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February 14, 2020

Honorable Senator John Moorlach
District Office
940 South Coast Drive, Suite 185
Costa Mesa, CA 92626

Re: Request for Legislative Amendments to Enable Local Compliance
with State Housing Laws

Dear Senator Moorlach:

The City of Newport Beach requests that you sponsor five (5) legislative amendments to current housing laws. These legislative amendments would significantly reduce barriers for cities throughout the 37th Assembly District to achieve the State of California's ambitious housing goals set forth in the Regional Housing Needs Allocation ("RHNA") process for the 6th cycle covering the period 2021-2029 ("6th Cycle Housing Element").

The proposed legislative amendments include:

- allowing cities to count accessory dwelling units ("ADUs") as *affordable units* provided the ADU meets certain objective standards;
- eliminating barriers to applying alternative methodologies for achieving compliance with state obligations to provide an adequate number of housing units;
- establishing objective standards of what constitutes "site eligibility" as cities are zoning for housing units in the preparation of 6th Cycle Housing Element;
- providing a statutory exemption under the California Environmental Quality Act ("CEQA") for the preparation and completion of a certified 6th Cycle Housing Element; and
- extending the deadline to submit a 6th Cycle Housing Element to the California Department of Housing Community Development ("HCD") for certification.

The last two amendments would sunset upon completion of the 6th Cycle Housing Element. The proposed legislative amendments are explained in greater detail below, with specific revisions to state law reflected in Attachments A through C.

State of California Mandates in Furtherance of Meeting Housing Goals

Governor Gavin Newsom took office and set an ambitious goal of creating 3.5 million housing units by 2025 using a per-capita modeled off New York. As we understand the current housing climate, California added just over 200,000 housing units in 2005, which was the highest rate in three decades. More recently the State has been adding around 80,000 to 90,000 units a year. 3.5 million homes by 2025 would require that the State add almost 600,000 housing units a year—a number which represents almost half the housing added nationally in 2017.

In light of population slowdown and the difficulty of adding that many housing units in a truncated amount of time, Governor Newsom recently called that a “stretch goal.” Indeed, the California Department of Finance’s demographic data illustrates population growth has reduced to its lowest in 80 years, down to an anemic growth of less than one-half percent per year.

Over the past four years, the State Legislature has passed sweeping housing-oriented legislation. Examples include AB1763, SB35, AB1485, SB167, AB678, AB1515, and SB330. The first law addresses density bonuses. The second and third laws specifically address affordable housing. The last four laws strengthened the Housing Accountability Act (HAA), that was originally enacted in 1982 to limit the ability of local jurisdictions to deny or make infeasible qualifying housing projects. The HAA, which is codified as Government Code Section 65589.5, severely restricts cities and counties from denying or imposing conditions on residential projects that would require a reduction in density of a development that complies with “objective” general plan, zoning, and subdivision standards without making specified findings that the project would have a “specific adverse impact” on public health or safety.

SB 330 – among other provisions – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards, or conditions that would change current zoning and general plan designations of properties where housing is allowed in order to “lessen the intensity of housing,” such as by reducing height, density or floor area ratio; requiring new or increased open space, lot size, setbacks or frontage; or limiting maximum lot coverage. Moreover, the bill stipulates that any such amendment that took effect after January 1, 2018 would be null and void as a matter of law. SB 330 also bans jurisdictions from placing a moratorium or similar restrictions on housing development, from imposing subjective design standards established after Jan. 1, 2020, and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural.

General Plan housing element updates have also been affected by AB1397 and SB166, which establish the “No Net Loss” provisions to make sure that housing elements identify sufficient sites to accommodate the jurisdiction’s RHNA or include programs to ensure that sites will be available throughout the planning period. Under the “No Net Loss”

requirements, a city may not reduce residential density or allow development at a lower residential density unless the city makes findings supported by substantial evidence that the reduction is consistent with the general plan and there are remaining sites identified in the housing element adequate to meet the city's outstanding RHNA.

As also discussed below, the the Governor signed AB881, AB68, SB13, and AB671 on October 10, 2019, which was effectively a sweeping legislative overhaul of the production of accessory dwelling units.

