

APPENDIX A

NOTICE OF PREPARATION AND COMMENT LETTERS



Notice of Preparation and Scoping Meeting

City of Newport Beach Housing Implementation Program Program Environmental Impact Report

DATE: June 27, 2023

TO: State Clearinghouse; Responsible and Trustee Agencies; Interested Individuals and Organizations; County of Orange Clerk-Recorder

FROM: City of Newport Beach, Community Development Department, 100 Civic Center Drive, Newport Beach, CA 92660

PROJECT LOCATION: City of Newport Beach and its Sphere of Influence

NOTICE OF PREPARATION REVIEW PERIOD: June 27, 2023 to July 27, 2023

SCOPING MEETING: Monday, July 10, 2023, at 5:00 p.m., City of Newport Beach Central Library Friends Room, 1000 Avocado Avenue, Newport Beach

The City of Newport Beach (City) is the Lead Agency under the California Environmental Quality Act (CEQA) and will be responsible for the preparation of a Program Environmental Impact Report (EIR) for the City of Newport Beach Housing Implementation Program (proposed Project).

BACKGROUND

The City's 2021-2029 Housing Element was adopted in September 2022 as part of the 6th Cycle Housing Element process and was subsequently certified by the State of California Department of Housing and Community Development (HCD) on October 5, 2022. The adopted 2021-2029 Housing Element establishes programs, policies and actions to further the goal of meeting the existing and projected housing needs of all income levels of the community and provides evidence of the City's ability to accommodate the Regional Housing Needs Assessment (RHNA) allocation through the year 2029, as established by the Southern California Association of Governments (SCAG).

The Program EIR will evaluate the potential environmental effects of the implementing actions associated with the adopted 2021-2029 Housing Element. To facilitate development of housing as outlined in the adopted Housing Element, the Project requires a General Plan Amendment and amendments to the Municipal Code.

PURPOSE OF THE NOTICE OF PREPARATION

The purpose of this Notice of Preparation (NOP) is to fulfill legal notification requirements and inform the public, and CEQA Responsible and Trustee Agencies, that a Program EIR is being prepared by the City for the Project. This NOP solicits agency and interested party comments regarding the scope and content of the Program EIR. The City, as Lead Agency, respectfully requests that any Responsible or Trustee Agency responding to this notice reply in a manner consistent with State CEQA Guidelines Section 15082(b). Please address the scope and content of environmental information or issues that may relate to your agency's statutory responsibilities in connection with the proposed Project. The content of the responses will help guide the focus and scope of the Program EIR in accordance with State CEQA Guidelines.

This NOP includes a summary project description and a list of the environmental issues to be examined in the Program EIR. It is intended to provide said agencies, interested parties, and organizations with sufficient information describing the proposed Project and the environmental issues that will be addressed in the Program EIR so that meaningful responses and comments can be provided.

Public Comment Period

Based on the time limits defined by the State CEQA Guidelines, the 30-day public review/comment period on the NOP will commence on June 27, 2023 and conclude on July 27, 2023 at 5:00 p.m. The NOP and further information regarding the Project are available on the City's website:

www.newportbeachca.gov/CEQA

Any responses must be submitted to the City's Community Development Department as soon as possible, but no later than the July 26, 2023 deadline. Comments must be submitted in writing or via email to:

Benjamin M. Zdeba, AICP

Principal Planner

City of Newport Beach, Community Development Department

100 Civic Center Drive

Newport Beach, CA 92660

949-644-3253

bzdeba@newportbeachca.gov

Please include the name, phone number, email, and address of a contact person in your response. If comments are submitted by e-mail with attachments, it is recommended that the attachments be delivered in writing. Virus protection measures and variety of formats for attachments can limit the ability for the attachments to be delivered.

PROGRAM EIR PUBLIC SCOPING MEETING

The City will hold a public Scoping Meeting to solicit comments on the scope of the Program EIR on Monday, July 10, 2023, at 5:00 p.m. in the City of Newport Beach Central Library Friends Room, 1000 Avocado Avenue, Newport Beach. Questions regarding the Scoping Meeting should be directed to Benjamin Zdeba. You may also provide oral or written comments in person at the Scoping Meeting.

Special Accommodations. Should you require special accommodations at the Scoping Meeting, such as for the hearing impaired or an English translator, please contact the City no later than 5:00 p.m. on Thursday, July 6, 2023 (see contact information above).

City of Newport Beach Housing Implementation Program Project Summary

Figure 1 shows the boundaries of the City of Newport Beach and its Sphere of Influence (collectively, the City) in a regional context. Located in coastal Orange County, the City is approximately 31,472 acres of land area with a population of approximately 85,865 persons (Department of Finance, 2021). The City is generally northwest of the City of Laguna Beach, southeast of the City of Costa Mesa, east of the City of Huntington Beach, and southwest of the City of Irvine. Newport Beach is bordered to the west by the Pacific Ocean.

Background: City of Newport Beach 2021-2029 Housing Element

The City's 2021-2029 Housing Element was adopted in September 2022 as part of the statewide 6th Cycle Housing Element process and was subsequently certified by the State of California Department of Housing and Community Development (HCD) on October 5, 2022. The City's Regional Housing Needs Assessment (RHNA) allocation is 4,845 housing units, including 1,456 very low-income units and 930 low-income units. In addition to the 6th Cycle RHNA allocation, 2021-2029 Housing Element accounts for additional housing units as a buffer to address future "no net loss" if it becomes necessary to identify replacement sites during the 6th Cycle implementation period. Only a portion of these sites will be necessary to accommodate the City's planning obligation.

The adopted 2021-2029 Housing Element identifies six focus areas in the City that have sufficient capacity to meet its RHNA allocation for the 6th Cycle. The six focus areas in the adopted Housing Element are:

- Airport Area
- West Newport Mesa
- Dover-Westcliff
- Newport Center
- Coyote Canyon
- Banning Ranch

The Banning Ranch Focus Area is included in the adopted 2021-2029 Housing Element's sites inventory. However, it is not assumed in order to accommodate the City's 2021-2029 RHNA growth need. Banning Ranch is considered as an additional dwelling unit opportunity, beyond those that accommodate the RHNA.

Program Environmental Impact Report

The Program EIR will evaluate the potential environmental effects of the implementing actions associated with the 2021-2029 Housing Element. The Program EIR will analyze the 6th Cycle RHNA obligation of 4,845 units and a buffer of 5,242 units, for a total development capacity of 10,087 housing units. The adopted 2021-2029 Housing Element identifies 244 candidate housing sites in the six focus areas of the City that can accommodate housing. Subsequent to the adoption of the Housing Element, five additional potential housing sites were identified. Therefore, the Program EIR will evaluate 249 housing sites as shown in Figure 2A through 2E.

The Project does not propose any site development on any of the housing sites. Future housing development would occur over time depending upon numerous factors such as market conditions, and economic and planning considerations, and at the individual property owners' discretion.

The Project is proposing revisions to existing and the addition of additional General Plan Land Use Element policies to implement existing goals and policies to allow for the implementation of the 2021-2029 Housing Element.

The City's Zoning Code defines the City's allowed land uses and establishes development standards for each zone. The Zoning Code is adopted to regulate the use of real property and the buildings, structures, and improvements located thereon to implement the provisions of the General Plan and carry out its objectives. The Project proposes the adoption of housing opportunity overlay zoning districts for five of the six focus areas: Airport Area, West Newport Mesa, Dover-Westcliff, Newport Center, and Coyote Canyon. A housing opportunity overlay zoning district would also be applied to 5th Cycle RHNA housing sites. Residential use of any property included within a housing opportunity overlay zone is allowed regardless of the underlying land use category.

Potential Environmental Effects

The City, as the Lead Agency, is responsible for environmental review under CEQA. State CEQA Guidelines Section 15063 provides that if a lead agency determines that an EIR will clearly be required for a project, an Initial Study is not required. Accordingly, a Program EIR will be prepared to fully evaluate the potential impacts of the Project.

The Project has the potential to have significant impacts on several environmental factors. Using the CEQA Guidelines Appendix G Environmental Checklist as a guide, the following environmental topical areas will be addressed in the Program EIR:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

It is unknown which sites may transition in the future to provide new housing or housing at an increased density. Some sites may not be redeveloped or may redevelop consistent with the underlying zoning designation. Further, in addition to the 6th Cycle RHNA allocation, 2021-2029 Housing Element accounts for additional housing units as a buffer to address future "no net loss" if it becomes necessary to identify replacement sites during the 6th Cycle implementation period. For these reasons, the Program EIR proposes to evaluate the additional potential housing development as well as accounting for any existing land uses on the sites.

The Program EIR will address the potential short-term and long-term effects of the Project on the environment. It will also evaluate the potential for the Project to cause direct and indirect growth-inducing impacts, as well as cumulative impacts. Alternatives to the proposed project will be evaluated based on their ability to reduce impacts that are determined to be significant in the Program EIR.

Required Approvals

The following discretionary actions by the City would be required:

- General Plan Amendment for Housing Element program implementation.
- Zoning Text Amendments for rezoning overlay program implementation.
- Zoning Map Amendment for rezoning program implementation.
- Local Coastal Program Amendment (subject to certification by the California Coastal Commission) for rezoning program implementation.

