



CITY OF NEWPORT BEACH

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October 30, 2020

The Honorable Peggy Huang, Vice Chair
Legislative/Communications & Membership Committee
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

Subject: Support of Legislation to Protect Local Jurisdictions from Outside Agency Oversight Affecting Housing Development

Dear Vice Chair Huang:

Thank you for your consideration of legislative efforts to protect local jurisdictions from legal and/or financial penalties when another agency denies or applies barriers to development projects approved by local jurisdictions in good faith efforts to achieve the assigned Regional Housing Needs Assessment (RHNA) allocations.

As you are aware, the City of Newport Beach has filed an appeal of the Sixth Cycle Draft RHNA Allocation of 4,834 units assigned to the City. Of the several reasons cited for the appeal, one reason is germane to your legislative efforts. 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. Several of these constraints includes lands that require oversight and approval by other agencies, including the California Coastal Commission, California Department of Transportation (CalTrans), and the Airport Land Use Commission (ALUC) for John Wayne Airport, among many others.

While the Southern California Association of Governments (SCAG) is permitted to consider Newport Beach's ability to change its zoning in order to accommodate RHNA allocations, it cannot require members to violate other laws to do so. Unfortunately, the adopted RHNA Allocation Methodology does not consider a jurisdiction's ability to rezone or increase densities for residential development when subject to the jurisdiction of other agencies and regulations. The intent of this letter is to highlight these constraints.

Coastal Zone Limitations and California Coastal Commission Oversight

For the City of 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.

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 certified 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 sea level rise and other coastal 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 likely 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.

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 to review and ultimately deny the project.

Airport Proximity and CalTrans and ALUC Oversight

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) and California Department of Transportation (CalTrans) Division of Aeronautics.

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 B: 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 Airport¹, there are portions of Newport Beach that restrict or limit the development of any residential development. See **Exhibit C: Airport Safety Zones**.

¹ Airport Environs Land Use Plan for John Wayne Airport, amended April 17, 2008.

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 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 to be 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.

Protected Natural Lands

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

The City of Newport Beach appreciates your considerations of the above-mentioned constraints. If we can be of any assistance to your legislative efforts, please let us know.

