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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX

OLEN PROPERTIES CORP., a Florida corporation,

Petitioner,

v.

CITY OF NEWPORT BEACH, and DOES 1-10, inclusive,

Respondents.

TPG (KCN) ACQUISITION, LLC, a Delaware limited liability company, and DOES 11-20, inclusive,

Real Parties in Interest.

Case No. 30-2021-01185991-CU-WM-CXC

ASSIGNED FOR ALL PURPOSES TO:
HON. KIRK H. NAKAMURA
DEPARTMENT CX-103

DECLARATION OF SONJA TRAUSS IN SUPPORT OF YIMBY LAW, PEOPLE FOR HOUSING ORANGE COUNTY (A CHAPTER OF YIMBY ACTION), AND CALIFORNIANS FOR HOMEOWNERSHIP, INC.'S MOTION FOR LEAVE TO INTERVENE AS REAL PARTIES IN INTEREST

Date: August 5, 2021
Time: 2:00 p.m.
Dept.: CX-103

Reservation No.: 73559333

Action Filed: February 25, 2021
Trial Date: None Set.

I, Sonja Trauss, declare:

1. I am the founder and executive director of YIMBY Law, which seeks to intervene in this matter. I have personal knowledge of the facts stated below, and if called upon as a witness, I could and would testify as follows:

2. California is suffering from a housing supply shortage of epic proportions. Among the major causes of this shortage are the failure of local governments to approve enough new housing, especially affordable housing, to meet demand, and resistance to new housing by neighboring homeowners. Californians have experienced firsthand the devastating consequences of this housing shortage. They have endured skyrocketing rents that made the cost of living unbearable, been forced to relocate to communities far from their jobs and schools, and delayed life decisions like marriage or having children because of housing insecurity. They have found homeownership unattainable and been shut out of communities with jobs and good schools.

3. Fortunately, California has several state laws that seek to overcome local resistance to new housing and increase the housing supply at all levels of affordability, including the Housing Element or Regional Housing Needs Assessment/Allocation (RHNA) law, the Housing Accountability Act (HAA), and others. But these laws only matter if someone is willing and able to enforce them. That is YIMBY Law's mission. YIMBY Law is a 501(c)(3) charitable non-profit organization dedicated to make housing more accessible and affordable by promoting and enforcing compliance with state housing law in California. YIMBY Law enforces state laws such as those mentioned above by advising agencies of their obligations under state law, and filing lawsuits against those agencies when they fail to comply. Examples of some of our recent cases include litigation against the city of Simi Valley for denying a residential care facility for seniors in violation of the HAA, and litigation against the state Department of Housing and Community Development for assigning a Regional Housing Need Assessment for the San Francisco Bay Area that is too low, in violation of state law.

4. The voices of families in need of housing have traditionally been absent and ignored in litigation involving housing and environmental issues, as developers, cities, and

neighborhood groups litigate their respective concerns while no one speaks for the people in need of housing. YIMBY Law's role is to provide that voice.

5. As part of the RHNA process, every local government in California is required to make plans to accommodate its fair share of the regional need for affordable housing in the "housing element" of its general plan. YIMBY Law organizes and provides technical assistance to pro-housing activists all over California who are interested in advocating for housing elements that realistically plan for housing, and that distribute affordable and dense housing equitably across cities. We also organized the Campaign for Fair Housing Elements, a collaborative effort by housing advocates around the state to monitor and ensure cities' compliance with their RHNA obligations.

6. Even when cities are willing and able to meet their obligations under state law and provide needed housing, their compliance may still be frustrated if neighboring homeowners or others can block or delay housing projects by strategically using laws such as the California Environmental Quality Act ("CEQA"). For instance, cities may plan to entitle housing on certain sites to meet their Regional Housing Needs Allocations, only to then face CEQA lawsuits seeking to block housing on those same sites. It is documented that CEQA lawsuits are often used to obstruct dense housing projects, especially in job centers. These lawsuits threaten to undermine efforts of the state legislature to increase the housing supply generally and to concentrate housing in areas that are job centers.

