DYETT & BHATIA
Urban and Regional Planners

M E M O R A N D U M

To: Jenna Tourje, Kearns and West

From: Vivian Kahn and Andrew Hill

Re: Review of New Legal Requirements for General Plans and Implications for the Newport Beach Listen and Learn Process

Date: November 11, 2019

Dear Jenna:

This memo identifies new legal requirements for General Plans that have come into effect since the Newport Beach General Plan was adopted in 2006 and discusses implications and considerations for the Listen and Learn process, preceding a future General Plan Update. The new legal requirements generally fall under the following topics: transportation, housing, safety, and environmental justice.

TRANSPORTATION

Complete Streets Act (2008)

The Complete Streets Act of 2008 (California Government Code Section 65302(b)) requires that California communities plan for a "balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel." Communities must update the circulation element of the General Plan to comply with the law upon the next substantive revision to that element after January 1, 2011.

The 2006 General Plan was adopted before the Complete Streets Act came into effect and the term "complete streets" does not appear in the current plan; however, there are numerous policies that address core complete streets concepts. For example, Policy CE 1.1.1 calls for a diverse transportation system that provides a range of mobility options for the community; policies under Goal CE 4.1 seek to support transit use; policies under Goal 5.1 promote bicycle and pedestrian improvements; and Policy CE 6.1.2 requires project site designs that facilitate the use of public transportation and walking. Nevertheless, the General Plan Update presents an opportunity to synchronize the General Plan and the 2014 Bicycle Master Plan and to integrate complete streets concepts more fully. Emerging technologies such as electric vehicle charging infrastructure, ride hailing services, dockless scooters and bikes, and autonomous vehicles need to be considered and addressed. There is also an opportunity to explore creating a "layered network," recognizing that different streets accommodate various modes differently, depending on their function and the uses they contain. A layered network is one that considers the needs of a range of users holistically across the network and assigns different priorities among travel modes on different streets to satisfy the requirements of the Complete Streets Act. A layered

network can include performance metrics and design standards to reflect and support those priorities.

Senate Bill 743

Senate Bill (SB) 743, passed into law in 2013, committed the State to changing the way that transportation impacts are analyzed under the California Environmental Quality Act (CEQA). Traditionally under CEQA, one of the key metrics by which transportation impacts have been evaluated is vehicle level of service (LOS), a measure used for analyzing the performance of roadway segments and intersections based on vehicle speed, density, or congestion. However, better vehicle LOS is not necessarily consistent with other environmental objectives, such as improved air quality, reduced GHG emissions, or reduced traffic noise. As such, SB 743 required the State to amend the CEQA Guidelines to provide an alternative to LOS for evaluating transportation impacts such that auto delay would no longer be considered a significant environmental impact.

Pursuant to SB 743, new CEQA Guidelines adopted by the State in December 2018 established vehicle miles travelled (VMT) as the metric to be used for evaluating traffic impacts under CEQA, effective July 1, 2020. To comply with the new CEQA Guidelines, the City of Newport Beach will be required to set new thresholds for assessing transportation impacts based on VMT, consistent with technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures issued by the Governor's Office of Planning and Research. The City has the option of using metrics detailed in the Technical Advisory on Evaluating Transportation Impacts in CEQA prepared by OPR or developing its own metrics, subject to substantial evidence. The Listen and Learn process represents an opportunity to share information about the coming change.

While VMT will replace vehicle LOS as the metric for assessing traffic impacts under CEQA, vehicle LOS is still valuable for the purpose of evaluating roadway and intersection operations and planning the network. Other measures such as delay, cross-town travel time, vehicle hours of travel, etc. all remain relevant in assessing overall system performance depending on situations, although they cannot be used for CEQA purposes. Some cities we are working with have continued to use LOS standards for their general plans. Policy CE 2.1.1 from the current General Plan establishes LOS standards for the local roadway network and the General Plan can continue to use this policy for planning purposes. The move away from LOS as a metric for evaluating environmental impacts means that LOS impacts may not be a means of extracting roadway improvements as mitigation for impacts from proposed development projects; however, the City has adopted a Fair Share Traffic Contribution Ordinance (Municipal Code Chapter 15. 38) and a Traffic Phasing Ordinance (Municipal Code Chapter 15.40), which provide mechanisms for funding circulation system improvements from new development and redevelopment as needed to maintain acceptable levels of performance within the city.