Other Project activities or actions:

- John Wayne Airport Land Use Commission (ALUC) review of the Project for consistency with the Airport Environs Land Use Plan for John Wayne Airport
- Voter approval of a major amendment to the General Plan in compliance with City Charter Section 423



Figure 1: Regional Map
 City of Newport Beach General Plan Housing Implementation

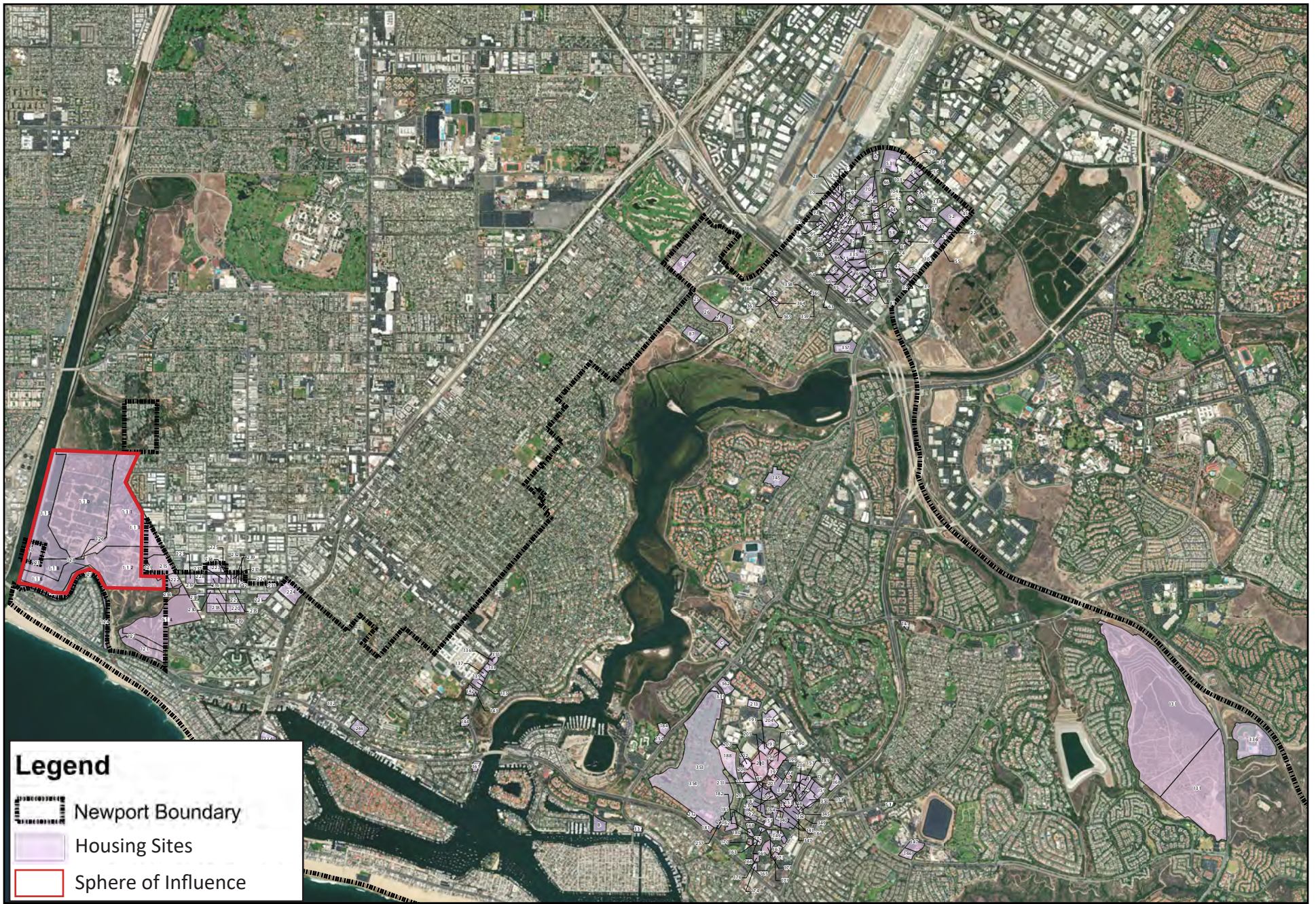


Figure 2A: Housing Sites
City of Newport Beach General Plan Housing Implementation

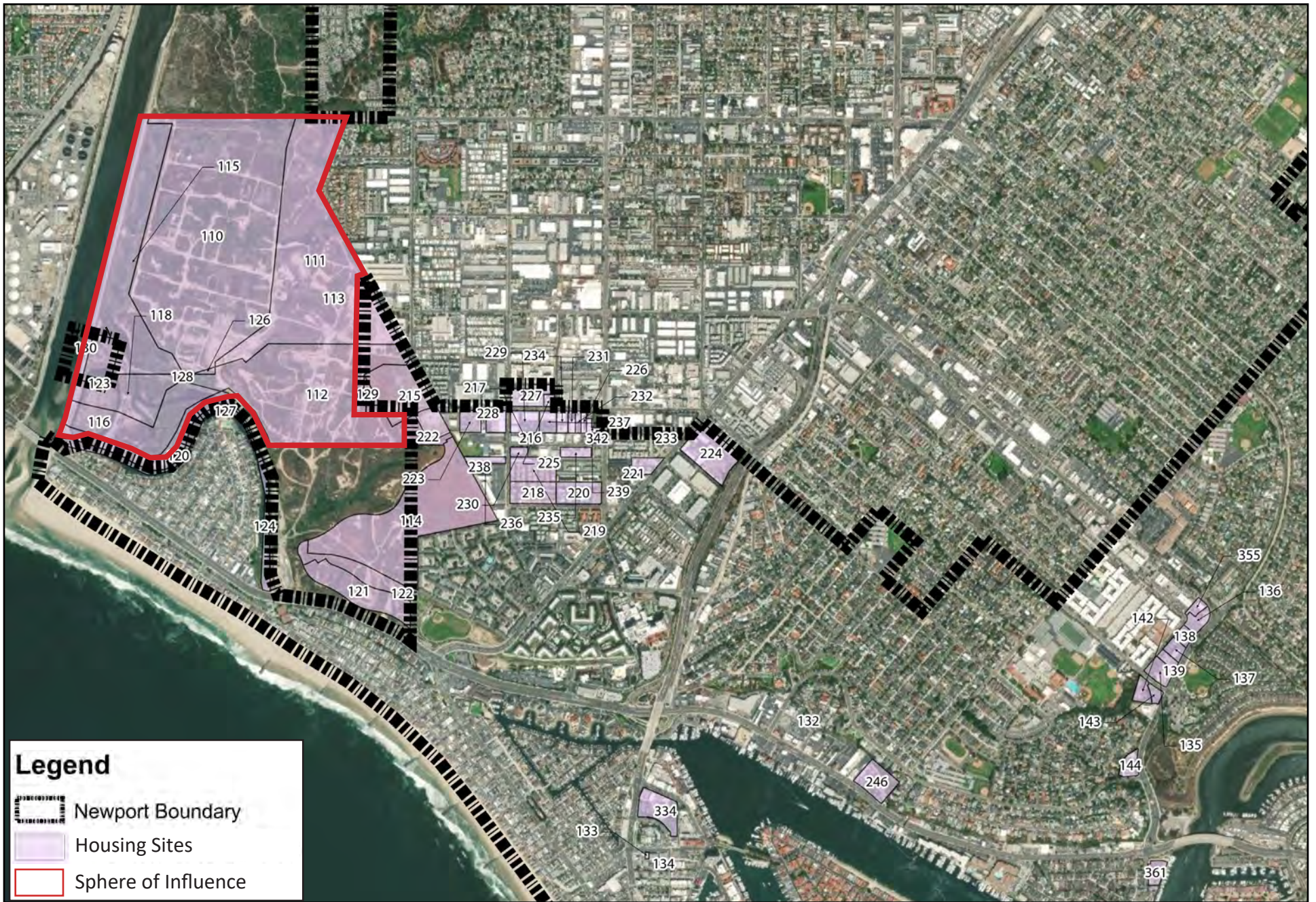


Figure 2B: Housing Sites
 City of Newport Beach General Plan Housing Implementation



Figure 2C: Housing Sites
 City of Newport Beach General Plan Housing Implementation



Figure 2D: Housing Sites
City of Newport Beach General Plan Housing Implementation



Figure 2E: Housing Sites
 City of Newport Beach General Plan Housing Implementation

From: Miller, William B. <william_b_miller@fws.gov>
Sent: July 17, 2023 4:25 PM
To: Zdeba, Benjamin
Cc: Gray, Emily@Wildlife
Subject: Fw: Notice of Preparation: City of Newport Beach Housing Implementation EIR
Attachments: 20210426_21B0102-21CPA0063_OR_Newport_Beach_Housing_Element_Update.pdf

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

William B. Miller, Biomonitor
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008
(760) 431-9440 Ext. 206
[William B Miller@fws.gov](mailto:William_B_Miller@fws.gov)

Pronouns: *He, Him, His*

From: Miller, William B.
Sent: Monday, July 17, 2023 4:21 PM
Cc: Gray, Emily@Wildlife <emily.gray@wildlife.ca.gov>
Subject: Notice of Preparation: City of Newport Beach Housing Implementation EIR

In response reply to: FWS-OR-23-0105546

Dear Benjamin Zdeba:

This email responds to the Notice of Preparation of a Program Environmental Impact Report (EIR) for the City of Newport Beach (City) Housing Implementation Program. The Program EIR is being prepared to evaluate the potential environmental effects of implementing actions associated with the adopted City of Newport Beach 2021-2029 Housing Element.

