



CITY OF NEWPORT BEACH

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October 13, 2020

Mr. Kome Ajise, Executive Director
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

Subject: City of Newport Beach Appeal of the Sixth Cycle Draft Regional Housing Needs Assessment (RHNA) Allocation

Dear Mr. Ajise:

On behalf of our residents, and in accordance with applicable California Government Code ("Government Code") Section 65584.05, the City of Newport Beach ("City") hereby submits this appeal to the Southern California Association of Governments (SCAG) of the Draft Regional Housing Needs Assessment (RHNA) Allocation ("Draft RHNA Allocation"), received September 11, 2020, for the Sixth Housing Element Cycle (2021-2029) (referred to herein as the Sixth Cycle).

A revision to the Draft RHNA Allocation is necessary to further the intent of the statutorily mandated objectives listed in Government Code Section 65584(d). In addition, this appeal is consistent with, and not to the detriment of, the development pattern in the applicable Sustainable Communities Strategy (SCAG's Connect SoCal Plan) developed pursuant to Government Code Section 65080(b)(2) as explained herein. This appeal is based on the following grounds:

- 1) **Local Planning Factors** - SCAG failed to adequately consider the information previously submitted by the City of Newport Beach that articulated a variety of local factors that directly influence housing production.
 - a. Specifically, this information includes lands preserved or protected from urban development under federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis; and
 - b. 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.
- 2) **Methodology** - SCAG failed to determine the share of the regional housing need in accordance with the information described in and the methodology established pursuant to Government Code Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in Government Code Section 65584(d); and
- 3) **Changed Circumstances** - A significant and unforeseen change in circumstances has occurred that supports revisions to the information submitted pursuant to Government Code Section 65584.04(b).

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Grounds for the City of Newport Beach Appeal

1(a)	Local Planning Factors	<i>SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b).</i>
<i>Lands Preserved or Protected from Urban Development Under Federal or State Programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis</i>		

The City has several major constraints on existing lands that severely limit or totally restrict the City's ability to accommodate growth to the extent identified in the Draft RHNA Allocation. SCAG provided the City with Regional Housing Needs Assessment (RHNA) Local Planning Factor Survey, dated April 29, 2019. This Survey is required by law for SCAG to allow jurisdictions to identify local planning factors (formerly known as "AB 2158 Factors") prior to the development of a proposed RHNA methodology, per Government Code Section 65584.04(b). Information collected from the survey is required to be included as part of the proposed RHNA methodology.

The City submitted responses to the Local Planning Factors Survey, provided herein as Attachment A. These responses indicate the planning factors that demonstrate severe limitations in the City's ability to accommodate the Draft RHNA Allocation. Additionally, the City also provided testimony before SCAG and submitted additional written correspondence to SCAG during the RHNA Methodology process which articulated these concerns (Attachment B).

The City of Newport Beach has a number of legitimate and justifiable claims to demonstrate SCAG's failure to adequately consider prior information submitted. The failure to adequately address these local factors further undermines Government Code Section 65588(d).

The following factors, pursuant to Government Code Section 65584.04(e), are relevant to determine the City of Newport Beach's ability to accommodate growth and were not adjusted for in the Draft RHNA Allocation.

(a) Local Factor: Coastal Zone Limitations Not Considered in Methodology

Although SCAG is not permitted to limit its considerations of suitable housing sites to a jurisdiction's existing zoning and land use policies, and the cities should consider other opportunities for development such as the availability of underutilized land or infill development with increased residential densities, SCAG should consider a city's ability to rezone or increase densities for residential development when subject to jurisdiction of other agencies and regulations, such as the California Coastal Commission and Executive Order N-82-20, signed by Governor Newsom on October 7, 2020 that sets the goal of conserving at least 30 percent of California's land and coastal waters by the year 2030. For Newport Beach, over 63 percent of the City, as shown in ***Exhibit A: Coastal Zone Boundary***, is within the Coastal Zone and subject to the oversight by the California Coastal Commission.

A major goal of the California Coastal Act and the City's adopted Local Coastal Program is to assure the priority for coastal-dependent and coastal-related development over other development in the Coastal Zone, which is a constraint on residential development, particularly in areas on or near the shoreline.



Exhibit A
Coastal Zone Boundary

In 1972, California voters passed Proposition 20, the Coastal Zone Conservation Act. The purposes of the Coastal Zone Conservation Act are to protect public access to the coast, promote visitor-serving uses and limit residential development and speculation along the coast. The Coastal Act was subsequently adopted in 1976 and the California Coastal Commission ("Coastal Commission") was formed to administer the Coastal Act.

The Coastal Act is an umbrella legislation designed to encourage local governments to create Local Coastal Programs (LCPs) to govern decisions that determine the short- and long-term conservation and use of coastal resources. The City of Newport Beach's LCP is considered the legislative equivalent of the City's General Plan for areas within the Coastal Zone. Local Coastal Programs are obligated by statute to be consistent with the policies of the Coastal Act and protect public access and coastal resources.

The Coastal Land Use Plan contains restrictions applicable to twelve (12) sensitive habitat areas that limit potential residential development areas and that control and

regulate locations on new buildings and structures to ensure preservation of unique natural resources and to minimize alteration of natural land forms along bluffs and cliffs. It should be noted that residential development is not considered a coastal-dependent use according to the Coastal Commission, and re-use of properties that result in the reduction of coastal-dependent commercial uses are discouraged. New development is also required to avoid hazardous areas and minimize risks to life and property from coastal and other hazards. The shoreline height limit further restricts heights within the Coastal Zone to a maximum of 35 feet, and only when impacts to public coastal views are not created.

Therefore, the extraordinarily high Draft RHNA Allocation for Newport Beach would necessitate pursuing new, significantly high-density, multi-family housing within the Coastal Zone and would require Coastal Commission approval of a comprehensive amendment of the City's certified Local Coastal Program. Such an amendment would include rezoning to allow higher density residential uses in commercial and visitor-serving zones, increasing height, floor area ratio, and density allowances, and reductions in off-street parking standards that would directly undermine the Coastal Act's requirements for coastal access, coastal views, and protection of visitor-serving uses.

While SCAG is permitted to consider Newport Beach's ability to change its zoning, it cannot require members to violate other laws to do so.

As identified in the City's adopted and certified 2014-2021 Housing Element, the City identified Banning Ranch as the only remaining vacant site available to accommodate future growth. On July 23, 2012, the City adopted a Master Development Plan for the site that included 1,375 dwelling units, including an affordable housing component. Unfortunately, on September 7, 2016, the California Coastal Commission denied a coastal development permit for the project due to its potential impact to environmentally sensitive habitat areas and coastal resources. As a result of this Coastal Commission action, the Newport Beach City Council adopted Ordinance No. 2017-17 on December 12, 2017, which repealed all approvals for the Banning Ranch project.

The Banning Ranch project is a clear example of outside agency constraints and how the additional Coastal Commission jurisdiction severely limits the City's ability to increase densities and rezone land to accommodate the Draft RHNA Allocation. The City spent four (4) years reviewing the application and approving the project for up to 1,375 residential units, only to have the California Coastal Commission spend another four (4) years of review and ultimate denial of the project.

(b) Local Factor: Sea Level Rise and Storm Inundation

Newport Beach is exposed to a variety of coastal hazards including beach erosion, bluff erosion, and coastal flooding due to sea level rise (SLR) and storm inundation. As a coastal community with the one of the largest pleasure craft harbors in the United States, the City has a significant amount of land directly adjacent to surface water that is directly affected by sea level rise and storm inundation. This exposure has unique risks to the

City of Newport Beach and has profound implications when analyzing the realistic growth potential of these lands.

The effects of SLR on coastal processes, such as shoreline erosion, storm-related flooding and bluff erosion, have been evaluated using a Coastal Storm Modeling System (CoSMoS), a software tool and multi-agency effort led by the United States Geological Survey (USGS), to make detailed predictions of coastal flooding and erosion based on existing and future climate scenarios for Southern California. The modeling system incorporates state-of-the-art physical process models to enable prediction of currents, wave height, wave runup, and total water levels. The mapping results from CoSMoS provide predictions of shoreline erosion (storm and non-storm), coastal flooding during extreme events, and bluff erosion for the City in community-level coastal planning and decision-making.

As shown in ***Exhibit B: 100-Year Storm Hazards***, a significant portion of the City's coastal adjacent land appropriate for development is at risk of tidal flooding. Land along the coast is vulnerable to shoreline retreat, which is predicted to accelerate with Sea Level Rise. Long-term shoreline retreat coupled with storm-induced beach erosion has the potential to cause permanent damage to buildings and infrastructure in these hazard zones. Beach loss threatens structures and also has the potential to impact the diverse range of coastal assets dependent on the sandy beaches of Newport Beach. The public access, recreational opportunities, habitat, visual, and cultural assets that contribute to the City's vibrant beach town culture are all valuable to the locals that live in Newport Beach and its visitors.