State agencies have also adopted regulations affecting housing. For example, pursuant to SB743, new CEQA Guidelines adopted by the State in December 2018 established vehicle miles travelled (VMT) as the metric to be used for evaluating traffic impacts under CEQA, effective July 1, 2020. To comply with the new CEQA Guidelines, the City of Newport Beach will be required to set new thresholds for assessing transportation impacts based on VMT, consistent with technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures issued by the Governor's Office of Planning and Research. Additionally, California's Department of Housing and Community Development ("HCD") has adopted regulations implementing SB35's streamlining of affordable housing approval. Eligible projects are now exempt from environmental review under CEQA and the process does not allow public hearings.

The repeated justification for this comprehensive housing reform aimed at removing local control over zoning and housing approval is a perception that cities have been the barrier to housing development. That simply has not been the case in Newport Beach. Our city has consistently met and then greatly exceeded past RHNA figures. For example, when the State required Newport Beach to zone for five (5) new housing units in the 5th Cycle Housing Element covering the period 2014 to 2021, Newport Beach approved over 3,000 housing units.

This misperception is not only applicable to Newport Beach but to Orange County as a whole. A February 6, 2020 Orange County Register article "Busting the Myth of Orange County's 'Suburban Sprawl'" found that, "[o]f more than 3,000 cities and counties nationwide, only 31 had more people per square mile than did Orange County. And in California, the only place denser than O.C. was San Francisco."

Legal and Geographic Constraints on Cities

Newport Beach is an attractive city for residents and visitors alike. Though relatively small compared to sprawling bedroom communities, Newport Beach neighbors an international airport, oversees the largest recreational boat harbor west of the Mississippi, contains substantial Environmentally Sensitive Habitat Areas, contains wetlands, borders state lands that have been recently described as high-risk fire zones, is home to a number of State parks and beaches, has a vacant landfill bordering a tolled highway system, and more.

These environmental concerns are all governed by comprehensive state and federal laws and regulations. This places Newport Beach – and cities like it – in a perilous position of

trying to comply with the housing laws described above. This position is also complicated by the timing of the next Housing Cycle

To that latter point, cities in the SCAG region must submit a compliant housing element by October 2021. That affords us only 19 months to comply with the stretch-goal figures. Of that 19 months, at least 12 months will be taken up by the lengthy environmental review process under CEQA. In effect, Newport Beach must find 40 years of growth in a process that will include engaging the public, establishing environmental impacts, engaging consultants and technical experts to prepare studies and the environmental document, issuing public notices, reviewing and responding to public comments and holding public hearings before approving the environmental document and the 6th Cycle Housing Element. Additionally, Newport Beach – like other cities in our area such as Costa Mesa – may be subject to voter approval of the 6th Cycle Housing Element in light of initiatives passed by local voters which are codified in the charter and/or municipal code.

This timeline would assume that the housing laws stay static as well. Indeed, any changes to the housing laws this year or next year likely would significantly alter any attempt by cities like Newport Beach to submit a compliant 6th Cycle Housing Element. That is, of course, not an idle concern. Senate Bill 50 (“SB 50”) was three (3) votes shy of Senate approval. When it failed, President pro Tempore of the California State Senate Toni Atkins, a central backer of the legislation, expressed regret at the bill falling three (3) votes short of what it needed to clear the Senate. “SB50 might not be coming forward right now, but the status quo cannot stand,” she said to fellow lawmakers: “This is not acceptable.” She urged lawmakers to come together and pass a future housing bill to try and address the acute housing crisis facing California. Any such future housing bill must include clauses allowing for significant extensions of time for cities in the Southern California Area Government (“SCAG”) region to submit new, altered housing elements beyond the present deadline of October 15, 2021.

Additionally, other state laws with differing objectives constrain cities’ ability to comply with state housing laws. For example, in 2008, the City approved the Banning Ranch project which would have allowed for the development of 1,375 residential units including 252 acres of permanent open space. However, the California Coastal Commission denied the project and the property remains fenced off. As reflected in Attachment D, Newport Beach is limited by other factors such as proximity to John Wayne Airport and its classification as within the coastal zone, flood zones, very high fire hazard severity and fuel modification zones, and seismic hazard zones.

Newport Beach’s Past and Present Commitment to Complying with State Housing Laws

Newport Beach obtained Housing Element certification in the 4th and 5th Cycle Housing Element Update. As should be abundantly clear, Newport Beach is not a city averse to housing. In 2011, HCD required Newport Beach to zone for five (5) new housing units over an eight-year period. The City zoned for 3,000 housing units including the 1,375 residential units of the Banning Ranch project mentioned above.