On April 26, 2021, we (the United States Fish and Wildlife Service, "Service") responded to the City's proposal to update its Housing Element for the 2021-2029 planning period (comment letter attached) to discourage the City from including two candidate sites (Banning Ranch and Coyote Canyon) among those proposed to help meet the City's Regional Housing Needs Assessment housing allocation. Our comments were based on potential effects to federally listed species that could result from residential development of the Banning Ranch property, and because the Coyote Canyon property is included within the Habitat Reserve created by the

1996 Orange County Central and Coastal Subregions Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) to which the City is a Participating Jurisdiction. Since our letter, 385 acres of the 401 acre Banning Ranch Property have been acquired for permanent conservation purposes via philanthropic donations and State of California and Service funding. Therefore, we are writing to request the City address our earlier comments about these properties during preparation of the EIR, and, in particular, to evaluate the consistency of the implementing actions for the Housing Element with the policies of the NCCP/HCP and permanent conservation of the Banning Ranch property.

Thank you for consideration of our comments. Should you have questions, please do not hesitate to contact me.

Sincerely,

William B. Miller, Biomonitor
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008
(760) 431-9440 Ext. 206
[William B Miller@fws.gov](mailto:William_B_Miller@fws.gov)

Pronouns: *He, Him, His*



U.S. FISH AND WILDLIFE SERVICE
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, California 92123

In Reply Refer to:
FWS/CDFW-OR-21B0102-21CPA0063

April 26, 2021
Sent by Email

Seimone Jurjis
Director, Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

Subject: City of Newport Beach General Plan Draft Housing Element Update, March 10, 2021

Dear Seimone Jurjis:

This letter responds to the draft City of Newport Beach (City) 2021–2029 Housing Element that is being prepared in response to the Southern California Association of Governments Regional Housing Needs Assessment (RHNA) for the 2021–2029 planning period. As part of this update, the City is required to identify sites to meet the City’s RHNA 4,845 housing unit growth need allocation. To identify candidate sites for accommodating the RHNA allocation, the City has prepared an Adequate Sites Inventory to assess the feasibility of various parcels to redevelop during the planning period. Two of the identified sites, Coyote Canyon and Banning Ranch, are specifically addressed by the Orange County Central and Coastal Subregions Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). Therefore, we, the U.S. Fish and Wildlife Service (Service) and California Department of Fish and Wildlife (Department), offer the following comments to assist the City in completing its Housing Element update consistent with the provisions of the NCCP/HCP.

On June 21, 2007, the Service issued a section 10(a)(1)(B) (TE 136064-0) permit under the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), to the City for the NCCP/HCP, and the City signed the NCCP/HCP Implementation Agreement on November 22, 1999, authorizing Take¹ of Identified Species in conjunction with Planned Activities pursuant to the Natural Community Conservation Planning Act and the California Endangered Species Act. The purpose of the NCCP/HCP is to protect and manage habitat supporting a broad range of plant and animal populations found within the Central and Coastal subregions while providing for economic uses that meet the social and economic needs of the people within these subregions. To achieve this purpose, the NCCP/HCP established a subregional Habitat Reserve System to minimize and mitigate impacts to Identified Species and Covered Habitats from implementation of Planned Activities by Participating Landowners and signatory Local Governments. As a signatory Local Government, some of the City’s NCCP/HCP responsibilities include: formally

¹ Capitalized terms in this letter are used to identify defined terms in the NCCP/HCP.

committing identified lands owned by the City to the Habitat Reserve System and managing such land in accordance with the provisions of the NCCP/HCP; and making best efforts to acquire conservation easements over privately owned Existing Use Areas owned by Non-Participating Landowners.

Among the sites identified as being feasible or potentially feasible for future development is a 22-acre portion of the closed Coyote Canyon landfill. When the NCCP/HCP was adopted in 1996, this land was owned by the Irvine Company, who as a NCCP/HCP Participating Landowner, committed to its permanent conservation by including the area in the NCCP/HCP Reserve System. The County of Orange, another NCCP/HCP Participating Landowner, accepted this commitment with fee ownership for the property. While the provisions of the NCCP/HCP allow for amendments that can include adjustments to Reserve boundaries that involve no net loss of Reserve acreage or loss of subregional habitat value, this parcel lies within an important habitat linkage between Upper Newport Back Bay and conserved lands within the San Joaquin Hills, so residential development of this parcel is likely to have a substantial impact on NCCP/HCP subregional habitat values. Therefore, we recommend the City remove the 22-acre Coyote Canyon site from the Housing Element update. In addition, as part of any future General Plan update, we recommend the City add the NCCP/HCP Reserve boundaries to its Land Use Overview map to avoid consideration of Reserve lands for future development.

The other site identified as being feasible or potentially feasible to help meet the City's RHNA allocation is Banning Ranch. The NCCP/HCP designates the Banning Ranch property² as an "Existing Use Area." Existing Use Areas include lands owned by Non-Participating Landowners within the Central and Coastal subregions where the NCCP/HCP does not authorize Incidental Take of the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*) out of a recognition that these areas have the potential to contribute to the NCCP/HCP conservation strategy by contributing to connectivity between Reserve areas and/or by supporting significant populations of the gnatcatcher or other listed or Identified Species (NCCP/HCP Section 4.4.1). The Banning Ranch property was designated as an Existing Use Area "...because: it provides existing gnatcatcher habitat; it is located adjacent to Talbert Nature Preserve and has significant potential to contribute to the long-term biological function of the Reserve System; and it would be inappropriate to authorize Incidental Take of what could be a significant population of coastal California gnatcatcher without being able to review available biological data (i.e., field survey data for gnatcatchers and other target or "Identified Species")" (NCCP/HCP p. II-223). Accordingly, effects to federally listed species resulting from development of the property should be addressed in coordination with the Service pursuant to the Act, as amended. If impacts to State-listed species are anticipated, the project proponent should also coordinate with the Department pursuant to the California Endangered Species Act. Finally, pursuant to the NCCP/HCP, as a signatory to the

² Identified as the "Santa Ana River Mouth Existing Use Area" in the NCCP/HCP.

Seimone Jurjis (FWS/CDFW-OR-21B0102-21CPA0063)

3

NCCP/HCP, the City committed to make best efforts to obtain a conservation easement over the Banning Ranch property³ (NCCP/HCP Section 4.4.2).

In conclusion, we are writing to discourage the City from considering the Coyote Canyon parcel as part of its Housing Element update since this property is part of the NCCP/HCP Habitat Reserve, and recommend the City make best efforts to conserve habitat on the Banning Ranch property in support of the design and function of the NCCP/HCP Habitat Reserve System. Based on the assessment in the Housing Plan that only a portion of the candidate sites identified in the Adequate Sites Analysis are necessary to meet the City's RHNA obligation, we recommend that the City prioritize the use of other identified sites with lower conservation values to meet its fair share housing unit growth allocation.

Thank you for consideration of the above comments on the proposed update to the Housing Element. Should you have questions or wish to discuss any of the above, please contact [William Miller](#)⁴ with the Service at 760-431-9440, extension 206, or [Kyle Rice](#)⁵ of the Department at 858-467-4250.

Sincerely,

**JONATHAN
SNYDER**

Digitally signed by
JONATHAN SNYDER
Date: 2021.04.26 17:42:59
-07'00'

Jonathan D. Snyder
Assistant Field Supervisor
U.S. Fish and Wildlife Service

DocuSigned by:
David Mayer
D700B4520375406...

David A. Mayer
Environmental Program Manager
Department of Fish and Wildlife

cc:

Jim Sulentich, NCC
Nancy Gardner, City of Newport Beach

³ Per the NCCP/HCP, "The failure or inability to obtain conservation easements over private lands located within existing use areas shall not be deemed a breach of the NCCP/HCP or in any way serve as the basis for suspension, revocation or termination of any Section 10(a) Permit or CDFG Management Authorization."

⁴ william_b_miller@fws.gov

⁵ kyle.rice@wildlife.ca.gov

NATIVE AMERICAN HERITAGE COMMISSION

Governor's Office of Planning & Research

June 30, 2023

July 24 2023

Benjamin M. Zdeba
City of Newport Beach
100 Civic Center Dr, Bay B
Newport Beach, CA 92660

STATE CLEARINGHOUSE

Re: 2023060699, City of Newport Beach Housing Implementation Program, Orange County

Dear Mr. Zdeba:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52



ACTING CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Sara Dutschke
Miwok

COMMISSIONER
Isaac Bojorquez
Ohlone-Costanoan

COMMISSIONER
Buffy McQuillen
Yokayo Pomo, Yuki,
Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Andrew.Green@nahc.ca.gov

Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse

California Department of Transportation



DISTRICT 12
1750 EAST 4TH STREET, SUITE 100
SANTA ANA, CA 92705
PHONE (657) 328-6000
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www.dot.ca.gov/caltrans-near-me/district12

July 27, 2023

Mr. Benjamin Zdeba
Principle Planner
City of Newport Beach
100 Civic Center Drive; Bay B
Newport Beach, CA. 92660

File: LDR/CEQA
SCH: 2023060699
12-ORA-2023-02318

Dear Mr. Zdeba,

Thank you for including the California Department of Transportation (Caltrans) in the review of Notice of Preparation (NOP) for the Draft Environmental Impact Report (EIR) for the Newport Beach Housing Element Implementation Project.