7. Newport Beach is a high-cost coastal city in Orange County, with proximity to jobs and good schools. In the upcoming 2021-2029 RHNA cycle, Newport Beach has been assigned a RHNA allocation of 4,845 homes, including 1,456 very low-income homes and 930 low-income homes.[1] As part of the RHNA process, Newport Beach is required to identify sites in the city that can accommodate all of these homes. The city planning staff is currently drafting the needed updates to the city's housing element, and has posted on the city's website a draft housing

[1] SCAG 6th Cycle Final RHNA Allocation Plan at 3, available at: https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-proposed-final-allocation-plan.pdf?1614023284

element, including an analysis of sites that are suitable and likely to be developed for housing to accommodate some share of the city's RHNA allocation of 4,845 new homes.[2]

8. The city's draft housing element sites analysis identifies the recently approved Residences at 4400 Von Karman project as a project that is very likely to be developed during the next planning cycle. The project provides 312 homes, including 13 homes that are affordable for very-low income families. The project is consistent with all the applicable objective standards in the city's general plan as well as the Koll-Conexant Integrated Conceptual Development Plan ("ICDP"), both of which were approved with a full Environmental Impact Report ("EIR") more than a decade ago. The city's draft housing element sites analysis credits the project's 13 very-low homes towards its RHNA share of 1,456 very low-income homes for the upcoming cycle. (Appendix B: Sites Analysis at B-4; B-17.)

9. Through our Campaign for Fair Housing Elements, YIMBY Law participated in Newport Beach's housing element update process. We collaborated with People for Housing Orange County to submit public comments on the current draft of the city's housing element. YIMBY Law's comment letter is attached as **Exhibit 1** to this declaration.

10. YIMBY Law is a strong supporter of the Residences at 4400 Von Karman project at issue in this litigation, and submitted a letter to the city council expressing its support. YIMBY Law's mission is to protect the integrity of the RHNA process and to ensure that cities comply with the HAA by approving housing projects that meet all of their applicable objective criteria. As described more fully in the letter of support, attached as **Exhibit 2** to the Trauss Declaration, YIMBY Law advised the city council that it was prohibited from disapproving the project under the HAA, because the project met all of the city's applicable objective development criteria.

[2] City of Newport Beach Draft Housing Element March 10, 2021, available at: https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan-update/housing-element-screencheck-draft-march-10-2020; Appendix B: Site Analysis, available at: https://www.newportbeachca.gov/PLN/Housing_Element_Update/March_10_2021_Draft/AppendixBSites_Analysis.pdf.

11. YIMBY Law has an interest in ensuring that sites designated for housing in a city's housing element and compliant with all of a city's applicable objective development standards will actually accommodate housing. If this lawsuit is successful, it will frustrate Newport Beach's ability to meet its RHNA goals, frustrate the aim of the HAA to ensure that compliant projects are approved, and undermine the work of groups like YIMBY Law to ensure that high-opportunity cities such as Newport Beach accommodate their fair share of the regional need for housing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge and that this declaration was executed on June 22, 2021, at Oakland, California.

By: _____
Sonja Trauss
Executive Director, YIMBY Law

EXHIBIT 1

YIMBY LAW

YIMBY Law
1260 Mission St
San Francisco, CA 94103
hello@yimbylaw.org

05/05/2021

The Honorable Brad Avery
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

citycouncil@newportbeachca.gov; gleung@newportbeachca.gov;
lbrown@newportbeachca.gov

Via Email

Re: Affirmatively Furthering Fair Housing

Dear Mayor Avery:

The City of Newport Beach last updated its housing element in 2013, and between then and now, there have been many substantial revisions to housing element law. One such revision was that of AB 686 (Santiago, 2018), which requires all of California's public agencies to affirmatively further fair housing. This state-mandated duty takes a slightly different meaning than the federal version of AFFH; however, the intent is very much the same. To wit, beginning January 1, 2021, Government Code § 8899.50 mandates that all housing elements adopted after that same date take meaningful actions, in addition to combating discrimination, to:

1. Overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics,
2. Address significant disparities in housing needs and in access to opportunity,
3. Replace segregated living patterns with truly integrated and balanced living patterns,
4. Transform racially and ethnically concentrated areas of poverty (R/ECAPs) into areas of opportunity, and
5. Foster and maintain compliance with civil rights and fair housing laws.

According to HCD's new AFFH Guidance, which was first published in April 2021, "goals, policies, and actions must be **aggressively** set to overcome those contributing factors [*see pp. 68-70*] to meet the 'meaningful impact' requirement in the statute" [**emphasis added**].[1] Furthermore, "goals and policies must be created with the intention to have a significant

[1] HCD AFFH Guidance Memo, p. 52

impact, well beyond a continuation of past actions" in order to achieve a beneficial impact, which is measured by programs that have a "specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation."[2]

Therefore, members of the Newport Beach city council, city professional staff, and the city's housing element consultant should be aware that "programs to 'explore' or 'consider' on an 'ongoing' basis are inadequate to demonstrate a beneficial impact in the planning period," but "a program with clear and specific commitment and numerical objectives such as 'rezone 50 acres to high density by June 2022' is adequate to demonstrate a beneficial impact."[3] These requirements are significantly different from those of the 5th Cycle Housing Element, and the penalties for noncompliance, as well as any attempted malicious compliance, are significant.[4]

While we appreciate that the city's 6th Cycle Housing Element is still in draft form—and that HCD's new AFFH Guidance was released after the city published its March 2021 draft housing element—and will almost certainly undergo significant revisions, we felt it important to share some of our concerns with the city in order to help facilitate a more collaborative, thoughtful, and actionable document that will shape the next decade of housing policy in the city. Included below is an analysis of the city's current draft, the draft's AFFH deficiencies, and conceptual suggestions for improvement.

