



### **SUMMARY OF OCCOG BOARD ACTION**

Following a closed session at its December 6, 2021, Board of Directors meeting, the Orange County Council of Governments (OCCOG) Board directed legal counsel to file an appeal with the California Court of Appeal to the trial court's November 18, 2021, decision dismissing the petition filed by OCCOG in the matter of Orange County Council of Governments v. Gustavo Valasquez, Calif. Dept. of Housing and Community Development.

Board Vote:

- Support – 14
- Oppose – 0
- Absent – 4

### **STATEMENT**

Attribute to OCCOG Chair, Trevor O'Neil

OCCOG's Board voted unanimously to appeal the court's November 18, 2021, dismissal of this lawsuit because Orange County's citizens and taxpayers deserve to be treated fairly under the law.

We strongly believe that the California Department of Housing and Community Development (HCD) did not follow the statutes outlined in state law to develop the projected number of units needed in the next eight years to adequately house Orange County's population.

Further, we are troubled that the Southern California Association of Governments (SCAG) filed a demurrer, given that our arguments paralleled SCAG's position and that many jurisdictions in the SCAG region support this lawsuit.

### **BACKGROUND**

On May 27, 2021, the OCCOG Board of Directors authorized the filing of a petition for writ of mandate against HCD challenging the department's application of Regional Housing Needs Assessment (RHNA) statutes. The writ of mandate was filed on June 21, 2021.

On October 15, 2021, SCAG also filed a demurrer in this case. SCAG essentially raised the same issue as argued by the Attorney General's office (on behalf of HCD) that the case filed by OCCOG and the individual cities that joined in is barred by the decision in the City of Irvine v. SCAG case. SCAG also justified its argument in favor of not allowing any disruption to the RHNA process in this way: "The relief sought by Petitioners in this litigation—namely that HCD's RHNA figures for the SCAG region be vacated and a whole new RHNA calculation be undertaken using new inputs and requiring a virtual do over as to the RHNA numbers for the SCAG region and its 197 jurisdictions—would cast doubt on the housing numbers for all of the SCAG member cities and counties. This, in turn, would cause delay in the creation of the desperately needed new housing for the region as the litigation winds its way through the courts." The Court considered both demurrers together in its ruling.



Orange County Council of Governments

## PRESS RELEASE December 6, 2021

---

In the morning on November 18, 2021, the court released a tentative ruling sustaining the demurrer and ordering the case be dismissed. The primary basis for the tentative ruling was that the prior case decided by the court of appeal, *City of Irvine v. SCAG*, was controlling, and in that case the court of appeal found that legislature had removed all issues related to the RHNA process from the jurisdiction of the courts. The court also agreed with arguments made by HCD and SCAG that allowing judicial review would disrupt the housing element process and create uncertainty regarding housing development.

At the hearing later that day, the judge rejected OCCOG's arguments that this case is different from *City of Irvine* because the challenge was directed at HCD's handling of data an initial decision regarding the housing needs allocation for all of SCAG's members, while the *City of Irvine* case was directed at SCAG's allocation process and was directed at solely the allocation to the City of Irvine, which would have necessitated a reallocation of regional housing needs among all of SCAGS members if Irvine prevailed.

The judge concluded it made no difference that our challenge was to HCD's actions rather than SCAG's, finding that the *City of Irvine* case held that no judicial review of any part of the RHNA process was allowed. In addition, the judge rejected our argument that, if the case proceeded to a decision on the merits, the result would be an overall reduction in housing needs allocations and local jurisdictions could then decide whether or not to amend their housing element to reduce the amount of housing planned for. The judge adopted her tentative ruling as the final ruling without change.

--

OCCOG is Orange County's legally designated sub-regional planning organization, ensuring that Orange County's unique perspective is included in SCAG's federal and state mandated planning efforts. OCCOG's members include 33 cities and 25 special districts located in Orange County, Calif.