The City's 2021-2029 Housing Element was adopted in September 2022 as part of the 6th Cycle Housing Element process and was subsequently certified by the State of California Department of Housing and Community Development (HCD) on October 5, 2022. The adopted 2021-2029 Housing Element establishes programs, policies and actions to further the goal of meeting the existing and projected housing needs of all income levels of the community and provides evidence of the City's ability to accommodate the Regional Housing Needs Assessment (RHNA) allocation through the year 2029, as established by the Southern California Association of Governments (SCAG).

The Program EIR will evaluate the potential environmental effects of the implementing actions associated with the adopted 2021-2029 Housing Element. To facilitate development of housing as outlined in the adopted Housing Element, the Project requires a General Plan Amendment and amendments to the Municipal Code.

The mission of Caltrans is to provide a safe and reliable transportation network that services all people and respects the environment. Caltrans is a responsible agency on this project and has the following comments:

"Provide a safe and reliable transportation network that serves all people and respects the environment"

Transportation Planning (LDR)

1. Please provide discussion regarding the City's multimodal mobility strategies and opportunities for local and regional transit services.
2. Please identify all the existing transit services for local and regional bus services and connectivity to rail services from the nearest train stations provided by Metrolink and Amtrak Pacific Surfliner.
3. Consider encouraging the use of transit among future residents, visitors, and workers of the proposed areas of developments. Increasing multimodal transportation will lead to a reduction to congestion, Vehicle Miles Traveled, and improve air quality.
4. Please provide adequate wayfinding signage to transit stops within all the project vicinity and local roadways.

Caltrans' mission is to provide a safe, sustainable, equitable, integrated, and efficient transportation system to enhance California's economy and livability. Please continue to coordinate with Caltrans for any future developments that could potentially impact State transportation facilities. If you have any questions, please do not hesitate to contact Julie Lugaro at Julie.lugaro@dot.ca.gov.

Sincerely,



for
Scott Shelley
Branch Chief, Regional-LDR-Transit Planning
Caltrans, District 12



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY Gavin Newsom, Governor
DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

South Coast Region
3883 Ruffin Road | San Diego, CA 92123
wildlife.ca.gov

July 26, 2023

Benjamin M. Zdeba, Principal Planner
City of Newport Beach
100 Civic Center Drive Bay B
Newport Beach, CA 92660
BZdeba@newportbeachca.gov

Subject: Notification of Preparation of a Program Environmental Impact Report for the City of Newport Beach Housing Element Implementation Program, SCH #2023060699, City of Newport Beach, Orange County

Dear Mr. Zdeba:

The California Department of Fish and Wildlife (CDFW) has reviewed a Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) from the City of Newport Beach (City) for the City of Newport Beach Housing Element Implementation Program (Project). CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and be subject to CDFW's regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Newport Beach (City)

Objective: The Project is proposing revisions to and the addition of additional General Plan Land Use Element policies to implement existing goals and policies to allow for the implementation of the 2021-2029 Housing Element. This proposal will implement housing programs to meet the City's housing needs for all income groups per the City's Regional Housing Needs Assessment (RHNA) allocation. Primary Project activities include a General Plan Amendment and Amendments to the Zoning Code and Zoning Map.

Location: The Project does not propose any site development at this time. Future housing development would occur over time depending upon numerous factors such as market conditions, and economic and planning considerations, and at the individual property owners' discretion. However, the Project does identify six focus areas within the City's boundary as potential housing sites to accommodate future housing needs. The six focus areas in the adopted Housing Element are: Airport Area, West Newport Mesa, Dover-Westcliff, Newport Center, Coyote Canyon, and Banning Ranch. The Banning Ranch Focus Area is included in the adopted 2021-2029 Housing Element's sites inventory. However, it is not assumed in order to accommodate the City's 2021-2029 RHNA growth need. Banning Ranch is considered as an additional dwelling unit opportunity, beyond those that accommodate the RHNA.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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CDFW looks forward to commenting on the PEIR when it is released. CDFW may have additional comments to the PEIR not addressed in this letter.

General Comments

1) Biological Baseline Assessment

CDFW recommends providing a complete assessment and impact analysis of the native/naturalized vegetation communities, flora, and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures (including provision for buffers between impacts and locations of sensitive species) necessary to avoid, minimize, or mitigate for significant impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. The PEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The PEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity;
- b) A complete floristic assessment within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a thorough, recent, floristic-based assessment of special status plants and natural communities;
- c) A complete, recent, assessment of the biological resources associated with each habitat type onsite and within adjacent areas that could **also be affected by the Project**. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results.

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City of Newport Beach
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Online forms can be obtained and submitted at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>; and,

- d) A recent wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years as long as there was not a prevailing drought during the time of the botanical survey. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if buildout could occur over a protracted time frame, or in phases.

2) Analyses of the Potential Project-Related Biological Direct, Indirect, and Cumulative Impacts

Due to the aim of providing capacity for the City's housing needs, rezoning will occur and thus have the potential to impact biological resources. Project activities may cause direct impacts if parcels are rezoned from open space to residential, resulting in direct take of habitat and the species therein. Project activities may also have indirect impacts resulting from increased noise, lighting, traffic, and human activity adjacent to open space or sensitive areas. Specific mitigation or avoidance measures may be necessary to offset such impacts. CDFW recommends providing a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. The following should be addressed in the PEIR:

- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address Project-related changes on drainage patterns on and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included;

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- b) Discussions regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the PEIR;
- c) The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document;
- d) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the PEIR; and,
- e) A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

3) Impacts to Bird Species

The Project plans identify six focus areas including some areas zoned as open space and/or adjacent to open space with existing shrubs and trees. These open spaces include, but are not limited to: Talbert Regional Park, Big Canyon Trailhead, Ecological Reserve of Upper Newport Bay, and Back Bay Golf Course. Project activities occurring during the avian breeding season could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. Some sites identified for the Project could also lead to the loss of foraging habitat for sensitive bird species. CNDDDB indicates the occurrence of several special status species within the Project vicinity, specifically least Bell's vireo (vireo; *Vireo bellii pusillus*; CESA- and ESA-listed endangered), coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*, ESA-listed threatened), California least tern (*Sternula antillarum browni*; CESA- and ESA-listed endangered), and

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western snowy plover (*Charadrius nivosus nivosus*; ESA-listed threatened). CNDDDB also indicates the occurrence of a CDFW Species of Special Concern (SSC): yellow rail (*Coturnicops noveboracensis*). The following should be addressed in the PEIR:

- a) CDFW recommends that measures be taken, primarily, to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs; and,
- b) If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working onsite, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

5) Project Description and Alternatives

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, CDFW recommends the following information be included in the PEIR:

- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,

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- b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.

6) Compensatory Mitigation

The PEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore would not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity. Under Government Code section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or non-profit organization to effectively manage and steward land, water, or natural resources on mitigation lands that it approves.

7) Wetland Permitting Obligations

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project **applicant (or "entity") must provide written notification** CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. **CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency.**

Figure 2B-2E of the NOP identifies opportunity sites adjacent to the Santa Ana River and San Diego Creek. The PEIR should include an analysis of the Project's direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 et seq. If impacts to the bed, bank, or channel of a stream may occur, we

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encourage the City to consult further with CDFW regarding the possible submittal of a LSA Notification package. A Notification package for a LSA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

8) Landscaping

Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the PEIR stipulate that no invasive plant material shall be used. Furthermore, we recommend using native, locally appropriate plant species for landscaping on the Project site. A list of invasive/exotic plants that should be avoided as well as suggestions for suitable landscape plants can be found at <https://www.cal-ipc.org/solutions/prevention/landscaping/>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. Questions

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City of Newport Beach
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regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:

D700B4520375406...

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov
Susan Howell, San Diego – Susan.Howell@wildlife.ca.gov
Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov
CEQA Program Coordinator, Sacramento –
CEQACommentLetters@wildlife.ca.gov

OPR

State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov

REFERENCES

California Department of Fish and Wildlife. 2022. California Natural Diversity Database. Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2022. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.

City of Newport Beach. 2023. Notice of Preparation of Housing Implementation Program Environmental Impact Report. Available from:
https://files.ceganet.opr.ca.gov/289030-1/attachment/bVxsg9bKz-S_BrE9JqJz7Up_nY6JhC48CsmWGoBUiw_5A9_5ui9aVrjVs6Z97r9kN_uDQZeuAekuMHgMO.