Implications for Listen and Learn

Mobility will be an important focus of the General Plan Update, and Listen and Learn outreach can help set up for that work in various ways:

- By introducing the concept of complete streets and the associated benefits for multi-modal mobility and roadway safety;
- By soliciting input on locations in Newport Beach where conflicts between roadway users need to be addressed and where prioritization between modes may need to differ;
- By soliciting input on how best to accommodate emerging transportation technologies on city streets in the future; and
- By informing the public of the move to VMT as the basic metric for evaluating transportation impacts under CEQA and the role that LOS will play in planning the transportation network.

HOUSING

The California State Legislature passed a high-profile package of 15 new housing laws in 2017 to address the urgent need for housing throughout the state. An additional 16 new laws related to housing passed in 2018 came into effect January 1, 2019, and in October 2019 the Governor signed an additional 18 bills intended to boost housing production in California. This section recaps the new housing laws most directly relevant to Listen and Learn outreach and the General Plan Update.

Senate Bill 35

Enacted in 2017, Senate Bill (SB) 35 established new provisions for streamlined processing of residential infill projects that first went into effect January 1, 2018. (A series of clarifying "clean up" amendments to SB 35 was passed as SB 765 in 2018 and went into effect January 1, 2019.) The requirements, which are codified in Government Code Section 65913.4, are intended to expedite and facilitate the construction of affordable housing, mandate a ministerial review and approval process for residential development projects that meet a variety of specific requirements. The new law applies to jurisdictions that have not made enough progress toward meeting their Regional Housing Needs Assessment (RHNA). Newport Beach is on a list of 213 California jurisdictions that have not made sufficient progress toward their Lower income RHNA (Very Low and Low-income), and are subject to the streamlining provisions for proposed multi-family developments that contain two or more residential units with at least 50 percent affordability.[1]

Even though requirements of SB 35 apply to jurisdictions regardless of whether they have codified the new procedures, because the law establishes a very short time frame within which to review an application, some jurisdictions have adopted their own application forms and adapted the procedures to simplify the process. SB 35 expands the common definition of "multi-family housing

[1] California Department of Housing and Community Development, SB 35 Statewide Determination Summary, June 2019. Download at http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf

development" applying to projects with two or more units; depending on the number of housing units proposed, the jurisdiction has from 60 to 90 days to review the project to determine if it is eligible for streamlined processing. If eligible, the jurisdiction has from 90 to 180 days to make a final decision.

California Department of Housing and Community Development (HCD) Guidelines for implementing SB 35 require local agencies subject to SB 35 to provide information on the application process and identify the relevant objective planning standards used for such projects. The information provided can include reference documents and a list of information the city needs to determine if the application is consistent with objective standards such as checklists, maps, diagrams, flow charts, or other formats. [2]

Eligible projects are exempt from environmental review under CEQA and the process does not allow public hearings; however, SB 35 does allow for "design review or public oversight" to occur if a locality so chooses. This process may be conducted by the Planning Commission or equivalent board or commission responsible for review and approval of development projects, or the City Council. However, the review process must be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards that were in effect before the application was submitted. This process may not in any way "inhibit, chill, or preclude the ministerial approval" allowed by SB 35 (Section 65913.4(c)(1)).

When determining consistency with objective zoning, subdivision, or design review standards, the local government can only use those standards that meet the definition specified in the Government Code. This means standards may not involve any personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. "Objective design review standards" must be published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and which are broadly applicable to development within the jurisdiction. For example, design review standards that require subjective decision-making, such as consistency with "neighborhood character", cannot be applied as an objective standard unless "neighborhood character" is defined in such a manner that is non-discretionary.