Analysis of Impediments

Beginning on Page 3-52 of the March 2021 draft element, the city identifies its duty to AFFH but then immediately shifts to discussing the local analysis of impediments from Fiscal Years 2015 through 2019; while not explicitly stated, it appears the city council has not yet adopted the FY 2020-2024 analysis of impediments. While the analysis of impediments is important information for the city council to consider, and the city council "may incorporate relevant portions of that assessment or revised assessment of fair housing or analysis or revised analysis of impediments to fair housing into its housing element," it alone does not satisfy the city's duty to AFFH.[5] The same goes for the city's FY 2020-24 Consolidated Plan.

Segregation

Regarding the city's entire preamble introducing the theme of segregation, we not only disagree with the framing it uses but also the conclusions it reaches. To be explicitly clear: Segregation is not a condition or lifestyle one chooses, and explaining it away as natural or reasonable gives hate groups and white supremacists like those in the Newport Beach-based antisemitic *Institute for Historical Review* a foothold in our communities.[6] While immigrants or American citizens who are People of Color may indeed seek out neighborhoods that they feel would be less hostile or oppressive, doing so is not willingly perpetuating segregation but rather an act of self-preservation. Furthermore, in light of the recent Ku Klux Klan-branded propaganda delivered under the cover of darkness to Newport Beach neighborhoods this past March, one would think the city council, the city's management staff, and the city's housing

[2] HCD AFFH Guidance Memo, p. 52
[3] ibid.
[4] Housing Element Compliance Fact Sheet
[5] California Government Code § 65583(c)(10)(B)
[6] Southern Poverty Law Center

element consultant would be unequivocal in their repudiation of white supremacy and all its consequences, including segregation, exclusionary single-family zoning, and restrictions and prohibitions on apartments and condominiums.[7] Moreover, describing White Flight as some benign phenomenon and not the fruits of urban decline resulting from underinvestment, indifference, and bias is deeply problematic if not ignorant, which is profoundly ironic for being located in a section of the housing element partially titled *local knowledge*.[8]

According to the data reported in the city's draft housing element, Newport Beach is 79.5% white.[9] While the city describes the 60% threshold of the dissimilarity index for determining high similarity and segregation, it fails to acknowledge this measurement is not binary and that segregation exists despite there being no finding of a "high amount" of segregation. It also appears that the city does not consider that having a city that is 79.5% white—and many census block groups that exceed 90% white—is itself indicative of a prolific, baseline level of segregation.[10] Additionally, with a median household income of $127,223 and a median home value of $2,542,673, it's no wonder that there exist no R/ECAPs in Newport Beach; however, even without the aid of peer-reviewed data and research, any reasonable person would see much of the city as an area of *Racially Concentrated Area of Affluence*.[11,12,13] Nevertheless, there exists areas of greater financial insecurity north of Irvine and Tustin Avenues, which the city should pay closer attention to in order to prevent ghettoizing its relatively lower-income households and (further) segregating lower-income housing development sites.[14]

Sources of Data

The March 2021 draft housing element relies upon the Regional Opportunity Index, a tool developed by UC Davis in 2014. These data are stale and should not be used for something so critically important as a housing element, especially when better, newer data exist. With the recent publication of the California Department of Housing and Community Development's AFFH Guidance Memo, as well as its accompanying data tools, the city should abandon the UC Davis ROI data and use current research that reflects current conditions to make inferences about and better understand existing circumstances, not what was happening seven years ago.