July 26, 2023

Benjamin M. Zdeba, AICP, Principal Planner
City of Newport Beach, Community Development Department
100 Civic Center Drive
Newport Beach, California 92660
Phone: (949) 644-3253
E-mail: bzdeba@newportbeachca.gov

Subject: SCAG Comments on the Notice of Preparation of a Draft Program
Environmental Impact Report for the City of Newport Beach Housing Implementation
Program [SCAG NO. IGR10909]

Dear Benjamin M. Zdeba:

Thank you for submitting the Notice of Preparation of a Draft Program Environmental
Impact Report for the City of Newport Beach Housing Implementation Program
("proposed project") to the Southern California Association of Governments (SCAG) for
review and comment. SCAG is responsible for providing informational resources to
regionally significant plans, projects, and programs per the California Environmental
Quality Act (CEQA) to facilitate the consistency of these projects with SCAG's adopted
regional plans, to be determined by the lead agencies.1

Pursuant to Senate Bill (SB) 375, SCAG is the designated Regional Transportation
Planning Agency under state law and is responsible for preparation of the Regional
Transportation Plan (RTP) including the Sustainable Communities Strategy (SCS).
SCAG's feedback is intended to assist local jurisdictions and project proponents to
implement projects that have the potential to contribute to attainment of Regional
Transportation Plan/Sustainable Communities Strategy (RTP/SCS) goals and align with
RTP/SCS policies. Finally, SCAG is the authorized regional agency for Intergovernmental
Review (IGR) of programs proposed for Federal financial assistance and direct Federal
development activities, pursuant to Presidential Executive Order 12372.

SCAG staff has reviewed the Notice of Preparation of a Draft Program Environmental
Impact Report for the City of Newport Beach Housing Implementation Program in
Orange County. The proposed project consists of revisions to existing and the addition
of additional General Plan Land Use Element policies to implement existing goals and
policies to allow for implementation of the 2021-2029 Housing Element including the
evaluation of 5 additional potential housing sites and the adoption of housing
opportunity overlay zoning districts.

When available, please email environmental documentation to IGR@scag.ca.gov
providing, at a minimum, the full public comment period for review.

If you have any questions regarding the attached comments, please contact the IGR
Program, attn.: Ryan Bañuelos, Associate Regional Planner, at (213) 630-1532 or
IGR@scag.ca.gov. Thank you.

Sincerely,

Frank Wen, Ph.D.
Manager, Planning Strategy Department

1 Lead agencies such as local jurisdictions have the sole discretion in determining a local project's consistency
with the 2020 RTP/SCS (Connect SoCal) for the purpose of determining consistency for CEQA.

SOUTHERN CALIFORNIA
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**COMMENTS ON THE NOTICE OF PREPARATION OF A
DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE
CITY OF NEWPORT BEACH HOUSING IMPLEMENTATION PROGRAM [SCAG NO. IGR10909]**

CONSISTENCY WITH CONNECT SOCIAL

SCAG provides informational resources to facilitate the consistency of the proposed project with the adopted 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS or Connect SoCal). For the purpose of determining consistency with CEQA, lead agencies such as local jurisdictions have the sole discretion in determining a local project’s consistency with Connect SoCal.

CONNECT SOCIAL GOALS

The SCAG Regional Council fully adopted [Connect SoCal](#) in September 2020. Connect SoCal, also known as the 2020 – 2045 RTP/SCS, builds upon and expands land use and transportation strategies established over several planning cycles to increase mobility options and achieve a more sustainable growth pattern. The long-range visioning plan balances future mobility and housing needs with goals for the environment, the regional economy, social equity and environmental justice, and public health. The goals included in Connect SoCal may be pertinent to the proposed project. These goals are meant to provide guidance for considering the proposed project. Among the relevant goals of Connect SoCal are the following:

SCAG CONNECT SOCIAL GOALS	
Goal #1:	<i>Encourage regional economic prosperity and global competitiveness</i>
Goal #2:	<i>Improve mobility, accessibility, reliability and travel safety for people and goods</i>
Goal #3:	<i>Enhance the preservation, security, and resilience of the regional transportation system</i>
Goal #4:	<i>Increase person and goods movement and travel choices within the transportation system</i>
Goal #5:	<i>Reduce greenhouse gas emissions and improve air quality</i>
Goal #6:	<i>Support healthy and equitable communities</i>
Goal #7:	<i>Adapt to a changing climate and support an integrated regional development pattern and transportation network</i>
Goal #8:	<i>Leverage new transportation technologies and data-driven solutions that result in more efficient travel</i>
Goal #9:	<i>Encourage development of diverse housing types in areas that are supported by multiple transportation options</i>
Goal #10:	<i>Promote conservation of natural and agricultural lands and restoration of habitats</i>

For ease of review, we encourage the use of a side-by-side comparison of SCAG goals with discussions of the consistency, non-consistency or non-applicability of the goals and supportive analysis in a table format. Suggested format is as follows:

SCAG CONNECT SOCIAL GOALS	
Goal	Analysis
Goal #1: <i>Encourage regional economic prosperity and global competitiveness</i>	<i>Consistent: Statement as to why; Not-Consistent: Statement as to why; Or Not Applicable: Statement as to why; DEIR page number reference</i>
Goal #2: <i>Improve mobility, accessibility, reliability and travel safety for people and goods</i>	<i>Consistent: Statement as to why; Not-Consistent: Statement as to why; Or Not Applicable: Statement as to why; DEIR page number reference</i>
etc.	etc.

Connect SoCal Strategies

To achieve the goals of Connect SoCal, a wide range of land use and transportation strategies are included in the accompanying twenty (20) technical reports. Of particular note are multiple strategies included in Chapter 3 of Connect SoCal intended to support implementation of the regional Sustainable Communities Strategy (SCS) framed within the context of focusing growth near destinations and mobility options; promoting diverse housing choices; leveraging technology innovations; supporting implementation of sustainability policies; and promoting a Green Region. To view Connect SoCal and the accompanying technical reports, please visit the [Connect SoCal webpage](#). Connect SoCal builds upon the progress from previous RTP/SCS cycles and continues to focus on integrated, coordinated, and balanced planning for land use and transportation that helps the SCAG region strive towards a more sustainable region, while meeting statutory requirements pertinent to RTP/SCSs. These strategies within the regional context are provided as guidance for lead agencies such as local jurisdictions when the proposed project is under consideration.

DEMOGRAPHICS AND GROWTH FORECASTS

A key, formative step in projecting future population, households, and employment through 2045 for Connect SoCal was the generation of a forecast of regional and county level growth in collaboration with expert demographers and economists on Southern California. From there, jurisdictional level forecasts were ground-truthed by subregions and local agencies, which helped SCAG identify opportunities and barriers to future development. This forecast helps the region understand, in a very general sense, where we are expected to grow, and allows SCAG to focus attention on areas that are experiencing change and may have increased transportation needs. After a year-long engagement effort with all 197 jurisdictions one-on-one, 82 percent of SCAG’s 197 jurisdictions provided feedback on the forecast of future growth for Connect SoCal. SCAG also sought feedback on potential sustainable growth strategies from a broad range of stakeholder groups – including local jurisdictions, county transportation commissions, other partner agencies, industry groups, community-based organizations, and the general public. Connect SoCal utilizes a bottom-up approach in that total projected growth for each jurisdiction reflects feedback received from jurisdiction staff, including city managers, community development/planning directors, and local staff. Growth at the neighborhood level (i.e., transportation analysis zone (TAZ) reflects entitled projects and adheres to current general and specific plan maximum densities as conveyed by jurisdictions (except in cases where entitled projects and development agreements exceed these capacities as calculated by SCAG). Neighborhood level growth projections also feature strategies that help to reduce greenhouse gas emissions (GHG) from automobiles and light trucks to achieve Southern California’s GHG reduction target, approved by the California Air Resources Board (CARB) in accordance with state planning law. Connect SoCal’s Forecasted Development Pattern is utilized for long range modeling purposes and does not supersede actions taken by elected bodies on future development, including entitlements and development agreements. SCAG does not have the authority to implement the plan -- neither through decisions about what type of development is built where, nor what transportation projects are ultimately built, as Connect

SoCal is adopted at the jurisdictional level. Achieving a sustained regional outcome depends upon informed and intentional local action. To access jurisdictional level growth estimates and forecasts for years 2016 and 2045, please refer to the [Connect SoCal Demographics and Growth Forecast Technical Report](#). The growth forecasts for the region and applicable jurisdictions are below.

	Adopted SCAG Region Wide Forecasts				Adopted City of Newport Beach Forecasts			
	Year 2020	Year 2030	Year 2035	Year 2045	Year 2020	Year 2030	Year 2035	Year 2045
Population	19,517,731	20,821,171	21,443,006	22,503,899	86,848	89,320	92,735	91,975
Households	6,333,458	6,902,821	7,170,110	7,633,451	39,952	40,240	41,601	41,825
Employment	8,695,427	9,303,627	9,566,384	10,048,822	83,888	84,508	84,720	84,899

MITIGATION MEASURES

SCAG staff recommends that you review the [Final Program Environmental Impact Report](#) (Final PEIR) for Connect SoCal for guidance, as appropriate. SCAG’s Regional Council certified the PEIR and adopted the associated Findings of Fact and a Statement of Overriding Considerations (FOF/SOC) and Mitigation Monitoring and Reporting Program (MMRP) on May 7, 2020 and also adopted a PEIR Addendum and amended the MMRP on September 3, 2020 (please see the [PEIR webpage](#) and scroll to the bottom of the page for the PEIR Addendum). The PEIR includes a list of project-level performance standards-based mitigation measures that may be considered for adoption and implementation by lead, responsible, or trustee agencies in the region, as applicable and feasible. Project-level mitigation measures are within responsibility, authority, and/or jurisdiction of project-implementing agency or other public agency serving as lead agency under CEQA in subsequent project- and site- specific design, CEQA review, and decision-making processes, to meet the performance standards for each of the CEQA resource categories.