And the City remains committed to updating its 6th Cycle Housing Element for compliance with State law. In fact, we initiated a Request for Proposal for a consultant in December 2019 and formed a housing element update advisory committee in January 2020. We unfortunately received no bids in response to the Request for Proposal because every other city in the SCAG region are competing for the limited consultant resources. We have re-opened the bid for another 30 days, but worry about the impact on our ability to comply will be if cities are not afforded more time.

Summary of Proposed Legislative Amendments with Justification

Below are five (5) proposed legislative amendments to current housing law that would significantly reduce the barriers to achieving local government compliance while still supporting the California Legislature's objective of increased housing production:

1. **Amending Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.**

In light of recent changes in state law requiring cities to allow up to three (3) units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially. Furthermore, relaxed parking and owner-occupancy requirements has eliminated additional barriers to the development of ADUs and increased development capacity in every jurisdiction with residential zoning. Therefore, it is essential that jurisdictions are allowed to utilize the development potential of ADUs towards accommodating their RHNA.

Currently, Government Code Section 65583.1 provides HCD full discretion to determine how ADUs count towards RHNA and includes criteria based on past production. This standard does not consider the development potential introduced by new statutes and may result in cities unable to count the true ADU development potential that new housing laws allow. Revisions to Section 65583.1 are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements and to establish reasonable assumptions for determining the percentage of ADUs that count towards lower-income requirements.

The proposed amendment would establish objective measures for estimating both ADU production and affordability levels for RHNA purposes. Since cities and counties are most knowledgeable of development trends within their jurisdictions, HCD would be directed to accept local estimates of future ADU production for purposes of their Housing Element sites inventories. With regard to ADU affordability levels, the proposed amendment would establish an automatically accepted assumption that the income levels of ADU occupants are distributed in the same ratio as all renter households in the jurisdiction as reported by the Department of

Housing and Urban Development unless more specific evidence is available.

Attachment A includes a more detailed analysis and justification for this bill with proposed revisions to state law.

2. **Amending Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing alternative adequate sites toward RHNA requirements.**

Generally, RHNA credit is obtained for potential new construction units, except Government Code 65583.1(c) currently allows local governments to meet up to 25 percent of sites requirements for RHNA by providing affordable units through either: *rehabilitation, conversion, and/or preservation*. However, jurisdictions seldom utilize Section 65583.1 because it includes a number of prohibitive prerequisites making qualification of sites extremely difficult. In fact, the City recently committed \$2 million to a rehabilitation project that converted 12 market-rate rental units in the coastal zone to affordable housing for homeless veterans and seniors. Yet, due to a requirement that the City must have committed funds within the first two (2) years of the planning period, the project was not eligible for RHNA credit.

Use of the “alternate sites” option could prove to be a feasible option to provide a net increase in affordable units in high cost markets and high resource cities such as Newport Beach and other similar highly urbanized coastal communities. Affordable housing developers must compete with luxury housing developers for housing opportunity sites, resulting in the need for substantial land acquisition subsidies to create feasible projects. Given significantly higher land costs, it is more feasible to rehabilitate and convert existing market-rate units for affordable housing than constructing new affordable housing units. Whether the units are new or rehabilitated, providing a net increase of affordable housing units in high resource areas should be encouraged and supported by expanding cities’ and counties’ ability to utilize these more flexible compliance options.

Attachment B includes a more detailed analysis and justification for this bill with proposed revisions to state law.

3. **Amending Government Code Section 65583.2(g) to establish objective standards of what constitutes “substantial evidence” providing cities and counties more certainty of a site’s eligibility for Housing Element compliance.**

In Newport Beach, there is no vacant land available for development with the exception of the Banning Ranch site. However, a majority of Banning Ranch remains within the jurisdiction of the County of Orange and a development of the site was previously denied by the Coastal Commission. Therefore, locating available sites will need to occur through redevelopment of non-vacant and underutilized sites. Of the approximately 29,000 sites located within the City, half are currently impacted by one (1) or more constraints that limit the potential

intensification of residential development. These development constraints include the coastal zone, flood zones, very high fire hazard severity and fuel modification zones, seismic hazard zones, environmentally sensitive habitat and protected open space areas, and airport noise exposure levels of 65dBa CNEL or greater (Attachment D – Potential Development Constraints Map).

Recent changes to State housing element law (e.g., AB1397, Chapter 2017) requiring substantial evidence criteria will make the viability and use of these remaining non-vacant and underutilized sites to accommodate RHNA more onerous and difficult.