Sincerely,



*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*

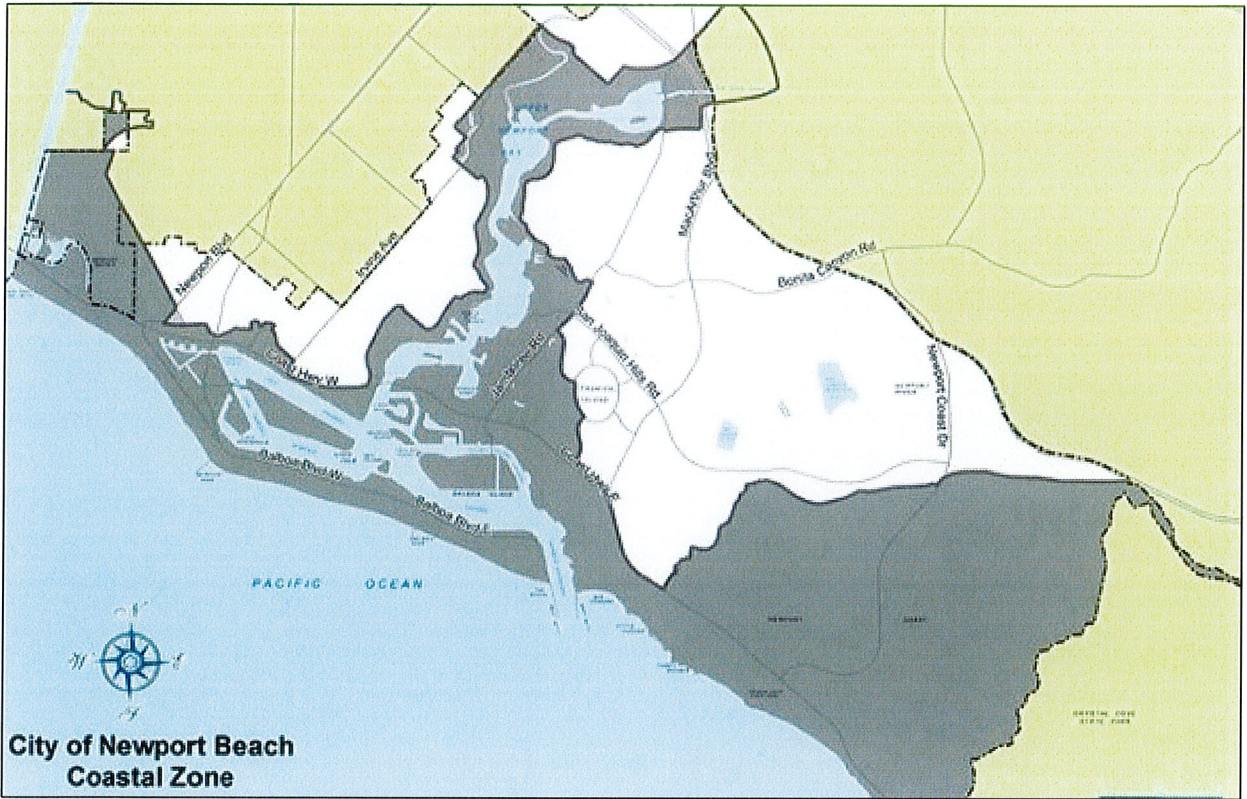


Exhibit A
Coastal Zone Boundary