Objective design review could include use of specific materials or styles, such as Spanish-style tile roofs or roof pitches with a slope of 1:5. Architectural design requirements such as "craftsman style architecture" could be used so long as the elements of "craftsman style architecture" are clearly defined (e.g., "porches with thick round or square columns and low-pitched roofs with wide eaves), ideally with illustrations.

Further, AB 1485 (Wicks), which is among the bills the Governor signed in October, has resulted in additional amendments to Government Code Section 65913.4 (which codified SB 35) that are

[2] California Department of Housing and Community Development, Streamlined Ministerial Approval Process (Chapter 366, Statutes of 2017) Guidelines, November 29, 2018. Download at http://www.hcd.ca.gov/policy-research/docs/SB-35-Guidelines-final.pdf

intended to address some issues that have been identified since the streamlining provisions were originally enacted. These changes:

- Require that underground space such as garages and basements shall not be considered part of the square footage of the development;
- Provide that if other state or local programs require the dedication of affordable housing units or fees, the requirements of those program shall be treated separately or additively and not additionally applied to a housing development project in addition to those already required under SB 35 (i.e. no stacking);
- Provide that a development shall be deemed consistent with objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with such objective planning standard;
- Allow a permit for a project with fewer than 50 percent affordable units to remain valid for three years or if litigation is filed challenging the approval, from the date of any final judgement upholding the approval, and shall remain valid so long as vertical construction is in progress;
- Require any permits subsequent to the streamlined, ministerial approval, such as demolition, grading, and building permits or, if required, final map, to be issued if the application substantially complies with the development as it was approved, as specified. Upon receipt of the application, the local government shall process subsequent permits without unreasonable delay and shall apply the same procedures and requirements on all projects; and
- Declare that SB 35 projects are eligible for protections under the Housing Accountability Act (HAA).

Under the provisions of Government Code Section 65913.4 (as amended), proponents of projects that meet the requirements of the statute may apply for ministerial processing when proposed multi-family developments satisfy objective development standards established by the community in which the development is proposed. Design review may still be conducted but is limited to an assessment of whether the project complies with objectives standards enacted prior to application and must be completed within 180 days (for projects of more than 150 units). Objective standards are those which "involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion." Such requirements must be available and "knowable" by both the applicant or project proponent and public officials and staff before the application is submitted. SB 35 also places limitation on the expiration of approvals pursuant to this process; limits the authority of local government to impose parking standards on development approved pursuant to the process; and requires that local governments report annually to the State on housing production.

Development and design standards are typically specified in the Zoning Code or in a Specific Plan that the jurisdiction adopts as a regulatory plan, rather than in the General Plan, but both the Zoning Code and any Specific Plan must be consistent with the General Plan. In light of the requirements of SB 35 and HAA, the Newport Beach General Plan needs to identify critical elements that contribute to desired character of the community that the Zoning Code can then regulate. Plan policies should also be written to provide a strong and clear basis for the regulations the City adopts to implement them.

Policy LU 5.1.9 from the current General Plan identifies the following aspects as important for high-quality multi-family residential development and provides guidance for development projects: architectural treatment of facades; ground floor treatments; roof design; parking; and open spaces and amenities. Municipal Code Chapter 20.18 (Table 2-3) provides standards for lot dimensions, lot coverage, setbacks, and building heights. Section 20.48.180 provides further residential development standards related to third floors and open volume area, while other sections of the Code govern bluffs, fencing, landscaping, lighting, parking, and satellite antennas. Chapter 20.56 provides standards for specific Planned Community Districts in the city. Collectively, these provisions from the Zoning Code are the objective standards that would apply in the case that a proposed development with 50 percent or more affordability applied for ministerial review under SB 35.