The California Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant with current statutes. One of the most important aspects of Housing Element law is the requirement that cities demonstrate “adequate sites” with realistic development potential that can accommodate the jurisdiction’s RHNA allocation at each income level (very low, low, moderate and above moderate). Recent amendments to Housing Element law establish additional criteria for underutilized sites to be considered suitable for “RHNA credit.” Under Section 65583.2(g)(2), if a city or county relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period. (Emphasis added.) Existing statutes and HCD guidance have not provided clear, objective criteria regarding what constitutes substantial evidence. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA goals, the substantial evidence requirement that development is “likely” to occur on all of the underutilized sites in the Housing Element inventory results in the inability to demonstrate adequate sites. Essentially, current law provides standards that are unlikely to be met by most jurisdictions, due to the onerous and non-objective criteria.

For example, previous HCD guidance on this issue has suggested that cities consider the status of existing leases and their expiration dates to determine whether a property is “underutilized” and likely to be redeveloped with new housing during the 8-year Housing Element period. However, cities do not have the legal authority to require property owners to disclose lease terms. Further, current law grants HCD full discretion to determine whether a site is “underutilized” based upon subjective criteria determined by HCD. In many cities with little vacant land, high property values and very few blighted or vacant buildings, the new substantial evidence criteria appear to pose an insurmountable obstacle to achieving Housing Element compliance.

Cities like Newport Beach are also at risk of losing vital commercial corridors without clarifying criteria. Newport Beach could certainly incentivize mixed-use residential by modifying the General Plan and zoning in areas where there now exist one- or two-story commercial buildings to include multi-story mixed-use property. It may be

nigh impossible, though, for each property owner of these low-rise commercial buildings to commit in the next six months to building mixed-use housing over the next eight years. But cities can and should get credit for allowing mixed-use where none presently exists. As noted, cities cannot dictate market conditions or owner preference, but certainly can afford opportunity, which should satisfy the housing mandates.

Demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. It is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market-friendly State guidance for implementing reasonable local policies that facilitate housing development. This legislative amendment would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development.

***Attachment C** includes a more detailed analysis and justification for this bill with proposed revisions to state law.*

4. **Creating a statutory exemption under the California Environmental Quality Act ("CEQA") for the completion of the 6th Cycle Housing Element.**

As discussed above, the added time to prepare and adopt required programmatic CEQA documentation to support substantially increased densities and associated traffic level of service impacts with the significant increase in RHNA allocations adds significant time and cost for completion of the 6th Cycle Housing Element. Given Governor Newsom's declaration of a housing crisis and the California Legislature's enactment of numerous unprecedented reforms to housing law, the California Legislature should consider creating a statutory exemption for local jurisdictions' preparation of the 6th Cycle Housing Element. Statutory exemptions have been enacted for a number of planning efforts not subject to a declared housing crisis by the Governor, such as for sport stadiums. Given the anticipated significant increases in density that cities and counties will need to accommodate in this 6th Cycle Housing Element, the need for CEQA reform is of great importance.

5. **Granting a two (2) year extension for cities to submit the 6th Cycle Housing Element to HCD.**

The City proposes an amendment to California Government Code Section 65588(e)(3) to provide local jurisdictions' adequate time to prepare and submit a certified 6th Cycle Housing Element to HCD. The amendment to Section 65588(e)(3) is proposed to read as follows:

(3) Subsequent revisions of the housing element shall be due as follows:

(A) (i) For local governments described in subparagraphs (A), (B), and (C) of paragraph (2), 18 months after adoption of every second regional transportation plan update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element, or as otherwise provided in law.

(ii) For local governments within the regional jurisdiction of the Southern California Association of Governments, the sixth revision of the housing element shall be due October 21, 2023.

In closing, while the proposed legislative amendments are drawn from Newport Beach's experience, it is my firm believe based upon my experience working with other cities, that these amendments would benefit other cities within the 74th Assembly District and throughout the State of California.

If you have any questions or would like to meet discuss in more detail, please let me know. Your assistance is greatly appreciated.

Sincerely,



Will O'Neill
Mayor

CC. City Council Members
Assemblywoman Cottie Petrie-Norris
Senator Ling Ling Chang
Senator Tom Umberg
Grace Leung, City Manager
Seimone Jurjis, Community Development Director
League of California Cities
Orange County Business Council

Attachments:

- A- Proposed amendments to Government Code Section 65583.1 providing cities objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.
- B- Proposed amendments to Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements.