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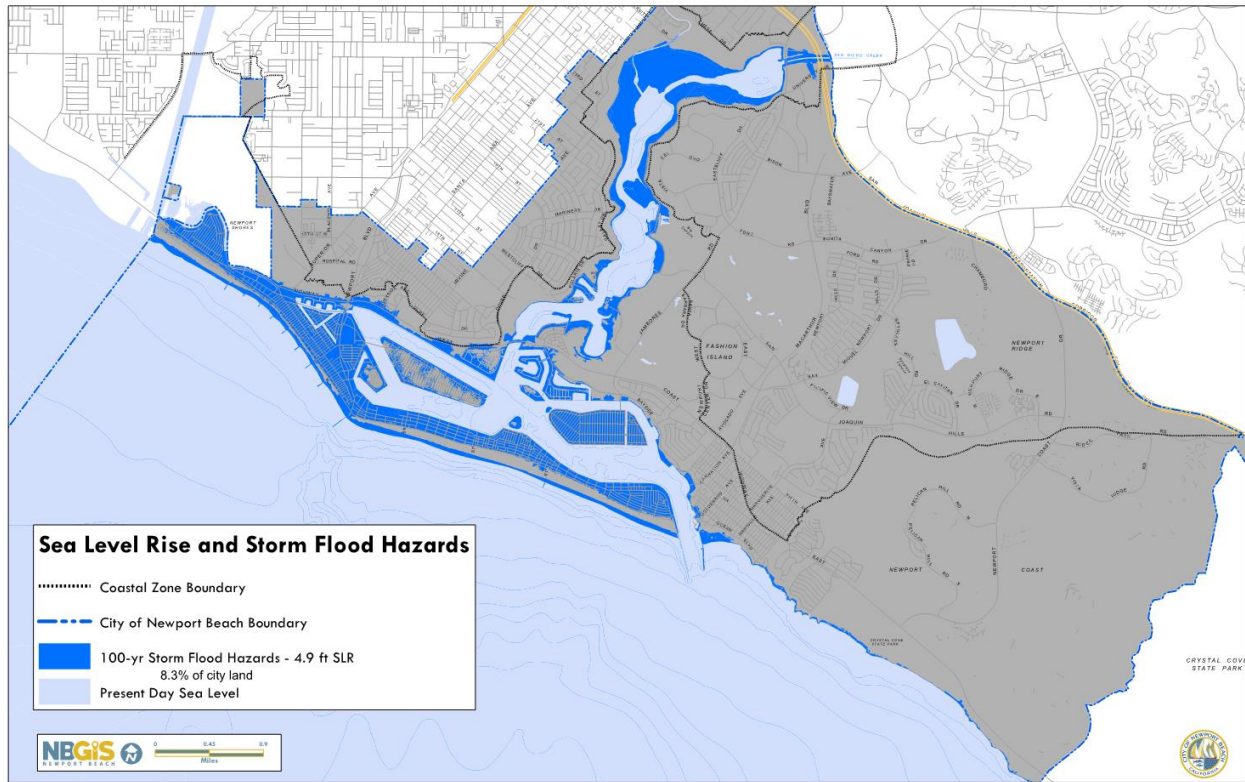


Exhibit B
100-Year Storm Hazards

On November 7, 2018, the California Coastal Commission released an update to the Sea Level Rise Policy Guidance. The Coastal Commission provides direct guidance on how the City of Newport Beach addresses future land use in consideration of sea level rise. According to the California Coastal Commission Sea Level Rise Policy Guidance¹, local jurisdictions can “Minimize Coastal Hazards through Planning and Development Standards” through the following measures applicable to Newport Beach:

- “Design adaptation strategies according to local conditions and existing development patterns, in accordance with the Coastal Act.” (Page 37)
- “Avoid significant coastal hazard risks to new development where feasible.” (Page 39)
- “Minimize hazard risk to new development over the life of the authorized development.” (Page 39)
- “Minimize coastal hazard risks and resource impacts when making redevelopment decisions.” (Page 39)

¹ California Coastal Commission Sea Level Rise Policy Guidance, 2018 Science Update

- *“Account for the social and economic needs of the people of the state include environmental justice, assure priority for coastal-dependent and coastal-related develop over other development” (Page 30)*

The Coastal Commission has also prepared a Draft Coastal Adaptation Planning Guidance: Residential Development (dated March 2018), which will serve as the Coastal Commission’s policy guidance on sea level rise adaptation for residential development to help facilitate planning for resilient shorelines while protecting coastal resources in LCPs. Section 6(B) Model Policy Language (Avoid Siting New Development and/or Perpetuating Redevelopment in Hazard Areas) included in the guidance confirms the Coastal Commission’s stance on new development and likely denial of any land use changes in hazardous areas, such as lands subject to future sea level rise and flooding. Policy B.9 (Restrict Land Division in Hazardous Areas) serves to prohibit land divisions in areas vulnerable to coastal hazards.

Furthermore, on September 21, 2018, the Federal Emergency Management Agency (FEMA) issued a final determination revising Flood Insurance Rate Maps (FIRMs) for the City that expanded the designation of areas most prone to flooding or affected by waves from the coastline (***Exhibit C: FEMA Flood Zones***). This determination created a new flood zone in the City called Coastal High Hazard Area, which is considered one of the highest risk depicted on FIRMs. Specifically, Zone VE is designated where wave hazards are expected to be particularly strong and have the potential to cause dramatic structural damage. To address the added wave hazard, more stringent building practices are required in Zone VE, such as elevating a home on pilings so that waves can pass beneath it, or a prohibition to building on fill, which can be easily washed away by waves. These practices are intended to improve the chance of a home safely weathering a storm but add significant construction costs.

Although the Housing Element planning period is from 2021-2029, the City of Newport Beach must consider long-term consequences of growth and development in the Coastal Zone. Therefore, the selection of sites must consider these constraints not just for the eight (8)-year RHNA housing cycle, but for the 75- to 100-year lifecycle of a residential development project. It would be irresponsible, and in conflict with State guidance, for Newport Beach to not consider the long-term impacts of coastal hazards when planning for future residential development. Much of the land in the Coastal Zone is considered built out and no vacant land is available for development. Therefore, future housing unit growth must consider the implications of these coastal hazards and will directly limit the type and extent of development that can occur in the future.



Exhibit C
FEMA Flood Zones

(c) Local Factor: Airport Environs Land Use Plan (AELUP)

The City's Airport Area is identified as one of the City's greatest opportunities in the community to create new residential neighborhoods through the replacement of existing uses and new construction on underutilized parking lots. However, lands located within the Airport Planning Area for the John Wayne Airport and subject to the development restrictions of the John Wayne Airport Environs Land Use Plan (AELUP) limit the ability to develop residential units. Any amendment to the City's General Plan or zoning, including the rezoning for residential use, requires review by the Orange County Airport Land Use Commission (ALUC).

Residential development in the Airport Area is restricted due to the noise impacts of John Wayne Airport. Much of the southwestern portion of the Airport Area is in the John Wayne Airport Environs Land Use Plan (AELUP) 65 dBA CNEL (Community Noise Equivalent Level) contour, which is unsuitable for residential and other "noise-sensitive" uses. As shown in **Exhibit D: John Wayne Airport CNEL Contours**, approximately 391 acres of land adjacent to John Wayne Airport have restrictions for residential development.

Additionally, there are building restrictions and height limitations imposed by the Airport Land Use Commission. According to the Airport Environs Land Use Plan for John Wayne

Airport², there are portions of Newport Beach that restrict or limit the development of any residential development. See **Exhibit E: Airport Safety Zones**.

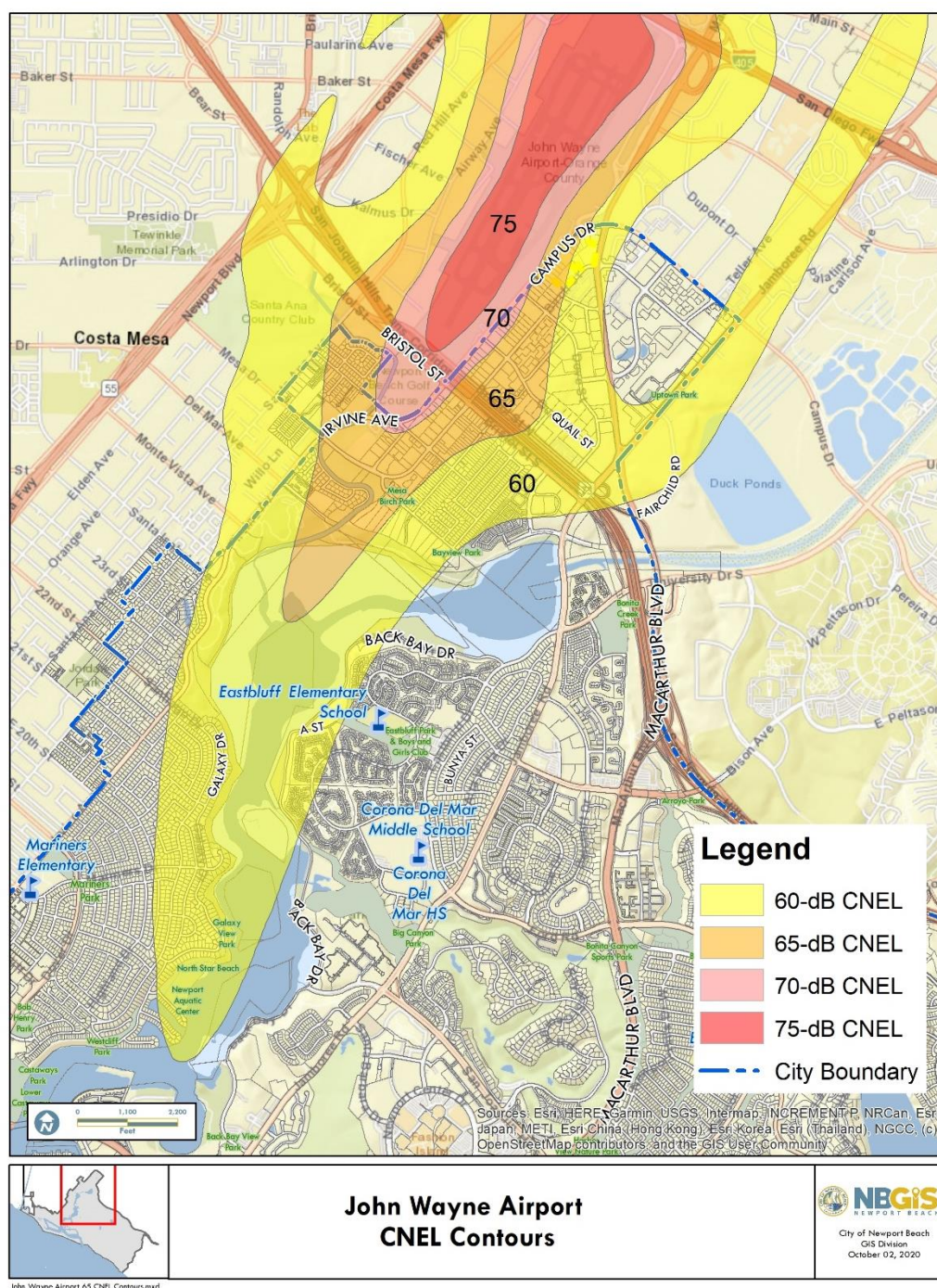


Exhibit D
John Wayne Airport CNEL Contours

² Airport Environs Land Use Plan for John Wayne Airport, amended April 17, 2008.

