



January 15, 2021

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

Dear Director Ajise and the 6th Cycle Appeals Board,

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 Huntington 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 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 application of the methodology and the consideration of local planning factors.

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 Beach Boulevard was incorrectly identified as a High Quality Transit Area ("HQTA") because SCAG erroneously included facilities that are conceptual or included facilities that do not meet the definition of an HQTA. The City claims that these incorrect assumptions about QTAs undermine and do not promote Connect SoCal. Moreover, the City questions some of the data used in the methodology and provides more information on

¹ Cal. Gov. Code § 65584.05(b)(2).

lower income worker transit commuting, the likelihood of residents driving rather than using transit, access to 30-minute transit to jobs, and actual transit access to jobs.

However, arguments contesting the definition of terms, the legality of definitions, the consistency with Connect SoCal, and advocating for the use of alternative data and additional local factors seek to change the methodology itself are not within the scope of a methodology appeal and are beyond the authority of the RHNA Appeals Board. 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.² Because a claim that the methodology is flawed is not included in those lists, we support SCAG Staff's recommendation to deny the City's appeal on this basis.

The City further contends that the future of local transit services are uncertain due to the COVID-19 pandemic. Although the City categorizes this as a methodology argument, it actually discusses a change in circumstance due to the COVID-19 Pandemic. We do not doubt that the City has experienced significant economic impacts due to the Pandemic, However, the entire region has been similarly affected and an appeal granted on this basis would have to be applied to every jurisdiction.³ 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 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 6th Cycle. Additionally, while the pandemic has changed circumstances for cities, it has also amplified and exacerbated the state's housing crisis. Therefore, we support SCAG Staff's recommendation to deny 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).⁴ The City has made its appeal based on the following:

- (1) Existing and projected jobs and housing relationship;⁵
- (2) 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;⁶

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

³ 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.

⁴ Cal. Gov. Code § 65584.05(b)(1).

⁵ Cal. Gov. Code § 65584.04(e)(1).

⁶ Cal. Gov. Code § 65584.04(e)(2)(B).

- (3) 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;⁷
- (4) The rate of overcrowding;⁸
- (5) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction;⁹ and
- (6) The region's greenhouse gas emissions targets provided by the State Air Resource Board pursuant to Section 65080.¹⁰

Regarding local planning factors, the City argues that SCAG should have used different data related to the regional growth projections and without it, the methodology is fundamentally flawed. The City also contends that SCAG should have accounted for differences in overcrowding rates between jurisdictions and by not doing so, the RHNA is inconsistent with Connect SoCal's goals. However, the City is not arguing that SCAG did not adequately consider information, but is asking for a change in methodology. SCAG Staff has repeatedly asserted that the appeals process cannot alter the adopted Final Methodology.

Although housing needs generated by the presence of a public or private university is included in the list of relevant local factors, the City claims that SCAG did not actually utilize this information in its methodology. Appeals are required to be based on comparable data available for all jurisdictions and the accepted planning methodology, and be supported by adequate documentation.¹¹ However, SCAG Staff notes that the City did not submit information regarding university-based housing needs in its local planning factor survey. The City's other claims about illegal political manipulation and failure to account for other student housing data again impermissibly asks for SCAG to alter its methodology.

Further, the City argues that sea level rise and guidance produced by the California Coastal Commission should have been taken into consideration. The City claims that the California Coastal Commission was not consulted and there are no guarantees it will allow for change in areas under their oversight. An appeal asking SCAG to consider alternative information and consult with other agencies amounts to another challenge to the methodology itself rather than the application of the methodology.

Finally, the City contends that the methodology does not include analysis of land in flood zones. However, Government Code Section 65584.04(e)(2)(B) allows the determination of available land suitable for urban development to exclude lands where the Federal Management Agency (FEMA) has determined the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.” The City did not provide information meeting this threshold and did not provide evidence that housing opportunities could not be identified in

⁷ Cal. Gov. Code § 65584.04(e)(3).

⁸ Cal. Gov. Code § 65584.04(e)(7).

⁹ Cal. Gov. Code § 65584.04(e)(9).

¹⁰ Cal. Gov. Code § 65584.04(e)(12).

¹¹ Cal. Gov. Code § 65584.05.

other areas within the jurisdiction. Without such information, we support SCAG Staff's recommendation to deny the City's appeal on these bases.

Other Unpermitted Bases of Appeal

In addition to its appeals based on application of methodology and consideration of local planning factors, the City included the following arguments:

- The residual need adjustment is not based in State law and is therefore illegal, arbitrary, and capricious methodology;
- The RHNA is not consistent with the development pattern included in the sustainable communities strategy or with preventing urban sprawl by encouraging efficient development patterns;
- The RHNA does not further the objectives of State Planning Law;
- SCAG did not reasonably apply the methodology because it created an illegal, arbitrary, and capricious methodology of allocation and failed to create and apply a methodology that supports the legally mandated objectives of state law; and
- The State's attempt to impose RHNA allocation upon Charter Cities violates the State Constitution.

Again, a jurisdiction cannot appeal its RHNA allocation based on any other criteria other than those permitted by statute and listed in Section I.C. of the published 6th RHNA Cycle Appeals Procedures.¹² Seeking to change the methodology itself, claims that the methodology is illegal, and claims that the RHNA should not apply to a Charter City are not included in those lists. Additionally, the California Department of Housing and Community Development, who has the authority to do so, has determined that SCAG's Final Methodology complies with state law and furthers the intents and objectives of state housing element law. Thus, we support SCAG Staff's recommendation to deny the City's appeals based on these claims.

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, the RHNA Appeals Board 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
Richard Walker, Housing and Homelessness Prevention Unit, Senior Staff Attorney

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