- C- Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes “substantial evidence.”
- D- Potential Development Constraints Map

ATTACHMENT A

Proposed amendments to Government Code
Section 65583.1 providing cities objective
standards for counting accessory dwelling units
(ADUs) towards RHNA requirements.

Proposed amendments to Government Code Section 65583.1 providing cities objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

Justification

In light of recent changes in state law related to accessory dwelling units that require jurisdictions to now allow up three units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially subsequent to the passing of recent statutes. Furthermore, the waiver of parking and owner occupancy requirements has eliminated the most significant barriers to the development of ADUs and increased the realistic development capacity of every jurisdiction. Therefore, it is essential that jurisdictions be allowed to utilize the development potential of ADUs towards accommodating their RHNA.

Currently Government Code Section 65583.1 provides HCD full discretion in determining how ADUs count towards RHNA and includes criteria based on past production. In most cities and counties, regulations for ADUs were much more restrictive prior to recent changes in law were adopted. Therefore, past production should not be utilized as the primary factor in estimating future ADU development potential. Revisions to the law are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements.

ADU capacity should be based on the existing site capacities when applying development standards required pursuant to state law. Because the current methodologies used to determine ADU yields do not reflect the considerable increase in ADU potential and the new limitations cities and counties have in restricting new ADU development, a new methodology is justified.

In the absence of affordability information, it is recommended that the statute establish reasonable assumptions for determining the percentage of ADUs that count towards a jurisdiction's lower-income requirements. The suggested method is currently required under SB 330 (Government Code Section 66300(d)(2)) and Density Bonus Law (Government Code Section 65915) when reviewing the replacement housing requirements for housing development projects regulated by these laws. The laws state that when any existing dwelling units are occupied by lower-income households, a proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be a rebuttable presumption that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of

Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

Given that this methodology for determining the affordability of households is currently utilized in both Density Bonus Law and SB330, it is recommended that this same methodology be utilized for determining the likely occupancy of ADUs. For example, if a jurisdiction's realistic capacity for ADUs is determined to be 1,000 new ADUs in the eight-year planning period, for the purposes of determining of many of these units may count towards accommodating the low and very-low income housing needs, a jurisdiction would utilize the percentage of existing very low- and low-income households compared to the jurisdiction's total renter households based on the HUD database. In the example below, a jurisdiction could count the capacity of up to 260 units towards the very low-income RHNA need and up to 146 units towards the low-income RHNA need.

The HUD database can be accessed at the following link: <https://www.huduser.gov/portal/datasets/cp.html>

Example Breakdown of a Jurisdiction's Renter Household Income Distribution

Income Level	Renter Households	Percentage of Total Renter Households
Very Low Income	4,400	26%
Low Income	2,400	14.6%
Moderate Income	1,100	6.7%
Above Moderate Income	8,500	52%
Total	16,400	100%

Total Determined ADU Capacity	ADU Capacity Assumed to Accommodate Very Low-Income Housing Need	ADU Capacity Assumed to Accommodate Low-Income Housing Need
1,000	260 (26%)	146 (14.6%)

Proposed Government Code Amendment to Section 65583.1 (Amend to provide objective standards for counting ADUs in sites analysis)

(a)(1) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, *may-shall* allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories.

(2) The department *may shall* also allow a city or county to identify adequate sites for accessory dwelling units based on ~~the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their~~

development, and any other relevant factors, as determined by the department, existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. When ADUs are utilized to meet greater than 50 percent of a jurisdiction's lower-income need, the Housing Element shall provide supplementary policies, programs and actions that further encourage or incentivize ADU development for lower-income households. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(3) For the purposes of determining the affordability level of potential accessory dwelling units and/or junior accessory dwelling units that can accommodate a jurisdiction's RHNA need affordable to lower-income households, the department shall take into account the jurisdiction's need for these units in the community, the resources or incentives available for their development, and any other relevant factors, justified by a local jurisdiction. At minimum, it shall be presumed that very low- and low-income renter households would occupy accessory units in the same proportion of very low- and low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

ATTACHMENT B

Proposed amendments to Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements.