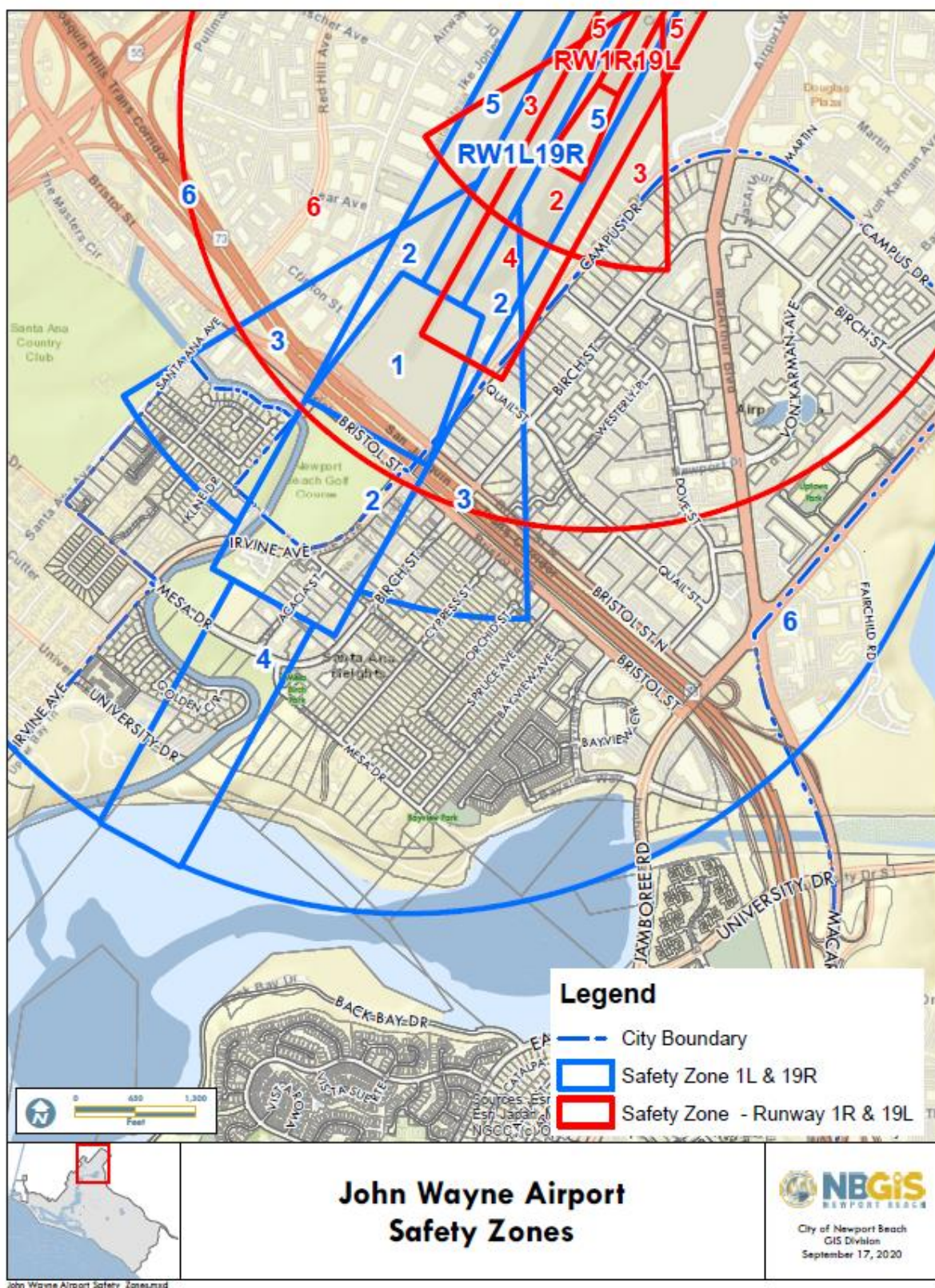


Exhibit E
John Wayne Airport Safety Zones

Requisite analysis for the Sixth Cycle housing elements will require review of adequacy of sites based upon known environmental factors, including noise and safety impacts. The limitation of the use of these sites further limit the ability for the City of Newport Beach to accommodate future residential growth.

The City anticipates the ALUC and the California Department of Transportation (Caltrans) Division of Aeronautics will oppose future rezoning efforts for increased residential development in the Airport Area based on recent experience with residential development projects designed consistent with the noise and safety requirements of the AELUP. In reviewing these recent projects, both ALUC and Caltrans found the projects to be inconsistent due to their proximity to John Wayne Airport and potential for complaints from future residents and safety impacts outside the identified safety zones.

(d) Local Factor: Lands Protected and/or Precluded From Development Activity

i. Protected Natural Lands

A majority of the City's remaining open space land is designated and protected as environmentally sensitive habitat areas and cannot be utilized for residential development. These areas are identified in ***Exhibit F: Natural Community Conservation Planning (NCCP) and Environmental Study Areas***.

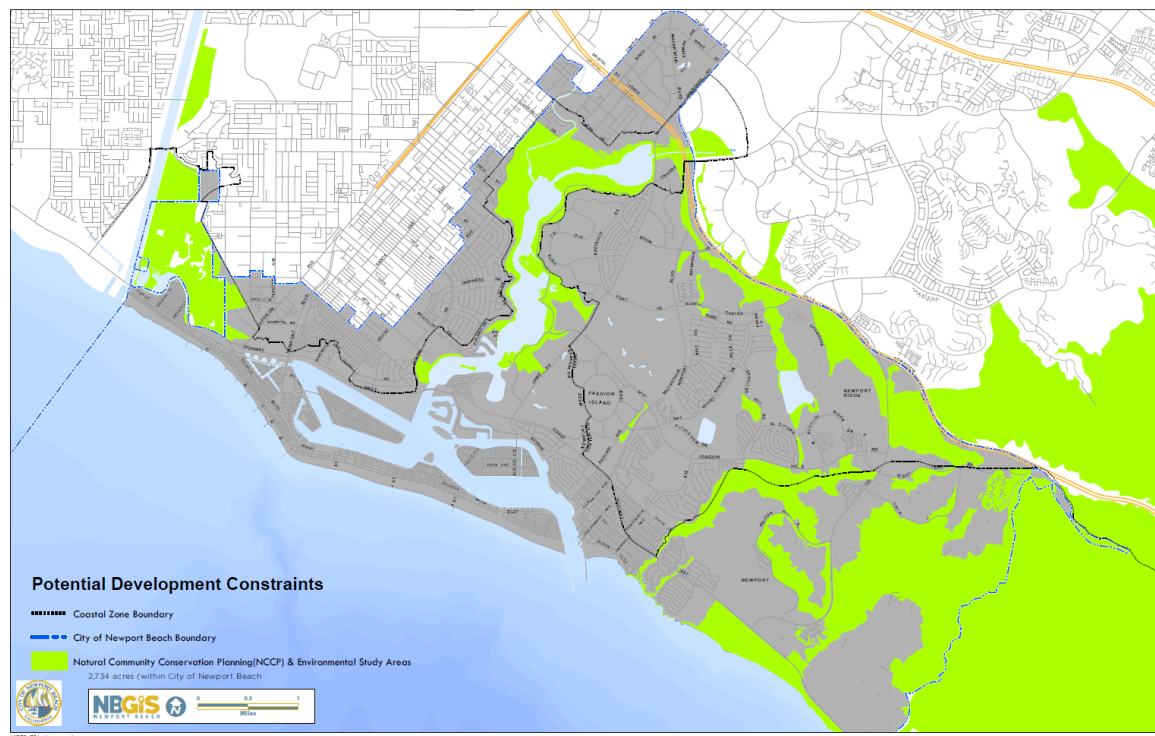


Exhibit F
Natural Community Conservation Planning (NCCP) and Environmental Study Areas

In July 1996, the City became a signatory agency in the Orange County Central-Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). The plan covers nearly 38,000 acres in coastal southern California and is a collaboration of federal and state resource agencies, local governments, special districts, and private property owners. The NCCP uses a multi-species habitat conservation approach rather than a species-specific approach resulting in the preservation of some of the most valuable native habitats, while freeing other properties for development. As a signatory agency, the City is responsible for enforcing mitigation measures and other policies identified in the NCCP/Habitat Conservation Plan Implementation Agreement for properties located within the City limits that are part of the NCCP Sub-regional Plan.

Furthermore, Section 30107.5 of the Coastal Act defines “environmentally sensitive area” as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values. Only uses dependent on those resources are allowed within ESHAs and adjacent development must be sited and designed to prevent impacts that would significantly degrade the ESHA and must be compatible with the continuance of the ESHA.

Several of the natural communities that occur in Newport Beach are designated rare by the California Department of Fish and Wildlife (CDFW) and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of Environmental Sensitive Habitat Area (ESHA) under the Coastal Act.

ii. High Fire Severity Hazard Zones

Lands with high severity risk of fire and fuel modification areas further limit available land to develop residential units, in particular, higher density residential development. The areas identified in ***Exhibit G: High Fire Severity Zones*** are highly prone to wildfire.

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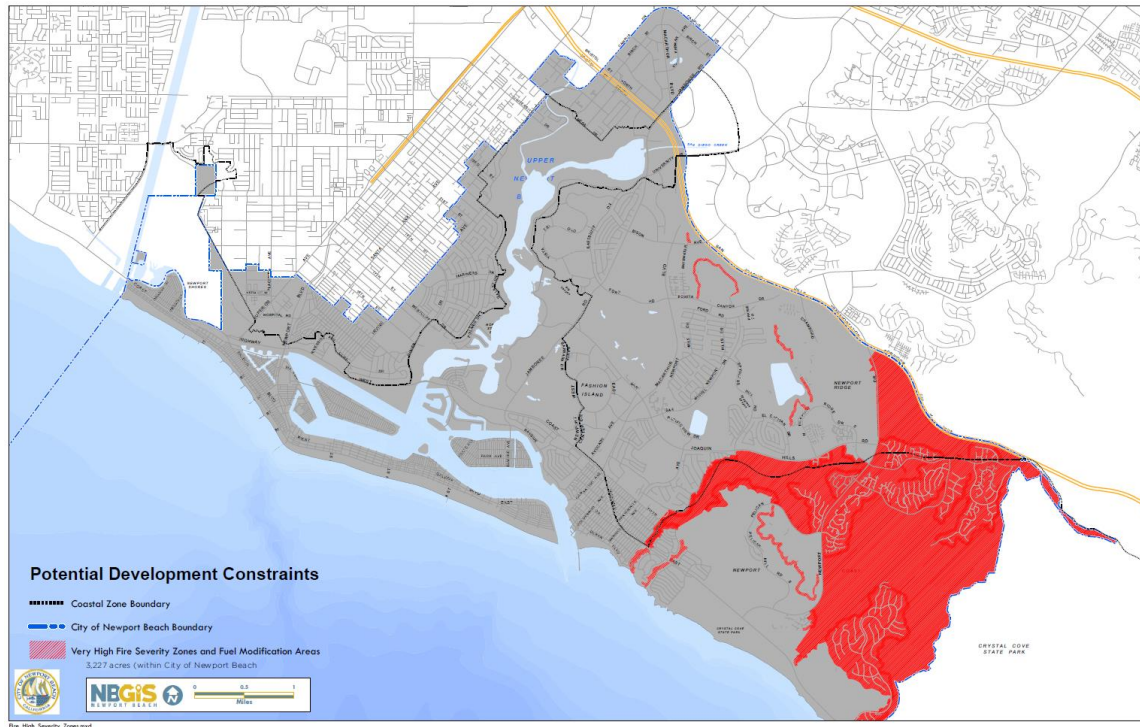


Exhibit G
High Fire Severity Zones

Additionally, these high fire severity zones are not compatible with development due to severe limitations of slope and natural features. As shown in **Exhibit H: Photo of Very High Fire Severity Zone**, these areas are characterized by natural slopes in excess of those that would contribute to feasible development. The considerable cost to modify landforms to provide access and provide infrastructure are significant factors contributing to the infeasibility of development within this area.