The City may wish to add or amplify existing standards to further define the desired character by establishing more detailed design and development standards for multi-family development especially for the Mixed-Use Zoning Districts, where it is likely much of the residential development will occur. For example, General Plan Policy LU 5.1.9 identifies roof modulation as an important design element, but the Code currently has objective standards related only to roof height, not modulation. In areas where the City has not established standards or where the standards it has adopted are inconsistent with the General Plan, the General Plan policies will be the only development and use requirements with which developers need to comply (Government Code Section 65913.4 (a) (5) (A) and (B)). Based on Section 20.14.020, it appears that the zoning for areas of Newport Beach designated MU-H Mixed-Use in the General Plan defaults to the existing standards for the MU-MM, -DW and CV/15th Street districts. These standards cover density, lot dimensions, setbacks, height but do not address any other design features, such as architectural treatment of facades, that are of concern to the City.

Senate Bill 167, Assembly Bill 678, Assembly Bill 1515 and SB 330 (Skinner)

Collectively, the first three laws, which became effective in January 2018, along with SB 330, signed by the Governor in October 2019, strengthened the Housing Accountability Act (HAA), that was originally enacted in 1982 to limit the ability of local jurisdictions to deny or make infeasible qualifying housing projects. The HAA, which is codified as Government Code Section 65589.5, severely restricts cities and counties from denying or imposing conditions on residential projects that would require a reduction in density of a development that complies with "objective" general plan, zoning, and subdivision standards without making specified findings that the project would have a "specific adverse impact" on public health or safety. Findings must be based on a "preponderance" of the evidence in the record. which is a stricter standard than the "substantial" evidence that the law previously required.

If, in the City's estimation, a proposed project does not comply with objective general plan, zoning, and subdivision standards and criteria (including design review criteria) the City must provide a list of inconsistencies within 30-60 days of application being deemed complete. If City fails to provide this list within the specified time limit, the project is "deemed consistent." Under SB 330, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. Furthermore, this section cannot be used to disapprove or conditionally approve if the project is

(1) proposed on a site suitable for low income (< 80 percent of annual median income) and (2) is consistent with the density specified in the Housing Element, even if the project is inconsistent with the zoning ordinance and general plan land use designation. A change to the zoning ordinance or general plan land use designation AFTER the date the application for the project was deemed complete will not be a valid basis to deny or condition approval of an eligible residential project. Also, if the City has not identified sufficient sites with the capacity to provide for a share of the jurisdiction's RHNA, the City must allow the development on any site designated in the Plan for residential uses or for commercial uses or an emergency shelter on any site zoned for industrial, commercial or multifamily residential use.

SB 330 established additional requirements, most of which will be in effect only until January 1, 2025 and others that will become effective as of that date including uniform statewide standards for what a community can require in a "preliminary application" and requiring all communities to use a standard application form developed by HCD. Even though the application requirements that will be codified in Government Code 65941.1 will expire on January 1, 2025, the list may serve as a useful basis for reviewing and, if necessary, revising the published lists of application requirements that the Section 65940 of the Permit Streamlining Act has required for a number of years.

Passed by the legislature in September 2019, and signed by the Governor, SB 330 limits the ability of cities and counties to move the goalposts for housing development projects during their application process and strengthens the protections of the Housing Accountability Act and the Permit Streamlining Act. SB 330 prohibits a jurisdiction (with some exceptions) from enacting development policies, standards, or conditions that would change current zoning and general plan designations of properties where housing is allowed in order to "lessen the intensity of housing," such as by reducing height, density or floor area ratio; requiring new or increased open space, lot size, setbacks or frontage; or limiting maximum lot coverage. Moreover, the bill stipulates that any such amendment that took effect after January 1, 2018 would be null and void as a matter of law. SB 330 also bans jurisdictions from placing a moratorium or similar restrictions on housing development, from imposing subjective design standards established after Jan. 1, 2020, and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural. This provision does not apply retroactively to any caps established before January 1, 2018, such as the restrictions applicable to residential development in the Airport Area and Newport Center identified in Table H32 of the Housing Element.

