers to opportunities to maximize the use of public transportation and existing transportation infrastructure, not that a lack of public transportation should reduce an allocation. Therefore, SCAG should not consider this factor.

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
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