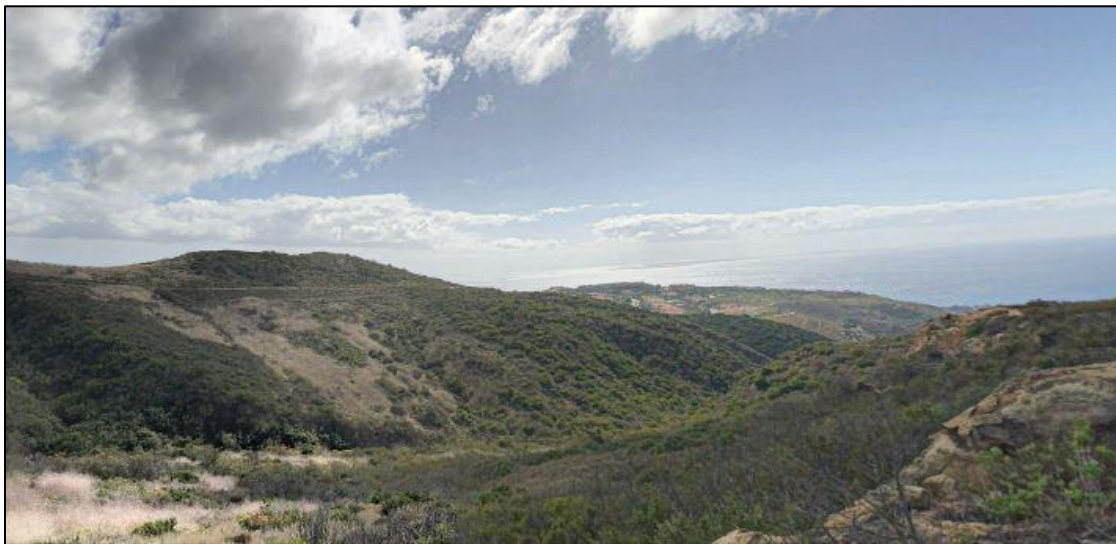


Exhibit H
Photo of Very High Fire Severity Zone

iii. Seismic Hazard Zones

Strong ground shaking can result in liquefaction. Liquefaction, a geologic process that causes ground failure, typically occurs in loose, saturated sediments primarily of sandy composition. Areas of the City susceptible to liquefaction and related ground failure (i.e. seismically induced settlement) include areas along the coastline, such as Balboa Peninsula, in and around the Newport Bay and Upper Newport Bay, in the lower reaches of major streams in Newport Beach, and in the floodplain of the Santa Ana River. It is likely that residential or commercial development will never occur in many of the other liquefiable areas, such as Upper Newport Bay, the Newport Coast beaches, and the bottoms of stream channels. However, other structures (such as bridges, roadways, major utility lines, and park improvements) that occupy these areas are vulnerable to damage from liquefaction if mitigation measures have not been included in their design.

(e) Summary of Land Use Constraints

When the City of Newport Beach compiles all lands exhibiting constraints that severely limit or restrict residential development within its jurisdiction, a considerable amount of land is not available to accommodate the Draft RHNA Allocation of 4,834 units for the 2021-2029 planning period. ***Exhibit I: Summary of Development Constraints*** illustrates the lands subject to these constraints.

The current methodology does not permit the consideration of hazards and a criterion for identifying the availability of land to accommodate growth. There is precedent that permits the consideration of constraints in determining available land. In the Draft Methodologies for the Association of Bay Area Governments (ABAG), a 10 percent adjustment factor is permitted to accommodate the consideration of hazards into the determination of RHNA Allocations. The SCAG methodology does not, but should permit this factor as it results in an overstated Draft RHNA Allocation for the City of Newport Beach.

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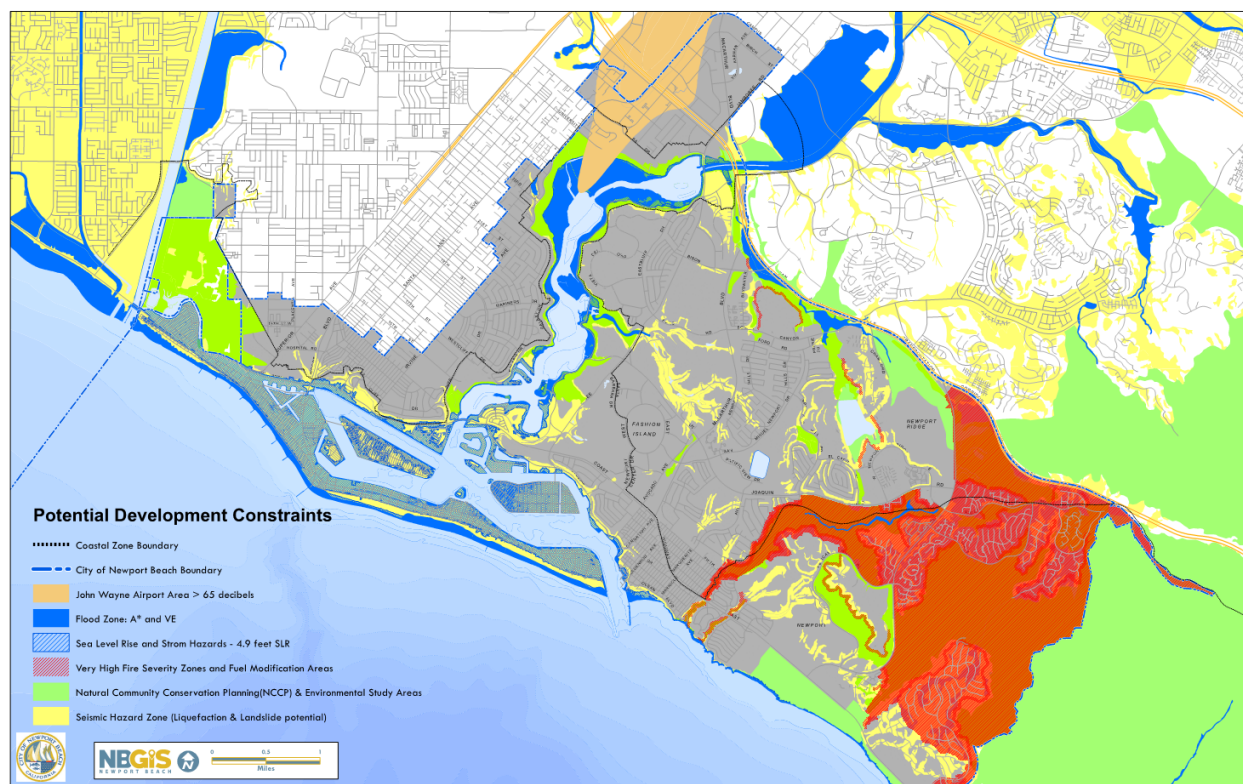


Exhibit I
Summary of Development Constraints

Table A provides a statistical summary of the acreage subject to identified constraints, demonstrating the significant amount of land. Of the 29,361 legal parcels in the City of Newport Beach, approximately 50 percent of these parcels are subject to the constraints illustrated in this section.

Table A
Statistical Summary of Land Use Constraints

Land Use Constraint	Acreage	Key Constraint Factors
Sea Level Rise & Storm	1,226	Coastal Hazard Avoidance
Flood Zone	479	Flood Hazards/Insurance
Airport Restrictions	391	Noise Compatibility
NCCP Conservation Areas	2,734	Protected Lands Preclusions
High Fire Severity Zone	3,227	Fire Hazards/Insurance
Seismic Hazard	4,107	Seismic Hazards Preclusions
TOTAL	8,418 ACRES*	

**Note: Total acreage represents land area affected by one or more constraint layer; therefore, affected land area is only counted once.*

1(b)	Local Planning Factors	<i>SCAG failed to adequately consider the information submitted pursuant to Section 65584.04(b).</i>
<i>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</i>		

In consideration of all local factors that limit the use of land to accommodate the City's Draft RHNA Allocation, future growth must be accommodated on lands not subject to identified constraints as identified in ***Exhibit I: Summary of Development Constraints***. These include all residential and non-residentially designated land including:

- Residential
- Commercial/Retail
- Mixed-Use
- Industrial

(a) Severe Limitations of Available Vacant Land

The City has little appropriate, available vacant land to accommodate future growth anticipated in the Draft RHNA Allocation. The only remaining land considered vacant are lands within the City's Sphere of Influence and cannot be considered when identifying adequate sites for residential development unless they are anticipated to be incorporated in the planning period.

Recently enacted AB 1397 modified Sections 65580, 65583 and 65583.2 of the Government Code. Generally, jurisdictions must demonstrate the following:

- *Land Inventory Sites Must Be "Available" and May Only Include Non-Vacant Sites with Realistic Development Potential (Government Code Section 65583).*
- *Sites in the Land Inventory Must Have Demonstrated Potential for Development (Government Code Section 65583(a)(3))*

This provision in State law requires the City to explicitly demonstrate the availability of vacant lands to accommodate future housing growth need.

