



June 7, 2021

Local Elected
1234 5th Street
City, CA 9----

Dear [Local Elected]:

Last month ABAG issued its draft Regional Housing Need Allocation (“RHNA”) for each city and county in its region, including yours.¹ Notwithstanding that each city and county’s RHNA has substantially increased since the last allocation, a lawsuit is currently pending in Alameda County Superior Court that seeks to increase your RHNA even more. We write to alert you to your right to ask the court for permission to file, and to file, a brief amicus curiae (friend of the court) to oppose the lawsuit and to protect your city from having its RHNA increased. We urge your council and city attorney to consider doing so. The California Alliance of Local Electeds (CALE) is a statewide, nonpartisan group of local elected officials who advocate for the empowerment of local government and advocate for innovative housing, land use, transportation, and other legislation.

The lawsuit was brought by an organization called “Yes In My Back Yard,” (YIMBY) and other activists, who filed a petition for a writ of mandate against the state Department of Housing and Community Development (HCD). A copy is attached to this letter. The petition centers on HCD’s Regional Housing Needs Determination (RHND) for the ABAG region, which ABAG then divided into each city and county’s RHNA. In short, RHND is HCD’s estimate of statewide housing needs for the upcoming sixth cycle of the Housing Element. Every eight years state law requires HCD, in cooperation with the Department of Finance, to update RHND numbers for all cities and counties in California. The determination, which began in the 60s as a helpful state assist to local planning, has in recent years been “weaponized” against local governments to reduce local control over new housing projects.

The petition alleges that “Despite being required by the RHND Statute to make determinations in writing on the relationship between jobs and housing, including any imbalance, (Gov. Code §§ 65584.01(b)(1)(G); 65584.01(c)(1)) HCD failed to consider this element in the ABAG RHND.” (Petition, para. 26.) YIMBY asks the court to “compel HCD to supplement its total determination under the RHND with any additional housing needs after consideration of the relationship between jobs and housing, including the impacts of the jobs-housing balance on both

¹ See Appendix 4 of https://abag.ca.gov/sites/default/files/documents/2021-02/ABAG_Draft_RHNA_Methodology_Report_2023-2031.pdf

intraregional and interregional commutes, and any imbalance thereof.” (Petition, para. 32) The lawsuit seeks this increase in the RHND, and in each city and county’s RHNA, despite the fact that HCD’s current RHND numbers are more than double the prior ones -- 441,176 new units compared to 187,990 – and despite the fact that California’s population growth has been slowing for more than a decade, and reached negative growth for the first time in nearly a century in 2020. How will your city fill its RHND, and how will it pay for the necessary improvements to schools, fire and police protection, and critical infrastructure? The activists don’t know or care – as far as they’re concerned it’s “build, build, build.”

We urge your city to file an amicus brief in opposition to the activists’ writ petition. Such an amicus brief could argue that the case should be dismissed because it fails to join parties who would be affected by the decision – ABAG and its constituent cities and counties. The brief could also argue that the case does not belong in the courts, as a court ruled several years ago. Filing such a brief would not make the city that filed a party to the lawsuit. The court-ordered briefing schedule starts July 5 for the trial date of September 3, 2021. We stand ready and willing to provide assistance to your city attorney with legal research that has already been done. If a city desires greater involvement in the case, it could seek leave to intervene as a real party in interest. Doing so, if permission were granted by the court, would make the city a party, would be significantly more expensive, and potentially subject the city, if it loses, to an award against it of legal fees incurred by YIMBY. By contrast, filing an amicus brief does not appear to carry that risk, although of course there are no guarantees. Consult your own city attorney.

Cities might also consider banding together and sharing the cost of an attorney who would file a single brief on their combined behalf.

Respectfully,

The California Alliance of Local Electeds

Enclosure