Proposed amendments Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements

Justification

Generally, RHNA credit is obtained for new construction units, except Government Code 65583.1(c) currently does allow local governments to meet up to 25 percent of sites requirements for RHNA by providing affordable units through either: *rehabilitation*; *conversion*; and/or *preservation*. However, this statute is seldom used by jurisdictions because it includes a number of prohibitive prerequisites making qualification of sites extremely difficult. In fact, the City of Newport Beach recently committed \$2 million to a rehabilitation project that converted 12 market-rate rental units in the coastal zone to affordable housing for homeless veterans and seniors. However, due to a requirement that the City must have committed funds within the first two years of the planning period, the project was not eligible for RHNA credit.

Identified problems and reforms suggested include:

1. Requires “committed assistance” from a local government during the first two years of the planning period. This is defined as a legally enforceable agreement which obligates the preemptive identification of sufficient available funds to the availability of financial assistance necessary to make the identified units affordable and available for occupancy within two years of the execution of the agreement.

This has proven problematic for a number of reasons, including:

- a. Committing assistance in the first two years is a difficult standard to achieve because housing element planning periods in metropolitan areas were extended from five years to eight years under SB 375 of 2008. For example, if a project is committed assistance in the third year of a planning period, those units would not be eligible. The statute should be amended to clarify that committed assistance must be demonstrated early enough in the planning period such that the housing units would be completed and available before the end of the planning period.
 - b. The definition of “committed assistance” is problematic because it requires a local government to actually provide financial assistance. For jurisdictions where a project’s inclusionary housing requirement is satisfied through the preservation or conversion of existing units to affordable housing, the affordable units provided would not be eligible under this statute. Therefore, the definition of “committed assistance” should be revised to eliminate sole reliance on financial commitment from a local government and clarify that private entities satisfying local jurisdiction’s affordable housing requirements would also comply.
2. Required affordability terms for units vary as follows: 55 years for converted units; 40 years for preserved units; and 20 years for rehabilitated units. For a new housing

development, terms of 40 or 55 years is reasonable; however, these terms are particularly long and have the potential to make the conversion or preservation of older, existing developments infeasible due to cost. The minimum terms of affordability should be reduced to 20 years unless a longer term is required by another supplementary funding sources.

3. Qualifications for Preservation of Units only allow credit if the existing affordable units are set to expire within the next five years. This should be revised to 10 years to allow for the additional time to negotiate typically complicated transactional details, particularly since committed assistance is currently required within the first two years of the planning period (see comment 1a above).
4. 25 percent limitation- The statute permits a maximum 25 percent of a jurisdiction's adequate sites requirement to be met through this requirement. This is very limiting and discourages jurisdictions from implementing this statute. Given the high land costs in coastal areas of California and significant increase in RHNA allocations to these jurisdiction's based on proximity to jobs and transit, this statute should encourage and promote rehabilitation, conversion and preservation as a realistic option for meeting RHNA requirements. By increasing the 25 percent limitation to 50 percent and removing onerous and unobtainable prerequisites for qualification, affordable units have a greater likelihood of being constructed in these high cost markets through conversion and preservation of existing housing stock.

Proposed Amendment to Government Code Section 65583.1 (c)

(c) (1) *The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to ~~25~~ 50 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:*

(A) *Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.*

(B) *Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.*

(C) *Demonstrate that the units meet the requirements of paragraph (2).*

(2) *Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:*

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units, are converted with committed assistance from the city or county, or from a private entity satisfying a city or county's housing requirement, from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available for rent at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:

(I) Low-income households, if the unit will be made affordable to low-income households.

(II) Very low income households, if the unit will be made affordable to very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or private entity has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any

occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 20 years unless a longer period is required by other supplementary financial assistance programs.

(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 20 additional years unless a longer period is required by other supplementary financial assistance programs.

(ii) The unit is within an "assisted housing development," as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five ten years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) ~~This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households.~~ A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county, or a private entity satisfying a city or county's housing requirements, enters into a legally enforceable agreement ~~during the period from the beginning of the projection period until the end of the second year of the planning period~~ that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy during the planning period within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the

current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the ~~third~~ fifth year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the ~~third~~ fifth year of the planning period, the city or county, or private entity satisfying a city or county's housing requirement, has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the ~~fourth~~ sixth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

ATTACHMENT C

**Proposed amendments to Government Code
Section 65583.2(g) to provide objective
standards of what constitutes “substantial
evidence.”**

Proposed amendments to Government Code Section 65583.2(g) to provide objective standards of what constitutes “substantial evidence.”

Justification

State law requires cities and counties to submit draft and adopted Housing Elements to HCD for review, and HCD is required to review Housing Elements and issue written findings regarding whether the Housing Element substantially complies with the requirements of State law. A finding of substantial compliance by HCD is referred to as “certification” of the Housing Element.