Banning Ranch is the only remaining vacant site available to accommodate future growth (see ***Exhibit J: Housing Sites Precluded from Future Development - Banning Ranch***). However, as previously discussed, the City's efforts in approving the development of 1,375 dwelling units on the site, including a portion dedicated to affordable housing, was ultimately overturned by the California Coastal Commission in 2016 due to the potential impacts to environmentally sensitive habitat areas and coastal

resources. Development of the site is further complicated by the fact that a large portion of the site is in County of Orange's jurisdiction, although in City's Sphere of Influence

It should also be noted that recent guidance from the California Department of Housing and Community Development (HCD), pursuant to AB 1397 on the use of adequate sites, limits the identification of sites that are not located within the incorporated boundaries of a jurisdiction. Therefore, any sites intended to accommodate future growth must demonstrate they are either within corporate boundaries or anticipated to be incorporated into the City's boundaries during the planning period. Due to the Coastal Commission's prior denial of a viable residential project, the entitlement and incorporation of the approximately 400 acre Banning Ranch property is unlikely during the planning period.

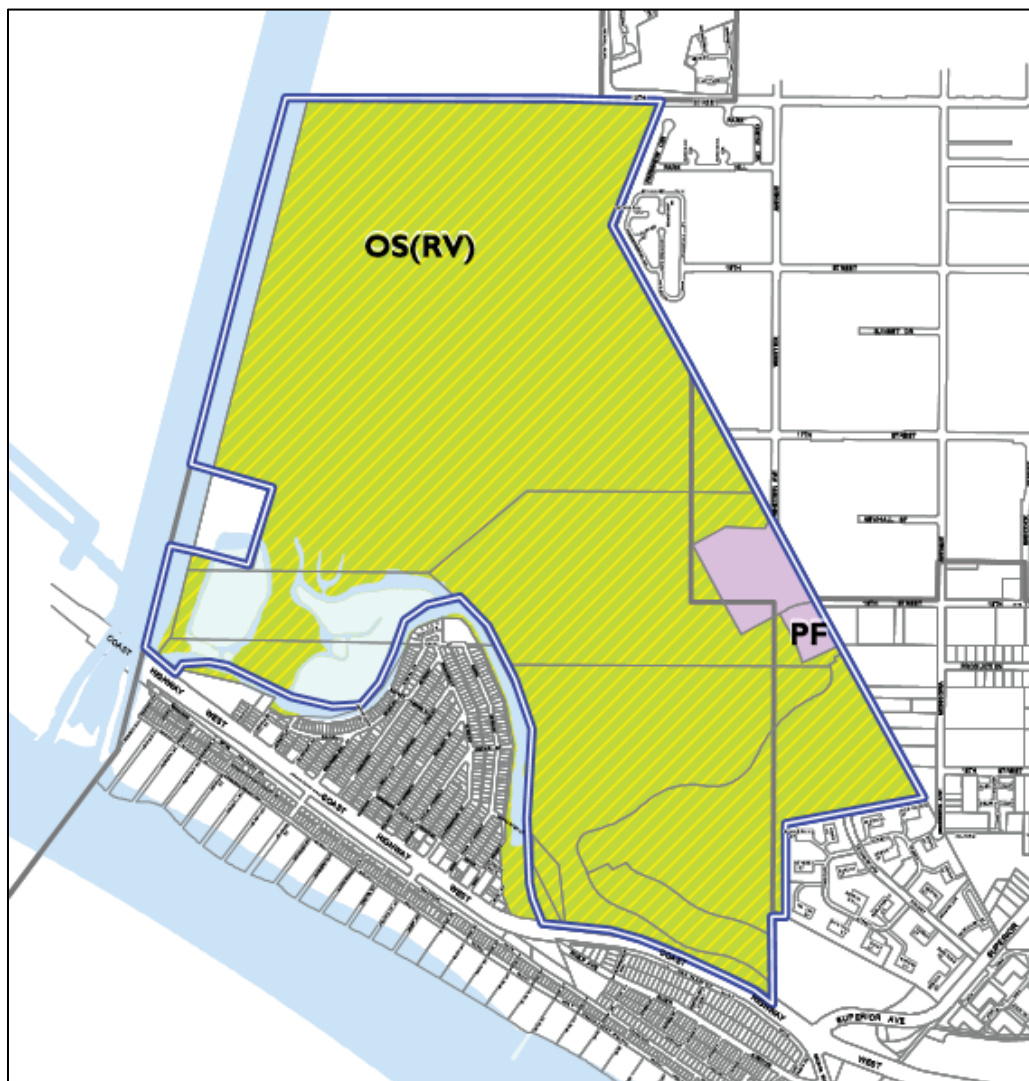


Exhibit J
Housing Sites Precluded from Future Development - Banning Ranch

The only other vacant land available for the 2014-2021 Housing Element to accommodate growth was a residentially zoned parcel located at 3928 East Coast Highway, as shown in **Exhibit K: Housing Sites Precluded from Development – 3928 East Coast Highway**. This site is currently under construction and will not be available to accommodate future growth during the Sixth Cycle.

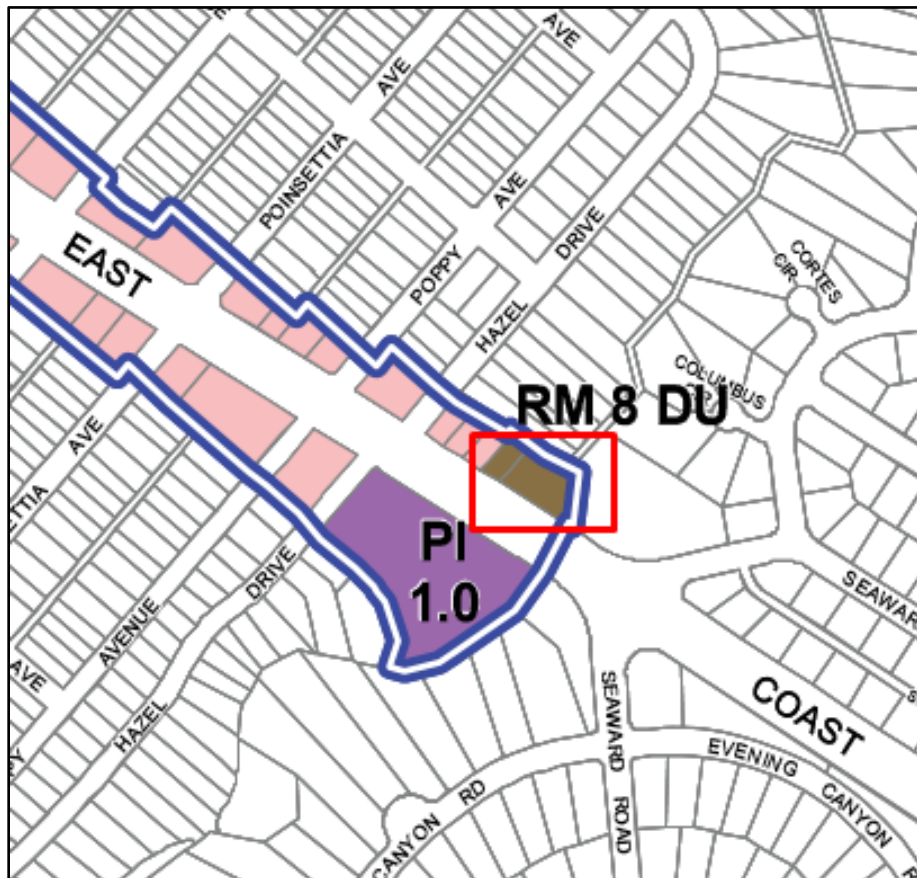


Exhibit K
Housing Sites Precluded from Development – 3928 East Coast Highway

(b) Existing Non-Vacant Residential Land

There are approximately 6,000 acres of residential land not subject to the constraints listed in **Table A**. As shown in **Exhibit L: Summary of Residential Land**, the majority of existing residential land consists of currently developed properties. There is no vacant residential land currently available to provide additional opportunities for residential development. Therefore, future residential development would have to be accommodated on infill, reuse and redevelopment of these existing residential properties.

