

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 Yorba Linda'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 Yorba Linda'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>

The City argues that the methodology is inconsistent with Connect SoCal based on growth forecasts, the need to construct additional units and utilize existing vacant housing, and the need to constrain growth within variable constraint areas unless the constraints conflict with accommodating the jurisdiction growth total (900). The City also contends that SCAG did not consider various environmental hazard concerns.

However, arguments regarding inconsistency with Connect SoCal and consideration of environmental hazards are not within the scope of a methodology appeal. A jurisdiction cannot appeal its RHNA allocation based on any other criteria other than those listed in Section I.C. of

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

the published 6<sup>th</sup> RHNA Cycle Appeals Procedures.<sup>2</sup> Because a flawed methodology is not included in those lists, SCAG should not consider 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).<sup>3</sup> The City has made its appeal based on the following factors: existing and projected jobs and housing relationship;<sup>4</sup> lack of capacity for sewer or water service;<sup>5</sup> the availability of land suitable for urban development or for conversion to residential use;<sup>6</sup> lands preserved or protected from urban development under existing federal or state programs;<sup>7</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>8</sup> the rate of overcrowding;<sup>9</sup> the loss of units during a state of emergency;<sup>10</sup> and the region’s greenhouse gas emissions.<sup>11</sup>

The City broadly claims that these local planning factors were only applied to the projected need, that the redistribution of residual need units from Disadvantaged Communities (“DACs”) was done without consideration of local factors, and that SCAG’s assignment of existing need units was a one-size-fits all approach do not address whether SCAG considered certain factors properly. Although characterized as arguments regarding the consideration of these local planning factors, these arguments are actually aimed at the methodology itself in an attempt to alter the approved and adopted methodology. Again, an appeal based on alleged flaws in the methodology is not permitted and should not be considered.

The City also makes specific arguments for each factor.

### **Existing or Projected Jobs-Housing Balance**

The City contends that accommodating its RHNA allocation would require rezoning commercial properties, resulting in job loss. However, the City cannot appeal based on a jurisdiction’s existing zoning ordinance and land use restrictions.<sup>12</sup> The housing element looks toward the future and SCAG must consider the potential for increased residential development

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<sup>2</sup> Cal. Gov. Code § 65584.05(b); 6<sup>th</sup> RHNA Cycle Appeals Procedures, I.D.1.

<sup>3</sup> Cal. Gov. Code § 65584.05(b)(1).

<sup>4</sup> Cal. Gov. Code § 65584.04(e)(1).

<sup>5</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>6</sup> Cal. Gov. Code § 65584.04(e)(2)(B).

<sup>7</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>8</sup> Cal. Gov. Code § 65584.04(e)(3).

<sup>9</sup> Cal. Gov. Code § 65584.04(e)(7).

<sup>10</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, 6<sup>th</sup> RHNA Cycle Appeals Procedures, I.C.2.j.

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

<sup>12</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

under alternative zoning ordinances and land use restrictions.<sup>13</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 consider zoning alternatives and creative solutions, such as mixed-use zoning, and not grant the City's appeal on this basis.

#### Sewer or Water Infrastructure

The City admits that there is no known capacity issue for sewer or water service, but the potential need for conversion from septic to sewer is expensive and sometimes cost-prohibitive. However, the City misunderstands the intent of this factor, as the statute does not refer to the expense of services. Rather, the factor is relevant when federal or state laws, regulations, or supply and distribution decisions are made by a sewer or water service provider other than the jurisdiction, which precludes the jurisdiction from providing necessary infrastructure for future development.<sup>14</sup> Therefore, SCAG should not consider this factor.

#### Availability of Land Suitable for Urban Development

The City argues that there is a limited number of vacant properties, most of which are too small for density housing, and that the rest of the jurisdiction is built out. Again, the City cannot appeal based on a jurisdiction's existing zoning ordinance and land use restrictions.<sup>15</sup> The City must identify areas where future housing could be placed and should not be granted its appeal on this basis.

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

The City points out that the jurisdiction only contains a couple of bus lines and a nearby Metrolink as a limitation to the distribution of household growth assumed for purposes of comparable Regional Transportation Plans. 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.

#### Rate of Overcrowding

The City admits that only approximately 2% of its homes are overcrowded. Instead, the City focuses on the appropriateness of the term "overcrowding." The statute permits a jurisdiction to appeal based on its rate of overcrowding, not the definition of the term. Therefore, SCAG should disregard these claims.

#### Loss of Units During Emergency

The City claims that most, but not all, of the 205 homes burned or partially burned in a 2008 fire have been rebuilt. However, under Government Code Section 65584.04(e)(11), a claim under this factor must stem from a loss of units since October 2013 that have not been rebuilt or

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<sup>13</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

<sup>14</sup> Cal. Gov. Code § 65584.04(e)(2)(A).

<sup>15</sup> Cal. Gov. Code Section 65584.04(e)(2)(B).

replaced by November 7, 2019. Because this fire occurred before the dates listed in the statute, SCAG should not grant the City's appeal on this basis.

The City also cites its designation as a very high fire hazard severity zone and wildfires near the jurisdiction should be considered. However, on August 31, 2020, the California Legislature passed SB 182. 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.

### **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>16</sup> Only the jurisdiction where the change occurred may appeal its RHNA on this basis.<sup>17</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. 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. 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 drop in employment.<sup>18</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. Without evidence 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 use current data as a justification for the reduction of the City's RHNA allocation 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.

### **Other Unpermitted Bases of Appeal**

In its local planning factors section, the City includes oil wells, natural disaster protection, and expensive development resulting from sloped land as factors that SCAG should

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<sup>16</sup> Cal. Gov. Code § 65584.04(b)(3); SCAG, 6th RHNA Cycle Appeals Procedures, I.C.3.

<sup>17</sup> Cal. Gov. Code § 65584.04(b)(3).

<sup>18</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.

consider. In its changed circumstances section, the City argues that a more recent Freddie Mac report demonstrates that the Department of Housing and Community Development (“HCD”) incorrectly allocated 1.34 million units to the region. The City separately argues that the region’s 1.34 million RHNA allocation is a violation of state law and is inconsistent with the sustainable communities strategy. The City further contends that its allocation is inconsistent with the Connect SoCal plan.


However, appeals based on these 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, a fact that the City acknowledged. Based on relevant statutes and HCD’s response to SCAG’s letter, SCAG should disregard the City’s appeal on these bases.

**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