Housing Element certification is important for two major reasons: 1) eligibility for some grant funds (e.g., SB 2) is contingent upon certification; and 2) in the event of a legal challenge to a Housing Element there is a rebuttable presumption of the validity of the Housing Element if HCD has found that the element substantially complies with State law (Government Code 65589.3).

For these reasons, Housing Element certification has very high financial consequences for cities and counties, and the Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant.

One of the most important aspects of Housing Element law is the requirement to demonstrate “adequate sites” with realistic development potential that could accommodate the jurisdiction’s RHNA allocation at each income level (very-low, low, moderate and above-moderate). Recent changes to State law have resulted in much higher RHNA allocations than in past cycles due to the addition of “existing need” to the allocation. For example, HCD’s 6th cycle RHNA allocation to the SCAG region is more than three times the 5th cycle and nearly double the 4th cycle. As a result, many highly urbanized cities will have RHNA allocations that far exceed their capacity for housing development on vacant land, and redevelopment of existing uses on non-vacant (or “underutilized”) sites would be required in order to accommodate their RHNA allocations.

Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for “RHNA credit.” Under Sec. 65583.2(g)(2) if a city relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed to an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence requirement that development is “likely” to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites.

Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

The combination of much higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with new substantial evidence criteria for underutilized sites, results in a very high level of uncertainty and potential financial risk for many cities.

One of the important legislative initiatives for increasing housing production has been to limit local government discretion in the review and approval of housing developments. SB 330, the Housing Crisis Act of 2019, describes the Legislature's intent to "Suspend certain restrictions on the development of new housing during the period of the statewide emergency" and "Work with local governments to expedite the permitting of housing..." In adopting SB 330 and other recent housing bills, the Legislature has recognized the importance of establishing clear, objective criteria for housing developments to reduce processing time and cost, and increase the certainty of housing approvals.

By the same token, demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. This approach would be similar to existing law regarding "default density" for lower-income housing. In metropolitan areas, zoning densities of either 20 or 30 units/acre (depending on population) are deemed suitable for lower-income housing, but jurisdictions may use alternative densities in their sites analysis subject to HCD approval (Government Code 65583.2(c)).

In short, it is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market friendly State guidance for implementing reasonable local policies that facilitate housing development.

This bill would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development. Several of the proposed standards build upon on the analysis and recommendations of leading housing experts in California, including University of California researchers and the Tax Credit Allocation Committee of the California Treasurer's office.

References

Landis, Hood, Li, Rodgers & Warren (2006) "The Future of Infill Housing in California: Opportunities, Potential, and Feasibility" in *Housing Policy Debate*, Volume 17, Issue 4, p. 687

(https://repository.upenn.edu/cgi/viewcontent.cgi?article=1038&context=cplan_papers)

(This landmark study by University of California, Berkeley researchers identified the metric of “improvement-to-land-value (I/L) as a means of identifying infill development potential of underutilized sites.)

California Fair Housing Task Force (2018) “Opportunity Mapping Methodology” (<https://www.treasurer.ca.gov/ctcac/opportunity/final-opportunity-mapping-methodology.pdf>)

(This study, initiated by HCD and the California Tax Credit Allocation Committee (TCAC), was conducted by a group of independent organizations and research centers that would become the California Fair Housing Task Force. The purpose of the study was to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further fair housing goals. TCAC and HCD asked the Task Force to create a statewide opportunity mapping tool that could be adopted into TCAC regulations to accompany regulations to incentivize development of large-family, new construction developments with 9 percent LIHTCs in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families.)

Proposed Government Code Amendment to Section 65583.2(g) (Amend to provide objective standards for substantial evidence determination)

65583.2(g)(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.