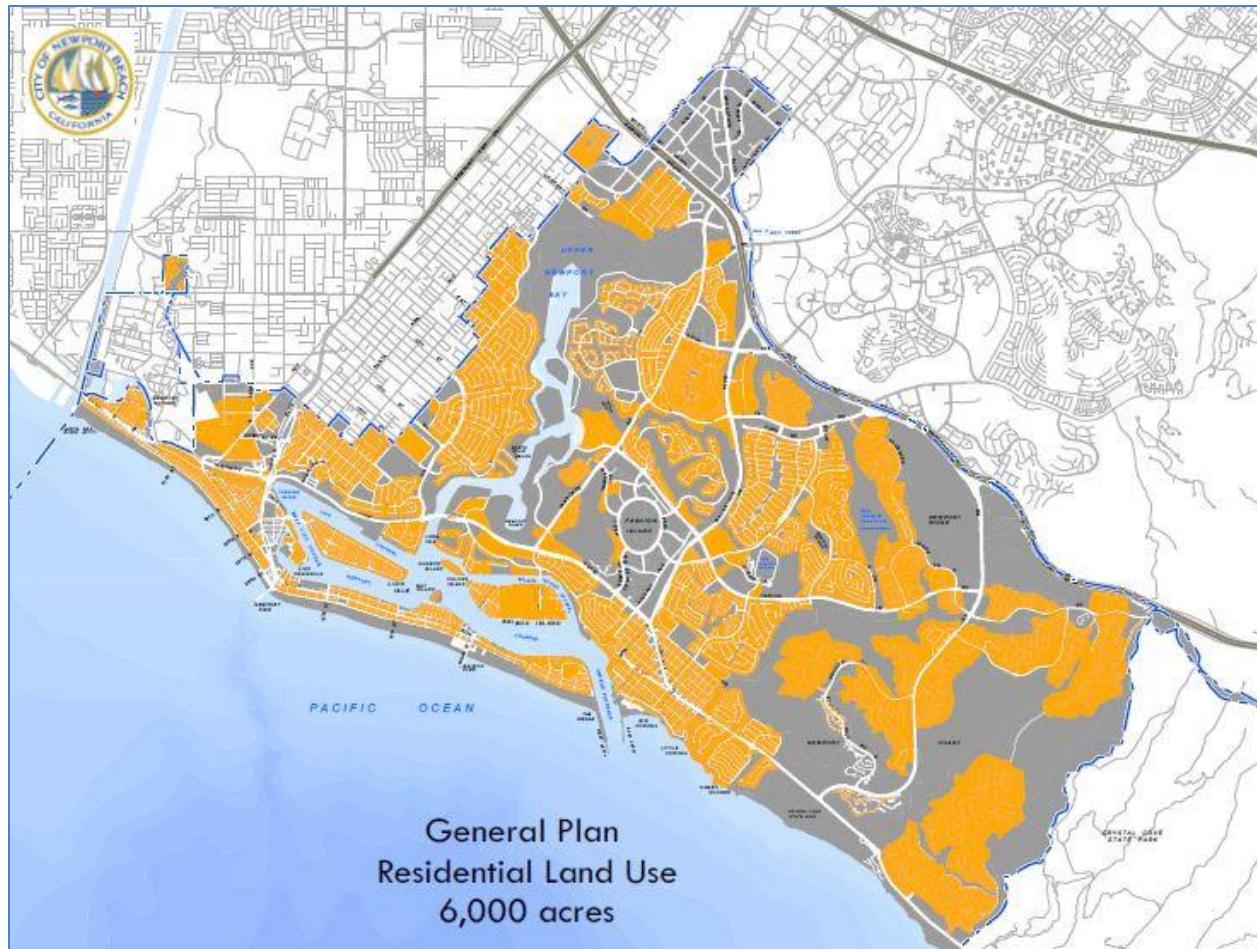


Exhibit L
Summary of Residential Land

(c) Existing Commercial/Retail Lands

There are approximately 922 acres of commercial/retail land not subject to the constraints listed in **Table A**. As shown in **Exhibit M: Summary of Commercial/Retail Land**, much of the existing commercial and retail land in the City is built out and highly utilized.

One of the factors included within the methodology to determine future RHNA allocations is employment generation. Employment generation is based on the existing job base and the forecast potential for new job creation. Therefore, future employment growth is dependent upon the preservation and expansion of existing inventory of land suitable for employment-generating activities. The significant size of RHNA allocations will force the City to re-designate land for residential development. This effectively limits the City's ability to create jobs, thus reducing the employment demand factor in the RHNA methodology.

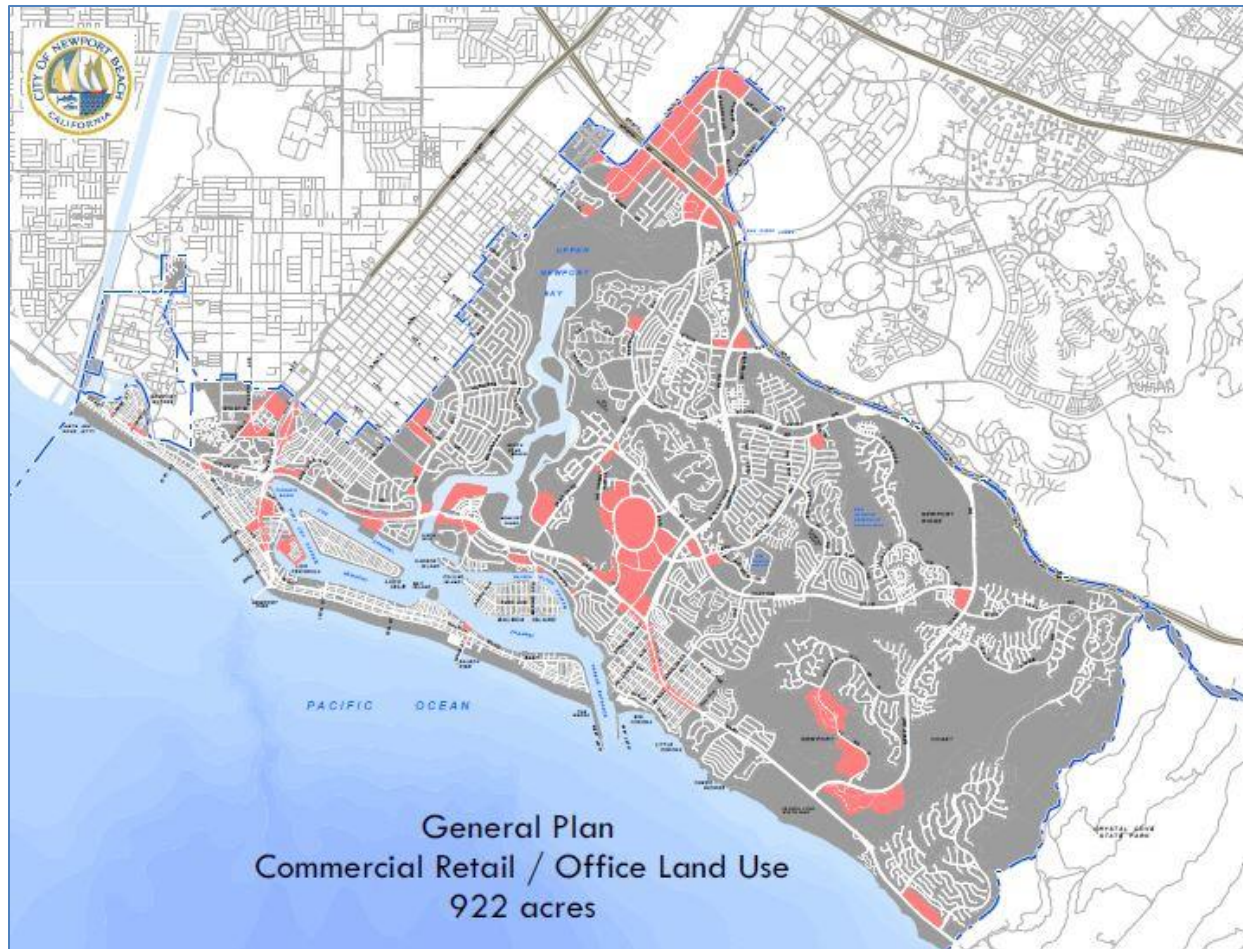


Exhibit M
Summary of Commercial/Retail Land

(d) Existing Industrial Lands

There are approximately 41 acres of industrial land not subject to the constraints listed in **Table A**. As shown in **Exhibit N: Summary of Industrial Land**, much of this land is located adjacent to Hoag Hospital where market conditions, including land costs and market demand for the expansion of medical and supportive uses, do not support the use of this land for residential use. Most of the remainder of this land is used for small scale service uses that should remain available for residents of the City.

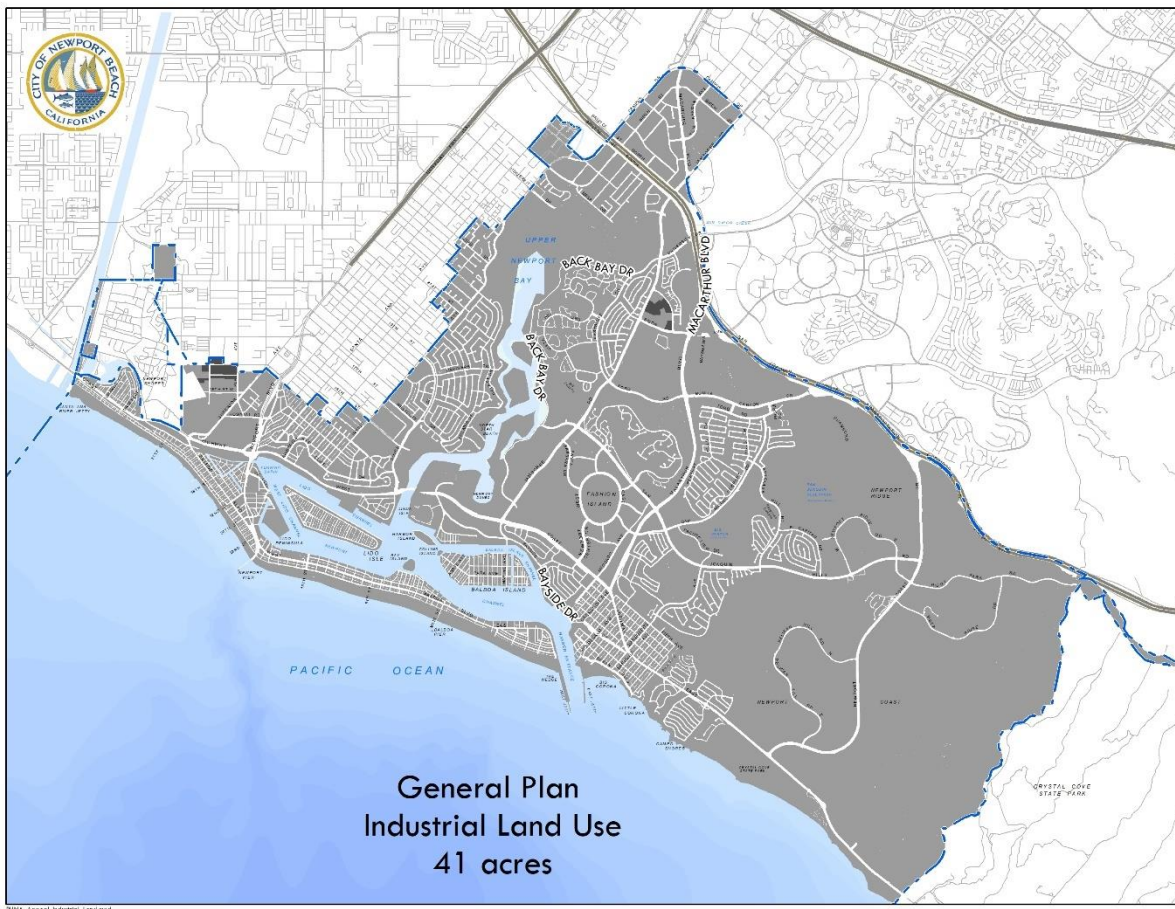


Exhibit N
Summary of Industrial Land

(e) Unavailability of Existing Commercial/Retail and Industrial Land for Housing Use.

The HCD Sites Inventory Guidebook requires the City to analyze property as either vacant or non-vacant. As noted above, there is next to no vacant land in the City; therefore, the City will need to meet its RHNA with non-vacant land. The HCD Guidebook states that when a City plans to accommodate more than 50 percent of the lower-income RHNA on non-vacant land, substantial evidence must be provided proving that the existing uses of the land will be discontinued during the planning period.