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SENT VIA E-MAIL:

bzdeba@newportbeachca.gov

Benjamin M. Zdeba, AICP,
Principal Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

July 26, 2023

Notice of Preparation of a Program Environmental Impact Report for the City of Newport Beach Housing Implementation Program (Proposed Project)

South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the above-mentioned document. Our comments are recommendations on the analysis of potential air quality impacts from the Proposed Project that should be included in the Program Environmental Impact Report (PEIR). Please send a copy of the Program EIR upon its completion and public release directly to South Coast AQMD as copies of the Program EIR submitted to the State Clearinghouse are not forwarded. **In addition, please send all appendices and technical documents related to the air quality, health risk, and greenhouse gas analyses and electronic versions of all emission calculation spreadsheets, and air quality modeling and health risk assessment input and output files (not PDF files). Any delays in providing all supporting documentation for our review will require additional review time beyond the end of the comment period.**

CEQA Air Quality Analysis

Staff recommends that the Lead Agency use South Coast AQMD's CEQA Air Quality Handbook and website¹ as guidance when preparing the air quality and greenhouse gas analyses. It is also recommended that the Lead Agency use the CalEEMod² land use emissions software, which can estimate pollutant emissions from typical land use development and is the only software model maintained by the California Air Pollution Control Officers Association.

South Coast AQMD has developed both regional and localized significance thresholds. South Coast AQMD staff recommends that the Lead Agency quantify criteria pollutant emissions and compare the emissions to South Coast AQMD's CEQA regional pollutant emissions significance thresholds³ and localized significance thresholds (LSTs)⁴ to determine the Proposed Project's air quality impacts. The localized analysis can be conducted by either using the LST screening tables or performing dispersion modeling.

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the Proposed Project and all air pollutant sources related to the Proposed Project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated.

¹ South Coast AQMD's CEQA Handbook and other resources for preparing air quality analyses can be found at: <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook>.

² CalEEMod is available free of charge at: www.caleemod.com.

³ South Coast AQMD's CEQA regional pollutant emissions significance thresholds can be found at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>.

⁴ South Coast AQMD's guidance for performing a localized air quality analysis can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips, and hauling trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers and air pollution control devices), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, such as sources that generate or attract vehicular trips, should be included in the analysis. Furthermore, emissions from the overlapping construction and operational activities should be combined and compared to South Coast AQMD's regional air quality CEQA *operational* thresholds to determine the level of significance.

If the Proposed Project generates diesel emissions from long-term construction or attracts diesel-fueled vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment⁵.

Sensitive receptors are people that have an increased sensitivity to air pollution or environmental contaminants and include schools, daycare centers, nursing homes, elderly care facilities, hospitals, and residential dwelling units. The Proposed Project will include, among others, 10,087 residential units and is located in close proximity to State Route 73, and to facilitate the purpose of an PEIR as an informational document, it is recommended that the Lead Agency perform a mobile source health risk assessment⁵ to disclose the potential health risks⁶.

In the event that implementation of the Proposed Project requires a permit from South Coast AQMD, South Coast AQMD should be identified as a Responsible Agency for the Proposed Project in the PEIR. The assumptions in the air quality analysis in the EIR will be the basis for evaluating the permit under CEQA and imposing permit conditions and limits. Questions on permits should be directed to South Coast AQMD's Engineering and Permitting staff at (909) 396-3385.

The California Air Resources Board's (CARB) *Air Quality and Land Use Handbook: A Community Health Perspective*⁷ is a general reference guide for evaluating and reducing air pollution impacts associated with new projects that go through the land use decision-making process with additional guidance on strategies to reduce air pollution exposure near high-volume roadways available in CARB's technical advisory⁸.

The South Coast AQMD's *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*⁹ includes suggested policies that local governments can use in their General Plans or through local planning to prevent or reduce potential air pollution impacts and protect public health. It is recommended that the Lead Agency review this Guidance Document as a tool when making local planning and land use decisions.

Mitigation Measures

In the event that the Proposed Project results in significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize these

⁵ South Coast AQMD's guidance for performing a mobile source health risk assessment can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>.

⁶ *Ibid.*

⁷ CARB's *Air Quality and Land Use Handbook: A Community Health Perspective* can be found at: <http://www.arb.ca.gov/ch/handbook.pdf>.

⁸ CARB's technical advisory can be found at: <https://www.arb.ca.gov/ch/landuse.htm>.

⁹ South Coast AQMD. 2005. *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Available at: <http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf>.

impacts. Any impacts resulting from mitigation measures must also be analyzed. Several resources to assist the Lead Agency with identifying potential mitigation measures for the Proposed Project include South Coast AQMD's CEQA Air Quality Handbook,¹⁰ South Coast AQMD's Mitigation Monitoring and Reporting Plan for the 2022 Air Quality Management Plan,¹¹ and Southern California Association of Government's Mitigation Monitoring and Reporting Plan for the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy.¹²

Health Risk Reduction Strategies

Many strategies are available to reduce exposures, including, but are not limited to, building filtration systems with MERV 13 or better, or in some cases, MERV 15 or better is recommended; building design, orientation, location; vegetation barriers or landscaping screening, etc. Enhanced filtration units are capable of reducing exposures. However, enhanced filtration systems have limitations. For example, in a study that South Coast AQMD conducted to investigate filters¹³, a cost burden is expected to be within the range of \$120 to \$240 per year to replace each filter panel. The initial start-up cost could substantially increase if an HVAC system needs to be installed and if standalone filter units are required. Installation costs may vary and include costs for conducting site assessments and obtaining permits and approvals before filters can be installed. Other costs may include filter life monitoring, annual maintenance, and training for conducting maintenance and reporting. In addition, because the filters would not have any effectiveness unless the HVAC system is running, there may be increased energy consumption that the Lead Agency should evaluate in the Program EIR. It is typically assumed that the filters operate 100 percent of the time while residents are indoors, and the environmental analysis does not generally account for the times when the residents have their windows or doors open or are in common space areas of the project. These filters have no ability to filter out any toxic gases. Furthermore, when used filters are replaced, replacement has the potential to result in emissions from the transportation of used filters at disposal sites and generate solid waste that the Lead Agency should evaluate in the Program EIR. Therefore, the presumed effectiveness and feasibility of any filtration units should be carefully evaluated in more detail prior to assuming that they will sufficiently alleviate exposures to diesel particulate matter emissions.

South Coast AQMD staff is available to work with the Lead Agency to ensure that air quality, greenhouse gas, and health risk impacts from the Proposed Project are accurately evaluated and mitigated where feasible. If you have any questions regarding this letter, please contact me at swang1@aqmd.gov.

Sincerely,

Sam Wang

Sam Wang

Program Supervisor, CEQA IGR

Planning, Rule Development & Implementation

SW

ORC230705-06

Control Number

¹⁰ <https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook>

¹¹ South Coast AQMD's 2022 Air Quality Management Plan can be found at: <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan> (Chapter 4 - Control Strategy and Implementation).

¹² Southern California Association of Governments' 2020-2045 RTP/SCS can be found at:

https://www.connectsocal.org/Documents/PEIR/certified/Exhibit-A_ConnectSoCal_PEIR.pdf.

¹³ This study evaluated filters rated MERV 13 or better. Accessed at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/aqmdpilotstudyfinalreport.pdf>. Also see 2012 Peer Review Journal article by South Coast AQMD: <https://onlinelibrary.wiley.com/doi/10.1111/ina.12013>.

July 26, 2023

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Special District Member

Carol Moore

City Member

Lou Penrose

Public Member

STAFF

Carolyn Emery

Executive Officer

Scott Smith

General Counsel

Benjamin M. Zdeba, Principal Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Notice of Preparation for the City of Newport Beach Housing Implementation Program Environmental Impact Report

Dear Mr. Zdeba:

On behalf of the Local Agency Formation Commission of Orange County ("OC LAFCO"), we would like to thank you for this opportunity to provide written comments on the Notice of Preparation for the City of Newport Beach Housing Implementation Program Environmental Impact Report.

As you may know, OC LAFCO seeks to serve Orange County cities, special districts and the county to ensure effective and efficient delivery of municipal services. With that, OC LAFCO recognizes the effort that the City of Newport Beach will be undertaking involving the preparation of an Environmental Impact Report pursuant to the California Environmental Quality Act ("CEQA") and offer the following comments:

- As the City of Newport Beach has identified "Banning Ranch," an unincorporated area of Orange County, as one of the six focus areas to be included in its effort, OC LAFCO recommends the City include the potential development and annexation of Banning Ranch to the City in part to this effort.