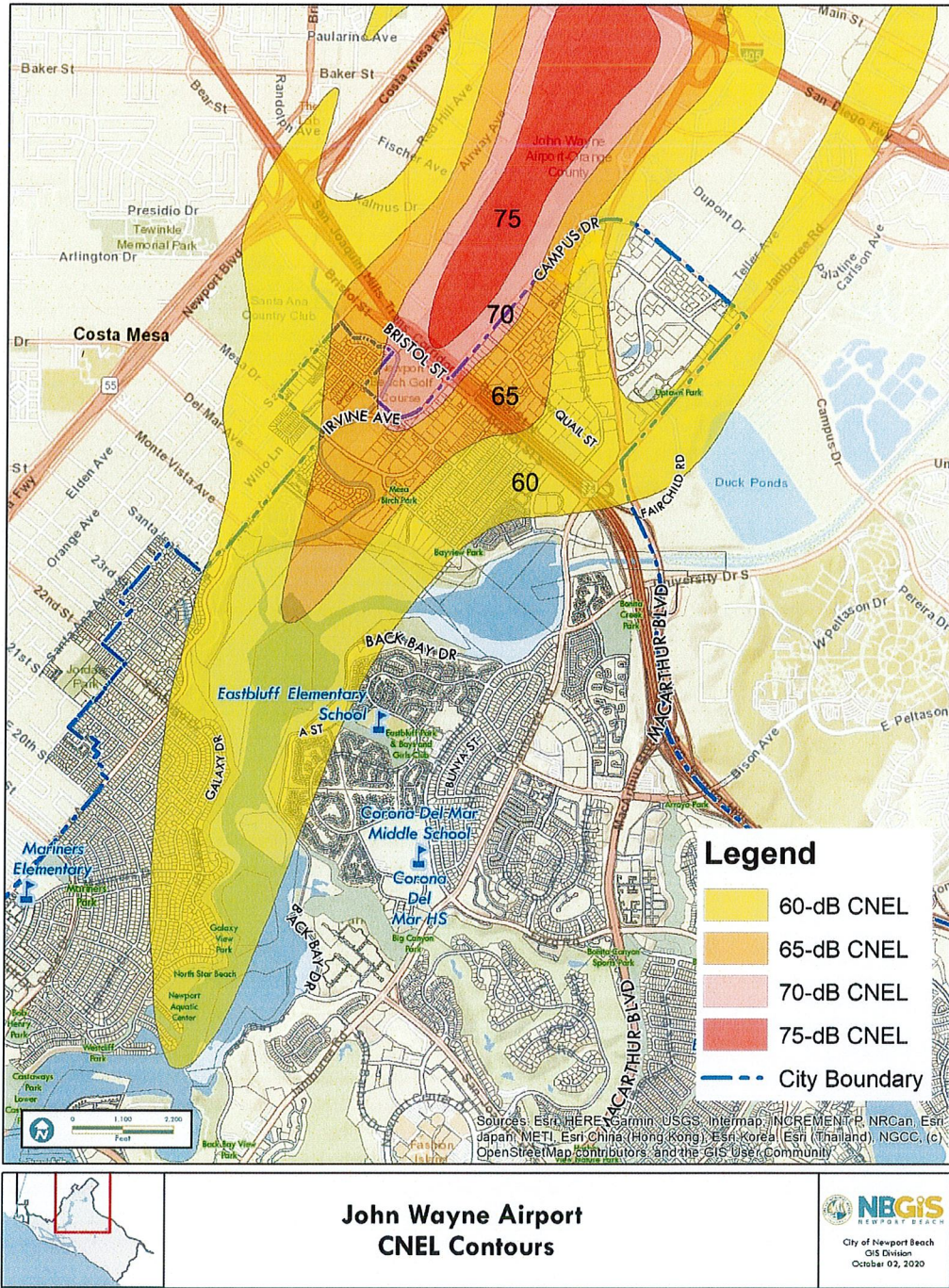


Exhibit B
John Wayne Airport CNEL Contours

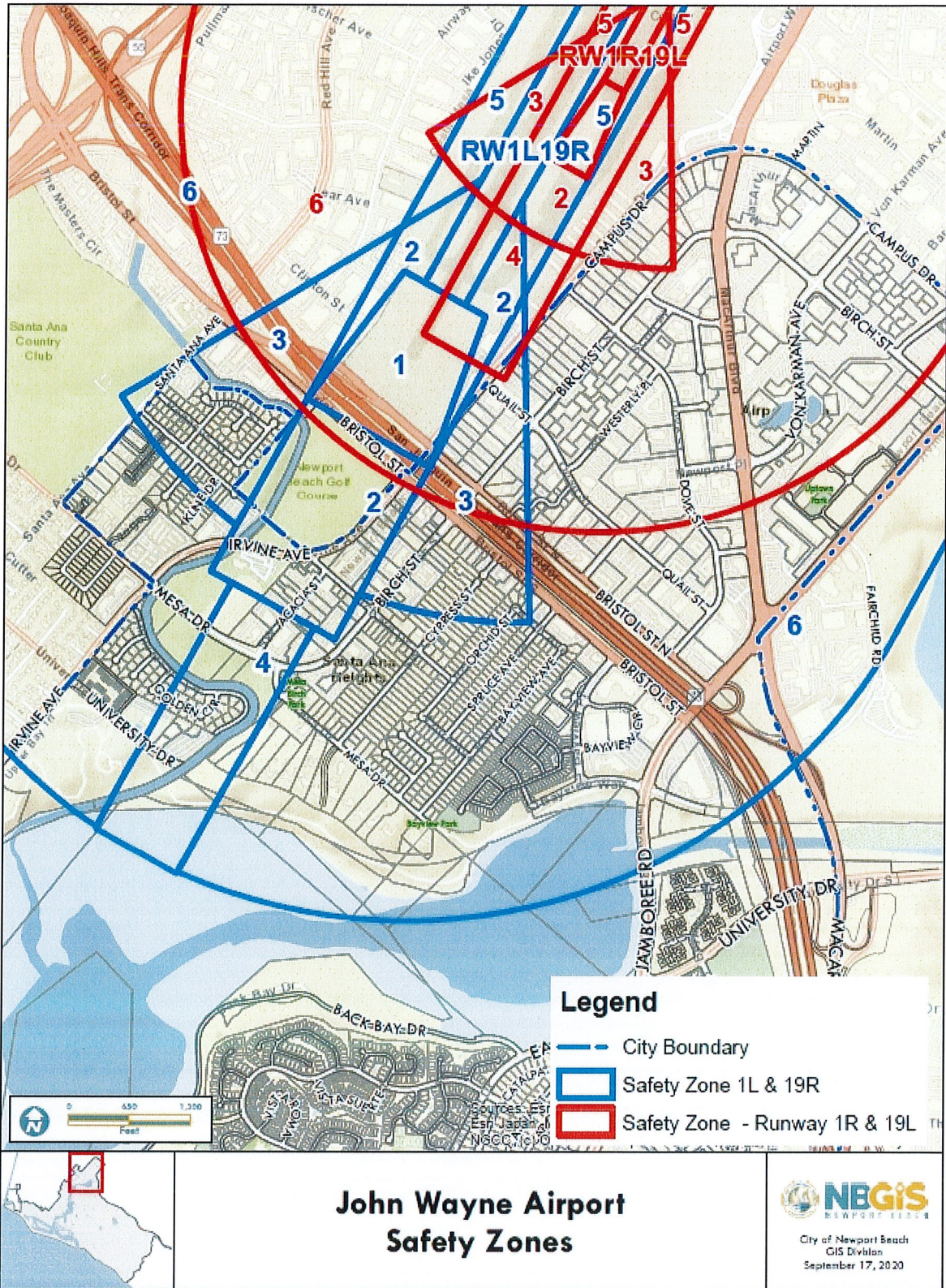


Exhibit C