In the Draft RHNA allocation to the City, SCAG does not appear to have made an effort to determine if there is sufficient non-vacant land in the City that can satisfy the substantial evidence standard. The City will list as many sites as practicable, but in order to meet its RHNA, the City will need at least 161 acres of land, assuming a density of 30 units per acre. That means property owners of 161 acres of land in the City must conclude that a conversion of some, or all, of their land to a residential use is more advantageous than the land's current commercial use. But the reality is there is very little land in the City that contains obsolete commercial or industrial improvements or is underutilized due to high

property values and rents. As a highly attractive location for businesses and thus jobs (as SCAG acknowledges), inefficiently used commercial/industrial land is in very low supply in Newport Beach.

Because the City has little vacant land, and little commercial/industrial land with obsolete improvements or which is underutilized, the City will have tremendous difficulty in meeting the Draft RHNA that was assigned to the City without regard to whether or not enough physical locations for residential uses are economically feasible. Before assigning the City its Draft RHNA, SCAG should have included a reasonable level of analysis, or at least made direct inquiries, as to the availability of land upon which the City would be able to plan its RHNA.

If Newport Beach cannot facilitate enough landowners to make their land available for housing through various incentives, as described in HCD Guidebook, the City will have very limited alternatives. Therefore, inherent consequences of non-compliance will be forced upon the City if it fails to comply with a RHNA, when current land resources do not allow the City to comply. State law should therefore not punish the inability of the City to comply with a mandate due to the lack of land resources.

(f) Comparative Analysis of Density Needed to Accommodate RHNA Growth Analysis

As described in **Table B**, the City must transition up to 161 acres of existing, developed, high value land to accommodate future growth need. Therefore, the City must demonstrate that 4,834 units must be accommodated by transitioning existing development over the eight (8)-year planning period. It is unreasonable to assume the City will be able to justify this extent of sites, pursuant to the analysis required under AB 1397.

Table B
Comparison of Densities Versus RHNA Growth Allocation

Density Range	RHNA Allocation	Acreage Needed to Accommodate Growth
30 Dwelling Units/Acre	4,834 units	161.0 acres
60 Dwelling Units/Acre	4,834 units	80.5 acres
100 Dwelling Units/Acre	4,834 units	48.3 acres
150 Dwelling Units/Acre	4,834 units	32.2 acres
200 Dwelling Units/Acre	4,834 units	24.1 acres

(g) Density Considerations and Resiliency Planning

The unique land use conditions in Newport Beach have historically affected the ability for the City to effectively respond and recover from a variety of natural and man-made events. These include flood, fire, sea level rise, and public health. The City has conducted extensive analysis of threats and the proper mitigation of these threats through resiliency planning to identify, mitigate and respond to them.

In response to the recent COVID-19 pandemic, the City must consider contingency planning to ensure the health, safety, welfare and economic integrity of our residents, which can be addressed through appropriate land use considerations, such as density and land uses. To provide for local resiliency and effective response to future pandemics and the need for social distancing, considerations related to development design and open space will be critical factors in future contingency planning.

As social distancing should allow for residents, children and pets the ability to recreate, exercise and provide a level of social interaction and movement, the provision of adequate open spaces through parks, open space and urban spaces will have an effect on urban densities. Coupled with the need to accommodate 4,834 dwelling units within infill development, this will pose considerable challenges in designing development that meets appropriate criteria.

2	Methodology	<i>SCAG failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in Section 65584(d).</i>
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(a) The Methodology Fails to Consider Growth Projections Consistent with the SoCal Connect Plan

SCAG failed to adequately consider local household growth factors and utilized growth projections inconsistent with the Connect SoCal Plan.

Utilization of projected household growth consistent with the Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) (Connect SoCal) is consistent with State law. However, the Draft RHNA Allocation would not be consistent with the development patterns projected in the Connect SoCal Plan. These forecasts are to be developed in conjunction with local input. As demonstrated in previous correspondence, the City of Newport Beach believes the profound inconsistency in forecasting growth demonstrates the failure of the methodology to consider local factors and future growth projections.

According to SCAG's *Connect SoCal Plan, Technical Reports - Demographics and Growth Forecast*³, the City of Newport Beach's household growth is forecast to reach 41,800 in 2045. Comparatively, the 2018 American Community Survey 5-Year Estimates show that the City of Newport Beach currently has 37,870 households.

As shown in **Table C** below, forecasts for households through 2045 are expected to be 41,800 according to the Connect SoCal Plan. If this is amortized over the forecast period (2016-2045), it equates to approximately 100 households per year of growth.

The City of Newport Beach's Draft RHNA Allocation is 4,834 units for the period of 2021 to 2029. If this is amortized over the planning period (2021-2029), it equates to approximately 604 households per year growth.

This demonstrates the unrealistic assumption that the City of Newport Beach would exceed its total 2045 forecast of household growth within 6.5 years of the 2021-2029 Housing Element planning period. More directly, the City of Newport Beach would reach the household estimate for 2045 approximately 17.5 years early.

³ Connect SoCal (2020 - 2045 Regional Transportation Plan/Sustainable Communities Strategy) Technical Reports - Demographics and Growth Forecast, Table 14.

Table C
Comparison of Household Growth Rates
Connect SoCal vs. RHNA

Connect SoCal Forecast Growth	Connect SoCal Forecast Year	Average Per year growth rate 2016-2045	RHNA Estimate Total Growth Need	RHNA Forecast Year	Average Per year growth rate 2021-2029
2,900	2045	100 HH/yr	4,834	2029	604 HH/yr

Source: Connect SoCal Plan; 2021-2029 Final Draft RHNA Allocations.

The City of Newport Beach contends that the household formation defined in the Draft RHNA Allocation far exceeds any reasonable projection for growth during the 2021-2029 Housing Element planning period. SCAG's own 2045 growth forecast, stated in the Connect SoCal Plan is inconsistent and directly undermines the validity of the assumptions in the Draft RHNA Allocation.

The discrepancy demonstrates the Draft RHNA Allocation undermines Government Code Section 65584(d)(1) by failing to provide the distribution of units in an equitable manner. This is demonstrated by the household growth rate increased by a factor of 504 percent above Connect SoCal forecasts. The City of Newport Beach contends that a realistic estimate of future growth need should be directly tied to realistic projections of household formation, consistent with SCAG's own projections in the Connect SoCal Plan.

(b) The Methodology of redistributing units from residual need calculation fails to be equitably distributed at a regional level, undermining objectives listed in Govt. Code Section 65584(d).

On November 7, 2019, the Regional Council approved a substitute motion removing the household growth factor and significantly modifying the Draft RHNA Allocation methodology to shift approximately 44,000 units of residual RHNA Allocation from lower-resourced jurisdictions (Anaheim, La Habra, Orange, Santa Ana and Stanton) to other higher-resourced jurisdictions in Orange County. As a result, Newport Beach and other Orange County communities not designated as lower-resourced must accommodate the residual need. This effectively increases the City's obligations not based on the City's demonstrated local needs, but based upon the residual need left by these jurisdictions. This has artificially allocated 1,506 units of growth need to Newport Beach, even when SCAG's own growth forecasts do not support this growth.

Further, the County of Orange is burdened with the redistribution of this residual need, when numerous other factors support the redistribution of the residual needs to areas not necessarily in the County. These factors include:

- **Failure to consider regional employment factors** – The methodology to redistribute housing growth is absent of regional factors in determining future growth. The methodology arbitrarily defines the county line rather than the regional influence of jobs to determine redistribution of units. This does not consider the influence of Los Angeles, Riverside, San Bernardino and San Diego counties when considering the proper distribution of these reallocated units.
- **Arbitrary reassignment of all need to Orange County jurisdictions only** - Newport Beach and other Orange County communities not designated as lower-resourced must accommodate the residual need. This effectively increases the City's obligations not based on the City's demonstrated local needs, but based upon the residual need left by these jurisdictions. This has artificially allocated 1,506 units of growth need to Newport Beach, even when SCAG's own growth forecasts do not support this growth. Furthermore, the reassignment fails to consider adjacent communities not designated as lower-resourced that are located outside the boundaries of Orange County.

(c) The Final Draft RHNA Allocation for Newport Beach Directly Undermines Government Code Sections 65588(d)(1) and 65588(d)(2)

Government Code Section 65588(d) defines five (5) specific objectives the RHNA allocation plan shall further. In particular, Section 65588(d)(1) objective of *“Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households”* is dependent on the availability of suitable land to various location within the City.

As discussed previously in this appeal letter, the City is very limited in appropriate and available vacant land and must accommodate almost all future growth need on infill parcels. Therefore, significant impact will occur to the City's non-residential land uses as these sites must be used to accommodate the growth identified in the Draft RHNA Allocation. Even at residential densities far above historical averages, the amount of land necessary to accommodate residential growth at the levels identified in the Draft RHNA Allocation would require the City to sacrifice a significant percentage of job-creating uses, retail and industrial land. Furthermore, the majority of this land will not be justifiable as adequate sites pursuant to the strict requirements for adequate sites of AB 1397. Requisite analysis to determine if these sites are viable is stated on the State Department of Housing and Community Development's "Building Blocks" website⁴. Considerations include:

- i. **Existing Uses** – *“The housing element must demonstrate non-vacant and/or underutilized sites in the inventory that can be realistically developed with residential uses or more-intensive residential uses at densities appropriate to accommodate the*

⁴ <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#realistic>

regional housing need (by income) within the planning period... The condition or age of existing uses and the potential for such uses to be discontinued and replaced with housing (within the planning period) are important factors in determining “realistic” development potential...”

It is the burden of the City of Newport Beach to demonstrate the realistic development potential of infill sites by income category. The ability to identify adequate acreage to rezone and permit new residential development on land that is “...*realistically developed with residential uses or more-intensive residential uses at densities appropriate to accommodate the regional housing need (by income) within the planning period....*” will be an insurmountable task that will be primarily influenced by current market conditions, the viability and health of existing non-residential uses, and the likelihood of existing investments to transition to new residential uses. Many of these existing non-residential lands are limited by constraints imposed by lease provisions, financing provisions and other encumbrances tied to the land that can negate the possibility of transition due to these circumstances.

ii. Development Trends – *“The inventory analysis should describe recent development and/or redevelopment trends in the community. The housing element should also include a description of the local government’s track record and specific role in encouraging and facilitating redevelopment, adaptive reuse, or recycling to residential or more-intense residential uses. If the local government does not have any examples of recent recycling or redevelopment, the housing element should describe current or planned efforts (via new programs) to encourage and facilitate this type of development (e.g. providing incentives to encourage lot consolidation or assemblage to facilitate increased residential-development capacity).”*

Development trends cannot be considered solely at the regional or state level. All development in Newport Beach is affected by the local market. Due to local market conditions, value of the land and construction costs, infill development transitioning to affordable housing is heavily influenced by existing development activity. The general costs to bring affordable residential development to the market does not generate the residual values to justify the transition of existing developed land. Newport Beach currently cannot demonstrate a consistent track record of transitioning viable existing commercial development into residential development projects.