It should be noted that through the provisions of the Cortese-Knox-Hertzberg Reorganization Act of 2000, OC LAFCO is responsible for establishing spheres of influence (SOI) for cities and special districts. An SOI defines the existing and probable physical boundaries and of a local agency, as determined in accordance with State law, and OC LAFCO has identified the City of Newport Beach as the most logical service provider to Banning Ranch by placing it within the City's SOI.

In addition to the above, and as permitted under CEQA and the Ralph M. Brown Act, OC LAFCO requests that the Commission continue to be notified of activities related to this Project. This request specifically includes copies of all CEQA notices, public meetings and hearing notices for this Project. The satisfaction of this written request is required both by CEQA (Public

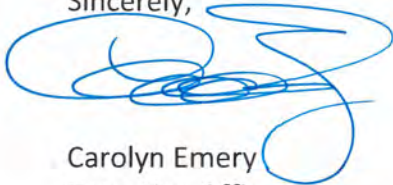
Notice of Preparation for the City of Newport Beach Housing Implementation Program Environmental Impact Report
July 26, 2023

Resources Code, § 21092.2) and the Ralph M. Brown Act (Government Code, § 54954.1). Please send copies of any and all such notices to the following:

Local Agency Formation Commission of Orange County
2677 North Main Street
Suite 1050
Santa Ana, CA 92705
Attn: Gavin Centeno, Policy Analyst II
Email: gcenteno@oclafco.org

Thank you for the opportunity to comment on this matter. Should you have any questions or concerns regarding this request, please contact Gavin Centeno at 714-640-5100 or gcenteno@oclafco.org.

Sincerely,



Carolyn Emery
Executive Officer



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

August 9, 2023

Ben Zdeba, AICP, Principal Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: City of Newport Beach NOP Program EIR for Housing Implementation Program

Dear Mr. Zdeba:

Thank you for the opportunity to provide comments on the NOP of a Program Environmental Impact Report (PEIR) for the proposed Housing Implementation Program in the context of the Airport Land Use Commission's (ALUC's) *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)*.

Please accept our September 9, 2021 comment letter that we provided regarding the NOP for the Program EIR for the Housing and Circulation Elements as the ALUC comments on the subject NOP.

Thank you!

Sincerely,

Lea U. Choum
Executive Officer

Attachment: September 9, 2021 ALUC Letter Regarding NOP PEIR for Housing and Circulation Elements



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

September 9, 2021

Ben Zdeba, Senior Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: City of Newport Beach NOP of PEIR for Housing and Circulation Elements

Dear Mr. Zdeba:

Thank you for the opportunity to review the Draft Housing Element Update and the Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for the proposed Housing and Circulation Element updates in the context of the Airport Land Use Commission's *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)*.

The Draft Housing Element includes a site inventory assessment, which identifies sites that can achieve the City's assigned 2021 Regional Housing Needs Allocation (RHNA) for the 2021-2029 planning period. The Draft Element identifies six focus areas for residential development:

- Airport Area
- West Newport Mesa
- Dover/Westcliff
- Newport Center
- Banning Ranch
- Coyote Canyon

Of these, the following proposed focus areas fall within the Airport Planning Area/Notification for JWA: Airport Area, Dover/Westcliff, and Newport Center.

The Draft Housing Element raises potentially significant land use compatibility impact concerns related to the Airport Area. In light of this area's close proximity to John Wayne Airport (JWA), and its location which is directly under a general aviation, low-altitude, primary flight corridor, the PEIR should specifically address

the impacts of development of new residential sites in terms of compatibility with the *AELUP for JWA*.

With respect to noise impacts, the Draft Housing Element is proposing to locate numerous residential sites within the 65 dB and 60 dB CNEL contours for JWA. As noted in your submittal to the ALUC, 23 sites are proposed within the 60 dB to 65 dB CNEL contour and 28 sites fall within the 65 dB to 70 dB CNEL contour. The California Airport Noise Regulations (promulgated in accordance with the State Aeronautics Act and set forth in Section 5000 et seq. of the California Code of Regulations, Title 21, Division 2.5, Chapter 6) establish the 65 dB CNEL as a noise impact boundary within which there shall be no incompatible land uses. The PEIR should address impacts related to incompatible development within these contours and address the California Airport Noise Regulations and ALUC policies contained in the *AELUP for JWA*.

As for homes located within the 60 dB CNEL contour, it is strongly recommended that residential units be limited or excluded from this area unless the sound attenuation provided is sufficient to comply with noise levels identified in the 1985 JWA Master Plan and subsequent Settlement Agreement Amendments.

The PEIR also needs to address the noise impacts of airport operations on the proposed sensitive land uses because the impacts would not occur if not for the project. Even with noise attenuation to meet interior noise standards, there would be a land use impact because exterior noise levels for residential uses may not be achieved.

The City's submittal to the ALUC states there are no proposed policies or mitigation measures in the Housing Element to address potential land use incompatibility and noise. Instead, the City relies on its General Plan Noise Element to provide goals and policies in relation to airport noise. As noted in the City's General Plan, locating residential within the 65 dB CNEL noise contour is contrary to the City's current General Plan Land Use and Noise Elements, which contain the following policies:

LU 6.15.3 Airport Compatibility:

Require that all development be constructed in conformance with the height restrictions set forth by Federal Aviation Administration (FAA) Federal Aviation Regulations (FAR) Part 77, Caltrans Division of Aeronautics, and that residential development be located outside of the 65 dB CNEL noise contour specified by the 1985 JWA Master Plan. (Imp 2.1, 3.1, 4.1, 14.3)

Policy N3.2 Residential Development:

Require that residential development in the Airport Area be located outside of the 65 dB CNEL noise contour no larger than shown in the 1985 JWA Master Plan and require residential developers to notify prospective purchasers or tenant of aircraft overflight and noise.

The City identifies there will be a need to amend the Land Use Element to reflect the sites identified in the Housing Element that are not presently designated for housing development to allow this type of land use. Additionally, Policy N 3.2 is identified as a policy needing to be amended to allow residential uses in the 65 to 70 dB CNEL contour. Until that action is taken and the appropriate mitigation measures to address such a policy change are adopted, the Housing Element would need to be identified as inconsistent with the Land Use and Noise Elements of the General Plan.

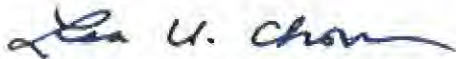
In addition to noise impacts, it is important that the PEIR address the proposed focus areas that are within the Federal Aviation Regulation (FAR) Part 77 Obstruction Imaginary Surfaces for JWA and those portions located on the AELUP Notification Area for JWA. The environmental document should address these height restrictions relative to both the notification and imaginary surfaces. ALUC staff recommends that policies be established ensuring that the maximum allowable building heights for projects located within the JWA Planning Area do not penetrate the FAA Part 77 Obstruction surfaces for JWA.

There are proposed housing opportunity sites in the Airport Area that are located within the approach and transitional obstruction imaginary surfaces for JWA. Housing sites proposed within the Santa Ana Heights Specific Area Plan (SAHSAP) will be situated under the primary approach surface for JWA. The PEIR should emphasize that future residents would be exposed to significant aircraft overflight and single event noise due to the project's location under this surface. In addition, there are new housing sites proposed along Campus Drive directly east of the airport that are located within the transitional surfaces for JWA. This area would also be subject to low-altitude general aviation overflight.

The PEIR should also discuss safety concerns related to proposing housing sites within the Safety Zones for JWA. The Draft Housing Element identifies housing sites within Safety Zone 6: Traffic Pattern Zone and Safety Zone 4: Outer Approach/Departure Zone. There are new housing sites proposed within SAHSAP that fall within Safety Zone 4. According to the California Airport Land Use Planning Handbook, noise and overflight should be considered in Safety Zone 6 and residential uses should be limited to low density in Safety Zone 4. In this zone, aircraft are flying at approximately 1,000 feet above the property and there is a moderate risk level for near-runway accidents. Approaching aircraft are usually at less than traffic pattern altitude in Safety Zone 4.

Thank you for the opportunity to comment on this NOP and we look forward to reviewing the PEIR. Please contact Julie Fitch at (949) 252-5284 or via email at jfitch@ocair.com should you require additional information.

Sincerely,

A handwritten signature in black ink that reads "Lea U. Choum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lea U. Choum
Executive Officer

From: philip@bettencourtplans.com
Sent: July 10, 2023 6:16 AM
To: Zdeba, Benjamin
Cc: Murillo, Jaime; Jurjis, Seimone; Campbell, Jim
Subject: CEQA analysis for Housing Element, General Plan: Scoping Analysis.

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Ben, wishing you well, this day, and always.

For the forthcoming environmental analysis of the housing element update for the general plan, would you please consider, addressing these matters:

For Newport Center:

Analyze the number of permitted average daily trips within the existing general plan for Newport Center in order to establish a baseline for the City charter constraint on new trips.

Analyze the number of new trips that could potentially result from full build out of the housing element opportunity sites in the currently adopted plan

Analyze through blackouts the building block heights on potential new housing under the 60 foot height limitation used in the Housing Element Opportunity sites forecast. The purpose of this analysis would be to address any concerns about the potential blockage of public views, following full build out.

Thank you so much.