(4) Pursuant to paragraph (2), any of the following conditions shall be deemed to satisfy the requirement for substantial evidence that the existing use is likely to be discontinued during the planning period:

(A) The existing improvement-to-land-value (I/L) ratio is less than 1.0 for commercial and multi-family properties or less than 0.5 for single-family properties according to the most recent available property assessment roll; or

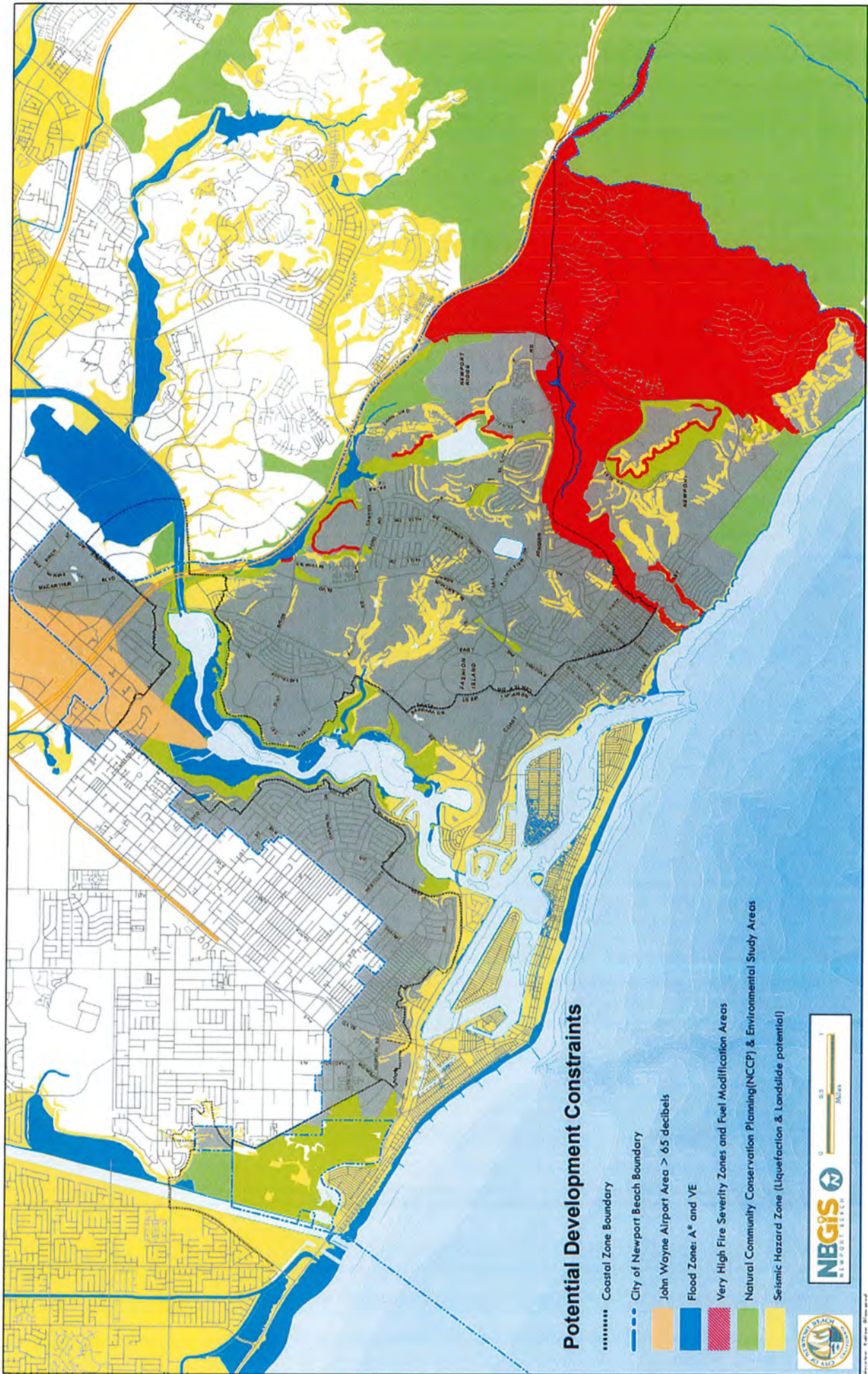
(B) The site is designated a Moderate, High or Highest Resource area in the most recent Tax Credit Allocation Committee of the California Treasurer’s office (TCAC) Opportunity Map; or

(C) Zoning for the site allows residential development of at least 100 percent additional floor area than existing structures on the site and housing developments in which at least 20 percent of the units are affordable to lower-income households are permitted by-right; or

(D) The use of non-vacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

ATTACHMENT D

Potential Development Constraints Map



Potential Development Constraints

- Coastal Zone Boundary
- - - City of Newport Beach Boundary
- John Wayne Airport Area > 65 decibels
- Flood Zones: A* and VE
- Very High Fire Severity Zones and Fuel Modification Areas
- Natural Community Conservation Planning (NCCP) & Environmental Study Areas
- Seismic Hazard Zone (Liquefaction & Landslide potential)