According to the TCAC/HCD Opportunity Area Map, all of Newport Beach is categorized as highest-resource, except for the West Newport Beach area abutting the Pacific Ocean. Given the high median incomes and home values, the former more than 60% higher than median incomes statewide and the latter nearly four times that of the statewide median home value, we implore the city to consider its many Racially Concentrated Areas of Affluence and what it means to integrate the city in the spirit of "taking meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to

[7] Los Angeles Times
[8] Newport Beach Draft Housing Element, March 2021, p. 3-55
[9] Newport Beach Draft Housing Element, March 2021, p. 3-56
[10] Justice Map
[11] United States Census Bureau QuickFacts
[12] Zillow
[13] Racially Concentrated Areas of Affluence: A Preliminary Investigation
[14] Newport Beach Draft Housing Element, March 2021, p. 3-58

opportunity based on protected characteristics."[15,16,17,18] In addition to HCD's more modern and updated data, we encourage the city to mine other freely available and easily located maps and data tools, such as the HUD AFFH maps, Opportunity Atlas, the UC Berkeley Terner Center and Othering and Belonging Institute's Mapping Opportunity in California map, the University of Virginia's Weldon Cooper Center for Public Service Racial Dot map, and the Justice Map. We also invite you to review—then use—the United States Census Bureau's *Measures of Residential Segregation* formulas, which will provide valuable insights into the level and prevalence of segregation within the city.[19]

Publicly Subsidized Housing

The draft housing element reports that "the city has allocated 112 Section 8 vouchers to residents within the community: 30 for families, 20 for persons with disabilities, and 62 for seniors."[20] With an estimated population of 84,534, having only 112 Housing Choice Voucher households is unfathomably inadequate.[21] To accomplish even a 1% housing choice voucher to population ratio, the city would need to increase its quantity of vouchers by 750%. When considering economic segregation and access to opportunity, this glaring disparity between access to opportunity and need—112 voucher holders in a community where the median home value is more than $2.5 million—should be a top priority. Furthermore, that there are six or seven times as many white HCV households as there are Black, Hispanic, or Asian households is cause for great concern, and the city should investigate why a place that is a hair shy of 80% white has such incredible disparity with the number of households of color that use vouchers compared to white households that use vouchers.[22] The same imbalance exists for residents of LIHTC housing developments, where there are 30 times as many white households as there are Black households and 20 times as many white households as there are Asian households.[23] That the subset of subsidized housing stock in Newport Beach is even more segregated than the city's nonsubsidized housing stock is categorically paradoxical with the virtue of subsidized housing and the goal of increasing opportunity for lower-income households.

Last, there are several assisted and affordable housing developments in the City of Newport Beach where the affordability covenants or deed restrictions are set to soon or have already expired.[24] Instead of hortatory goals, policies, or programs that merely pay lip service to the very real need to preserve affordable housing in Newport Beach, the city should commit to fundamental, mandatory, and clear programs and objectives that require it to develop a source of revenue for acquisition or facilitate refinancing of these affordable homes through various funding mechanisms, such as the California Statewide Communities Development Authority, the California Community Housing Agency, or revenue bonds accessed through a Community Revitalization and Investment Authority or Enhanced Infrastructure Financing District.

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[15] United State Census Bureau QuickFacts
[16] Zillow
[17] Newport Beach Draft Housing Element, March 2021, p. 3-62
[18] Racially Concentrated Areas of Affluence: A Preliminary Investigation
[19] United States Census Bureau
[20] Newport Beach Draft Housing Element, March 2021, p. 3-65
[21] Annual Estimates of the Resident Population for Incorporated Places: April 1, 2010 to July 1, 2019
[22] Newport Beach Draft Housing Element, March 2021, p. 3-65
[23] ibid.
[24] Newport Beach Draft Housing Element, March 2021, p. 3-66

Preventing the displacement of vulnerable lower-income residents will require more than the current ambivalence or even feigned hope that dominates the public discourse.

Candidate Sites

The draft housing element includes an ethnicity analysis map overlaid with site inventory candidate sites.[25] Importantly, this map displays all candidate sites, not just sites zoned for lower-income housing. While there are a handful of candidate sites located in areas with 5% or less of households identifying as Hispanic (this identity group refers to people who identify as ethnically Hispanic, even those who report their race as white) and a majority of candidate sites located in areas with between 5.1% and 10% of households identifying as Hispanic, close to a third of candidate sites are located in areas with between 10.1% and 25% of households identifying as Hispanic and roughly a dozen candidate sites located in areas with more than 50% of households identifying as Hispanic. Frustratingly, this analysis uses a nonstandard scale, making more precise comparisons impossible. For instance, with nearly a third of the candidate sites located in areas where between 10.1% and 25% of households identify as Hispanic, are some, most, or all of those candidate sites in areas with 11% or 24% identifying as Hispanic, or are those sites evenly distributed?