Philip F. Bettencourt
Real Estate Development Planning | Stewardship
Newport Beach | La Quinta | RivCo
Cell: 949-874-4443

From: p.martz@cox.net
Sent: July 12, 2023 3:30 PM
To: Zdeba, Benjamin
Subject: Notice of Preparation and Scoping Meeting for City of Newport Beach Hosing Implementation Program

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

July 12, 2023

Benjamin M. Zdeba, AICP
City of Newport Beach

RE: Notice of Preparation and Scoping Meeting City of Newport Beach Housing Implementation Program.

Thank you for the opportunity to review the above-mentioned Notice. There are many areas within Newport Beach that are culturally sensitive, particularly with respect to archaeological sites. Newport Beach is a densely populated urban area where most of the once numerous archaeological sites have been destroyed. This makes any existing sites especially rare and extremely important as they represent all the others that have been lost. Therefore, it is important that advance planning is done so that avoidance and preservation of any existing archaeological sites that may be affected as the result of the Newport Beach Housing Implementation Program.

Although many of the proposed project areas have been developed, structures that were constructed prior to the 1970 enactment of CEQA have the potential for the presence of buried archaeological resources. For these areas a literature and records search at the South Central Coastal Information Center at Cal State University, Fullerton, followed by monitoring during construction by a qualified archaeologist and culturally related Native American is recommended. Areas of open space would require a literature and records search and an archaeological survey.

Currently, the standard treatment for a significant archaeological site that is threatened by development is to conduct archaeological excavations to recover scientific data. If an archaeological site is significant because it contains important scientific information, it also contains religious and cultural values for Native American descendants. The Native American values can't be mitigated through archaeological excavations. This is one reason why CEQA guidelines state that preservation is preferable to data recovery excavation. "Preservation may also avoid conflict with religious or cultural values of groups associated with the site." If human remains are discovered, compliance with Section 7050.5 of the Health and Safety Code is a requirement.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Martz". The signature is written in dark ink on a light-colored, slightly textured background.

Patricia Martz, Ph.D.

President California Cultural Resources Preservation Alliance, Inc.

949-559-6490

From: Jim Mosher <jimmosher@yahoo.com>
Sent: July 27, 2023 2:46 PM
To: Zdeba, Benjamin
Subject: Scoping Comments - Housing Element Implementation EIR

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

The following comments are offered by Jim Mosher in response to:

"City of Newport Beach Housing Element Implementation Program, Notice of Preparation of a Draft EIR" ([SCH 2023060699](#))

- * As noted at the July 10, 2023, Scoping Meeting, this is a peculiar request, in that by adopting a new Housing Element in September 2022, the City Council committed to actions the impacts of which are only now being analyzed, even though those impacts should have been known and disclosed before a commitment to any future action was made.
- * Given a detailed action has been committed to, the present effort would seem primarily an exercise in identifying mitigation measures and possibly alternatives that could still be substituted for the prior commitment.
- * Despite the prior action, the project being analyzed remains difficult for me to be certain of.
- * I notice some minor discrepancies between the NOP document provided at the Scoping Meeting and the one currently posted on the CEQA site linked to above.
- * For example, Figure 2C at the Scoping Meeting contained some letters, said to represent the five potential housing sites added subsequent to approval of the Housing Element (although, it was said, some might be on a different map). They now appear to have been assigned numbers.
- * Figure 2C of the NOP continues to show Sites 353 and 354 as encompassing the entire Newport Beach Country Club golf course and clubhouse, although Appendix B to the Housing Element identifies them as much smaller sites.
- * None of the illustrations in the NOP disclose that, at least in the already-approved Housing Element, the "Dover-Westcliff" Focus Area includes 5th Cycle sites, such as in Balboa Village, which by virtue of being included in the focus area, may be eligible for that new overlay.
- * The NOP seems to be lacking a clear and concise statement of what the goals of "the project" are -- without which the suggestion of alternatives achieving those goals is difficult.

* It is not clear why the NOP says "*The Program EIR will analyze the 6th Cycle RHNA obligation of 4,845 units and a buffer of 5,242 units, for a total development capacity of 10,087 housing units.*" Those numbers differ from the "Summary of Sites Inventory and RHNA Obligations" on page 3-139 of the Housing Element, which says "*The data and map detailed in Figure 3-28 above shows the City of Newport Beach's ability to meet the 4,845 RHNA allocation in full capacity with a 5,293-unit buffer.*" A 5,293-unit buffer added to the 4,845 requirement would add to 10,138 units. Page B-9 says the City has identified an even larger potential development capacity of 10,403 units (to which, if we believe the NOP, five additional sites capable of supporting an undisclosed number of units have been added). The EIR should explain why 10,087 units was chosen for analysis.

* The NOP says the EIR will analyze housing overlays without clearly explaining how they would work. And it should be noted the Housing Element did not commit the City to a specific overlay mechanism. Policy Actions 1A through 1D say only: "*The City will establish a housing opportunity overlay, or similar rezoning strategy*" and page 317: "*The details of the housing overlay zones are yet to be determined.*"

* It also appears from the NOP that the EIR may be analyzing a "project" in which overlays will be instituted that are available *only* to 249 housing sites, as depicted on the (partial?) maps provided in the NOP. My understanding of the Housing Element is it demonstrates there is enough potential within the vaguely defined "focus areas," *not* that the availability of the overlays would be limited to the listed parcels.

* Some possible alternatives the EIR might examine:

** Consider allowing a smaller buffer.

** Consider increased reliance on ADU's.

** Consider a range of alternative ways to implement housing overlays, including:

*** Allowing the new housing opportunities to only be *substituted* for the existing entitlements or General Plan allocations, versus allowing the new housing to be *added* to (and exist in addition to) anything already on the site, or possibly anything already allowed on the site but not yet build.

*** Non-parcel-specific overlays, that would allow *any* parcel in a geographically-mapped focus area access to the units, not just a pre-selected set of parcels (noting that the geographic limits of the focus areas mentioned in the NOP are not clear from either the NOP or the Housing Element).

*** Same as above, but with the new housing overlay allocations available only to parcels with certain existing land use designations within the geographic area (similar to the existing Land Use Element's allocation of 2,200 units to all MU-H2 parcels in the Airport Area).

*** Same as above, but a single citywide overlay (similar to the citywide cap on Short Term Lodging permits).

*** Overlays with caps that diminish in response to housing production throughout the city, by whatever mechanism, so as to ensure the revised Land Use Element does not commit the City to production in excess of the RHNA requirement.

*** Consider some "similar rezoning strategy" other than overlays, as contemplated in the Housing Element

(note: even if the environmental consequences of these alternatives were to be the same, analyzing them would allow the Council to place them on the ballot as alternatives)

* Some topics the EIR needs to analyze:

** Applicability of Charter Section 423.

** Conflicts with currently-designated allowed uses in Local Coastal Program.

** Conflicts of a revised Land Use Element with other elements of the General Plan if they are not modified, such as commitments to preserve and expand open space in NR 17.1 and NR 17.3.

** Probability of housing being built, and long-range consequences of state-mandated housing not being built, including impact on City's obligations in 7th RHNA Cycle.

** The amount of unbuilt residential capacity allowed by the current General Plan, and whether it could be used to reduce the quantity of new opportunities that need to be added. For example, when the City last attempted to update the Land Use Element with [Measure Y](#) in 2014, it was [claimed](#) there were at least 356 allowed but unbuilt units in Newport Ridge. Could those be used to reduce or redistribute the RHNA burden?

July 27, 2023

City of Newport Beach
Attn: Ben Zdeba
Principal Planner
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Housing Implementation Program - Program Environmental Impact Report
Notice of Preparation Comment Letter

Dear Mr. Zdeba:

Irvine Company appreciates the City of Newport Beach's comprehensive planning efforts that resulted in the certification of its Housing Element and its current effort to secure the requisite Housing Implementation Program. Irvine Company also appreciates the opportunity to provide comments on the Notice of Preparation (NOP) dated June 27, 2023, for the Housing Implementation Program - Program Environmental Impact Report (EIR).

The NOP details the City's requirements under the California Environmental Quality Act (CEQA) to prepare a program EIR to analyze potential environmental impacts associated with implementing the 2021-2029 Housing Element through the Housing Implementation Program.

The Program EIR will analyze five focus areas within the City with a predetermined number of opportunity housing sites, as identified on Figures 2A-E of the NOP. Irvine Company recognizes that the Housing Implementation Program is an important planning exercise required to satisfy the adopted Housing Element. It is further understood that to meet CEQA and Housing Element requirements a specific site inventory will be evaluated. However, it is also reasonable to anticipate that within the context of a community master planning construct there may be housing opportunities during the 6th Cycle, and within prescribed limits, that would best be delivered if site flexibility is also planned at this time.

In that regard, and to allow effective direction in carrying out the Housing Element Objectives, it is suggested an analysis of policies allowing for prudent planning principles relative to implementation of housing allocations be included as a part of the EIR analysis.

Thank you again for this opportunity to provide the City with comments on the NOP. We look forward to reviewing the Program EIR upon its circulation.

Sincerely,



Barry Curtis, AICP
Irvine Company
Senior Director, Entitlement

c: Jim Campbell, Deputy Community Development Director