Development activity in Newport Beach is also significantly influenced by the variety of approvals required by external agencies. These approvals in many cases can limit, or completely halt future development activity. The City of Newport Beach is therefore influenced by the decision of external agencies in the approval of projects. In particular the California Coastal Commission, Federal Aviation Administration (FAA), ALUC, and Caltrans, all have local jurisdiction for a large percentage of lands in the City. These agencies can preempt local decisions and deny the use of lands. This is demonstrated by the recent Coastal Commission denial of the Banning Ranch project, which was to provide significant opportunity to accommodate residential growth.

iii. Market Conditions – *“Housing market conditions also play a vital role in determining the feasibility or realistic potential of non-vacant sites and/or underutilized sites for residential development. The housing element should evaluate the impact of local market conditions on redevelopment or reuse strategies. For example, high land and construction costs, combined with a limited supply of available and developable land may indicate conditions ‘ripe’ for more-intensive, compact and infill development or redevelopment and reuse.”*

As required by statute, the City of Newport Beach must “...evaluate the impact of local market conditions on redevelopment or reuse strategies...”. Local market conditions include some of the highest land costs in the United States and they play a significant role in the feasibility of transitioning existing viable commercial uses to residential use. Financing costs are also subject to market forces and they affect the feasibility of projects. The combination of high construction costs, high land values, increased financing costs, and the scarcity of vacant land are all factors that are included in development pro-formas to justify whether to proceed with redevelopment. In addition, existing commercial/industrial leases or loans place severe limitations on the ability to redevelop existing commercial/industrial sites. Therefore, all these market factors significantly affect the ability to structure the complex, multi-tranche financing necessary to accommodate affordable housing. In the end, all of these factors result in almost insurmountable conditions.

The Final Draft RHNA Allocation fails to consider the implications of existing law governing Housing Elements. Specifically, the requirements of State law that Newport Beach will be subject to in determining the adequacy of housing sites to accommodate future housing growth directly conflict with the ability of the City to accommodate the current Draft RHNA Allocation. This creates a scenario where the City cannot accommodate the level of RHNA growth need based on the inability to justify these sites pursuant to statutory provisions.

In review of the Government Code’s Housing Element for compliance with State law, the following factors severely limit the sites that can be considered for future growth:

iv. Realistic Development Capacity - *Realistic development capacity calculation accounts for minimum density requirements, land use controls, site improvements, and typical densities of existing or approved projects at similar income levels, and access to current, or planned, water, sewer, and dry utilities (Government Code Sections 65583.2(c)(1) and (2)).*

The City of Newport Beach must demonstrate realistic development capacity for approximately a large percentage of existing viable land with existing stable land uses in the City. This is infeasible as the City would essentially have to consider a large portion of existing job-generating uses to transition to residential uses and must prove these sites are a viable to transition during the planning period.

- v. Realistic Capacity of Non-Vacant Sites** - *The realistic capacity methodology analyzes the extent the existing use may impede additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, current market demand for the existing use, analysis of existing leases or other contracts that would perpetuate the existing use or prevent additional residential development, development trends, market conditions, and incentives or standards that encourage development (Government Code Section 65583.2(g)(1)).*

Existing uses are a major impediment to the development of future residential use in Newport Beach to the extent identified in the Draft RHNA Allocation. This would require the City to analyze all private lease agreements and contracts to determine site feasibility. This is both impractical and infeasible. Additionally, market factors must consider the actual ability of the site to transition during the planning period. Many of the infill sites must be accommodated on existing commercial/industrial lands, which have long-term financing provisions with severe penalties if these provisions are compromised. Even with incentives, by-right development and other regulatory relief, a site could not redevelop due to these restrictions.

- vi. "Substantial Evidence" Requirement** - *If non-vacant sites accommodate 50 percent or more of the lower-income need, the housing element must describe "substantial evidence" that the existing use does not constitute an impediment for additional residential use on the site. Absent substantial evidence, the existing use is deemed an impediment to additional residential development during the planning period (Government Code Section 65583.2(g)(2)).*

As the City of Newport Beach has an extremely limited inventory of vacant lands available to accommodate growth, all future development will occur on sites identified as non-vacant sites. The substantial evidence requirement will be difficult, if not impossible to achieve. If more than 50 percent of the lower-income need is accommodated on sites currently in use, before the site could be identified as one available for housing, Newport Beach must overcome the presumption by showing: 1) past experience with converting the existing type of use to higher density residential development, 2) the current market demand for the current use will not impede redevelopment, and 3) existing leases or contracts would not legally prevent redevelopment of the site. Each of these criteria could not be currently met by the City.

3	Changed Circumstances	<i>A significant and unforeseen change in circumstances has occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted pursuant to Section 65584.04(b).</i>
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The COVID-19 pandemic has had a demonstrable impact on Newport Beach's economy. The pandemic was unforeseen during the development of regional RHNA methodology and will have lasting impacts to Newport Beach's economy and housing market. Additionally, population growth trends in California have recently been revised to reflect a substantially lower rate of population growth in the region.

Prior to COVID-19, Newport Beach enjoyed a robust and diversified economy. With the restrictions imposed and ongoing during the pandemic, these restrictions have significantly impacted all aspects of Newport Beach's economy. With many job opportunities supportive to the tourist and hospitality industries now gone, it is estimated it will take years to return to pre-COVID levels. Because this was an unforeseen circumstance, the impacts to the economy of the City and consequently to the housing market are profound and should be a consideration when evaluating realistic development potential over the eight (8)-year RHNA planning period.

The State of California is experiencing population growth rates at historically low levels. Recent downward revisions by the Department of Finance illustrate the rate of population growth throughout California is slowing at a faster rate than previously anticipated. In the last three (3) years, the state has experienced the lowest population growth rates on record since 1900. Population growth is directly tied to household formation. The flattening of the population growth curve is contrary to the rate of growth identified in the Draft RHNA Allocation. Furthermore, according to Freddie Mac's February 2020 report, *The Housing Supply Shortage: State of the States*, their research indicates that "...California has a shortage of 820,000 housing units. But history suggests that California's shortage may be overestimated if interstate migration is considered."⁵

Summary of Contributing Factors Justifying Modifications to the City of Newport Beach's Draft RHNA Allocation

Based on the evidence provided herein, the Draft RHNA Allocation undermines Government Code Section 65584(d) by failing to support the goals identified therein. Further, the substantial growth need allocated to the City of Newport Beach, when applying current statutory requirements, will preclude the City from complying with law and be unfairly affected by the failure to enact these laws. The Draft RHNA Allocation and methodology used to develop it needs to be revised so that it fulfills the objectives identified in the Government Code.

The City of Newport Beach has compiled all development-contributing factors to summarize the severe limitations of the City to accommodate the Final RHNA Allocation. As shown in ***Exhibit I: Summary of Development Constraints***, the City is severely limited in the availability of land to accommodate the unprecedented increase in growth from the Sixth RHNA cycle.

Remaining land available to accommodate growth will be limited to infill development on parcels with existing development, including existing residential zoned land and non-residential land that must be rezoned to accommodate residential development.

Exhibits J through M demonstrate the only sites that can be used to accommodate residential growth in the future.

⁵ Freddie Mac, "The Housing Supply Shortage: State of the States" February 2020, Page 6.

The future growth of residential development will require the execution of the substantial evidence clause in State housing law to demonstrate the viability of infill sites. This evidence may include:

- Age of Existing Structures
- Developer Interest
- Past Experience in Developing Infill Property
- Existing Lease Provisions
- Environmental and Infrastructure Constraints

The City will not be able to justify the use of these infill sites in the Housing Element to accommodate the level of need shown in the Draft RHNA Allocation.

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CONCLUSION

The City of Newport Beach is committed to accommodating the existing and future needs of its residents. While the City is committed to contributing to the collective local, regional and State needs for housing, the City has demonstrated that the Draft RHNA Allocation is unrealistic, excessive and based on faulty assumptions that can have grave consequences to the City and its residents. Therefore, the City, respectfully objects to the Final Draft RHNA Allocation and methodology used and requests the RHNA Allocation be revised so that it fulfills the objectives identified in the Government Code.

Pursuant to Government Code Section 65584.05(b), the City of Newport Beach states the following revisions to the Final Draft RHNA Allocation are necessary to further the intent of the objectives stated in Government Code Section 65584(d). **Table D** illustrates these recommended modifications.

**Table D
Summary of RHNA Reductions**

Government Code Requirements	RHNA Reduction
<p>Section 65584(d)(1) - <i>Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low-income households.</i></p> <p>Reason- The Draft RHNA Allocation undermines this objective as it does not assign housing unit growth need in an equitable manner. The allocation is a marked increase in allocations from prior RHNA planning cycles and a disproportionately higher amount of lower income need to the community, based upon a flawed methodology that is inconsistent with regional growth forecasts at the regional, state and federal level.</p>	-902
<p>Section 65584(d)(2) - <i>Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region's greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.</i></p> <p>Reason- The Draft RHNA Allocation undermines this objective as it does not properly consider lands that are designated for the protection of natural resources, protected lands precluded from development and lands subject to high fire severity. Furthermore, the use of these lands is not supportive of the efficient utilization of land to encourage and support efficient development patterns.</p>	-1506
TOTAL	-2,408

Table E summarizes the City of Newport Beach's recommended RHNA allocation by income category:

Table E
Summary of Recommended RHNA Allocations for Newport Beach

Income Category	SCAG September 3, 2020 Final Draft RHNA Allocation	Newport Beach Recommended RHNA Allocation
Very Low	1,453 Units	729 Units
Low	928 Units	466 Units
Moderate	1,048 Units	526 Units
Above Moderate	1,405 Units	705 Units
TOTAL	4,834 Units	2,426 Units

Respectfully Submitted,



*Will O'Neill, Mayor
City of Newport Beach*

*cc: City Council Members, City of Newport Beach
Grace K. Leung, City Manager
Aaron C. Harp, City Attorney
Seimone Jurjis, Community Development Director*

Attachments:

- A - Local Planning Factors Survey*
- B - RHNA Methodology Correspondence*