John Wayne Airport Safety Zones

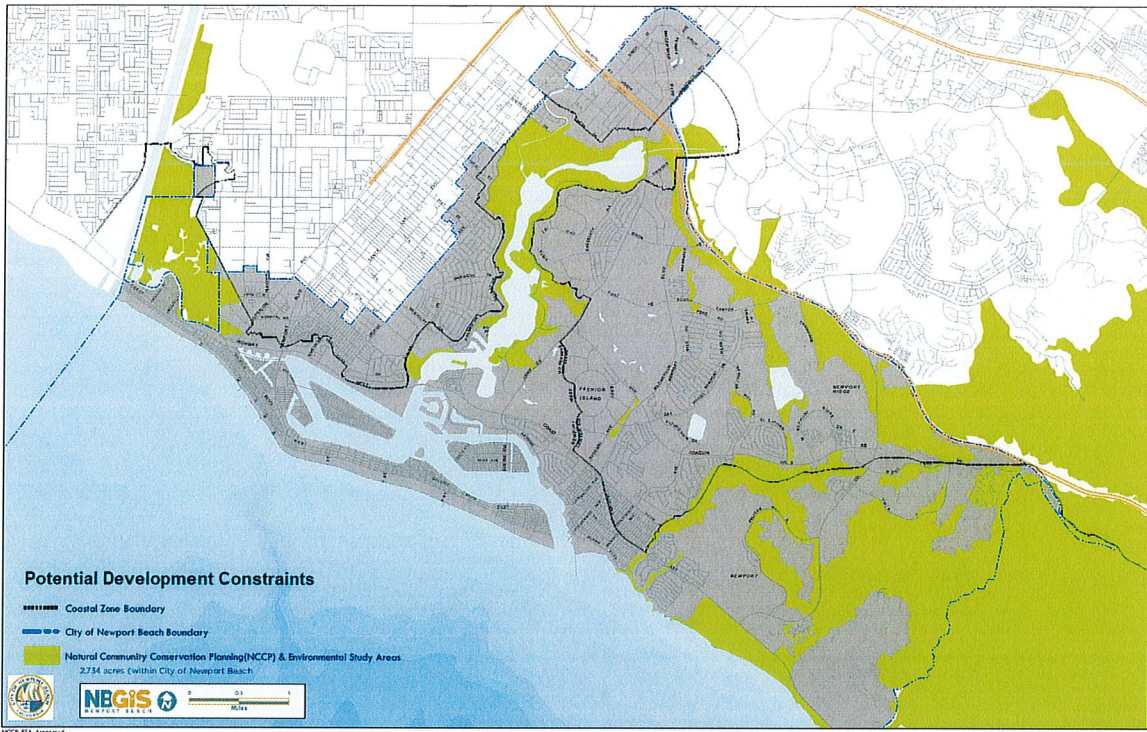


Exhibit D
Natural Community Conservation Planning (NCCP) and Environmental Study Areas