The city also includes a second ethnicity analysis map overlaid with candidate sites, with the second analysis being for all non-white Hispanic and non-Hispanic households.[26] The results of this map are objectively worse, with zero candidate sites being located in areas with 5% or less of households identifying as non-white Hispanic and non-Hispanic and just as many candidate sites located in areas with between 10.1% and 25% of households identifying as non-white Hispanic and non-Hispanic. Roughly a dozen candidate sites are located in areas with more than 50% of households identifying as non-white Hispanic and non-Hispanic. This analysis also uses a nonstandard scale, again making precise comparisons impossible.

Last, the draft housing element includes an income analysis map for persons with low and moderate incomes overlaid with candidate sites.[27] The results of this map demonstrate that only one of the approximately 200 candidate sites is located in an area that has less than 15% of households identifying as low- or moderate-income. Many candidate sites are located in areas where between 30.1 % and 40% of households report having low or moderate income, and it appears a majority of candidate sites are located in areas where between 40.1 % and 60% of households report having low or moderate income. Disturbingly, the city reports that it is actively, if not unintentionally, catalyzing gentrification by pursuing candidate sites that are located in areas where more than 60% of households report having low or moderate income. And again, this analysis uses a nonstandard scale, making precise comparisons impossible.

Proposed Solution(s)

Newport Beach can promote increased economic diversity and racial and ethnic integration by permitting up to ten units of housing on each lot in all residential zones citywide. Coupled with a well-designed inclusionary zoning ordinance; a cash subsidy from an affordable housing

[25] Newport Beach Draft Housing Element, March 2021, p. 3-69
[26] Newport Beach Draft Housing Element, March 2021, p. 3-70
[27] Newport Beach Draft Housing Element, March 2021, p. 3-71

trust fund, real estate transfer tax, donation of land, or affordable housing bond revenue, etc.; or a leaseback agreement in which the city acquires vacant, disused, and underutilized parcels and partners with residential developers under various terms depending on the quantity and affordability of additional housing stock, this will also facilitate the city realistically meeting its RHNA of 4,834 housing units. If during the next 8 years, just 6.8% of the 21,399 single-unit detached homes in Newport Beach were redeveloped into 10-unit apartment buildings that included one low income unit, the city would successfully meet its RHNA goal for all income categories, including for very low-income households.[28]

Conclusion

Thank you for your hard work on this task and your consideration of our letter. We appreciate the council will face many challenges in navigating the competing desires of residents, the business community, fair housing advocates, public interest and impact litigation lawyers, and the state as it continues to develop its 6th Cycle Housing Element. While there are undoubtedly several difficult conversations and decisions that lie ahead, we implore the city's leaders to embrace the virtues of your duty to AFFH, and, alternatively, to wield state law as a shield against those who would attack you for merely doing your duty.

The Campaign for Fair Housing Elements is a statewide project to support the production of more housing of a variety of types and affordability, which will be achieved through local agencies adopting more fair, just, and practicable housing elements. YIMBY Law is a 501(c)3 nonprofit corporation, whose mission is to increase the accessibility and affordability of housing throughout all of California.

I am signing this letter both in my capacity as an employee of YIMBY Law and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,



Jon Wizard

Policy Director, Campaign for Fair Housing Elements
YIMBY Law

CC: Vice Mayor Kevin Muldoon
Councilmember Noah Blom
Councilmember Joy Brenner
Councilmember Diane B. Dixon
Councilmember Duffy Duffield
Councilmember Will O'Neill

[28] Newport Beach Draft Housing Element, March 2021, p. 2-29

EXHIBIT 2

YIMBY Law

1260 Mission St

San Francisco, CA 94103

hello@yimbylaw.org

YIMBY LAW

1/26/2021

Newport Beach City Council
100 Civic Center Drive
Newport Beach, CA 92660

citycouncil@newportbeachca.gov; sjurjis@newportbeachca.gov;
Via Email

Re: 4400 Von Karman Avenue
PA2020-061

Dear Newport Beach City Council,

YIMBY Law submits this letter to inform you that the City Council has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal, including the Housing Accountability Act (HAA).

California Government Code § 65589.5, the Housing Accountability Act, prohibits localities from denying housing development projects that are compliant with the locality's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. The most relevant section is copied below:

> (j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:
>
> > (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
> >
> > (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
> >
> > . . .
> >
> > (4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the

> housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

The applicant proposes to construct a 312-unit apartment building atop a large parking garage, a one acre public park, and an additional parking structure within the Koll Center Newport Professional and Business Office Site B.

The above captioned proposal is zoning compliant and general plan compliant, therefore, your local agency must approve the application, or else make findings to the effect that the proposed project would have an adverse impact on public health and safety, as described above.

Yimby Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California.

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,

Sonja Trauss

Sonja Trauss
Executive Director
YIMBY Law