SB 330 also requires cities and counties to reduce the time it takes to process housing applications with an EIR to no more than 90 days for most market-rate housing developments (from 120 days) and to 60 days (from 90 days) for affordable developments, after a project application is deemed complete. In addition, SB 330 requires communities to either approve or disapprove the application at any of the five allowed hearings. With certain defined exceptions, SB 330 prohibits communities from requiring a housing development project to comply with an ordinance, policy, or standard that not adopted and in effect when a preliminary application was submitted. a provision that exempts housing projects exempt from any ordinances, policies, and standards adopted after the applicant's submission of a "preliminary application" that meets the requirements of the Permit Streamlining Act (Section 65941) as amended by SB 330 except for:

- A fee, charge or other exaction that results from an automatic annual adjustment based on a cost index referenced in an adopted ordinance or resolution;
- An ordinance, policy, or standard beyond those in effect when a preliminary application was submitted that is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety;
- An ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act; or
- When housing development project has not commenced construction within two and one-half years following the date that the project received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits with a few specific exceptions.

The provisions of these laws primarily concern the procedures and parameters for approving housing, rather than planning for housing; however, with these revisions to the HAA, a mixed-use project now qualifies as long as at least two-thirds of its square footage is designated for residential use, whereas previously, the HAA made a more limited set of mixed-use projects to qualify for its protections. In addition to 100 percent residential and mixed-use projects that have two thirds or more of the total square footage devoted to residential uses, the law also applies to transitional and supportive housing and emergency housing shelters.

The new requirements underscore the importance of ensuring that City plans and regulations include carefully written provisions that establish a sound basis for "objective, quantifiable, written development standards."

Assembly Bill 1763

Assembly Bill (AB) 1763 was signed into law on October 10, 2019, providing enhanced density bonus options. A density bonus is an increase in the number of housing units allowed under a general plan and/or zoning ("base density") to encourage the production of affordable housing. Depending on the amount and affordability of the proposed affordable housing, under State Density Bonus Law (Government Code 65915 et seq.) a project may be allowed a density bonus between 5 percent and 35 percent above the base maximum density. Under AB 1763, projects that provide 100 percent of their units dedicated for lower income households or 80 percent for lower income households and 20 percent for moderate-income, are eligible for a potential 80 percent increase in base density and these projects would also be able to receive three to four concessions, such as such as reduced setback and minimum square footage requirements. Further, under AB 1763, for a project that meets the affordability requirements and is also within 0.5 miles of a major transit stop, there is no maximum control on density; however, these provisions do not currently apply in Newport Beach as there is no facility in the city which meets

the definition of major transit stop.[3,4] While the 2006 General Plan contains policies and implementation measures that seek to enhance transit service, there are no provisions that explicitly call for increased frequency of service.

Finally, it should be noted that projects that meet the AB 1763 affordability requirements will also likely meet SB 35 affordability requirements and would therefore also be eligible for streamlining pursuant to SB 35. This underscores the importance of establishing objective standards to guide the design of qualifying high density housing and mixed use projects to ensure they are in keeping with community standards.

Assembly Bill 1397 and SB 166

The "No Net Loss" provisions in Section 65583.2 of the Housing Element law were established to make sure that housing elements identify sufficient sites to accommodate the jurisdiction's RHNA or include programs to ensure that sites will be available throughout the planning period. Under the "No Net Loss "requirements, a city may not reduce residential density or allow development at a lower residential density unless the city makes findings supported by substantial evidence that the reduction is consistent with the general plan and there are remaining sites identified in the housing element adequate to meet the city's outstanding RHNA. SB 166 and AB 1397, which became effective in January 2018, added to that requirement by stipulating that sites listed on the inventory must be both available and suitable for residential development. Specifically, AB 1397 requires that sites listed on the inventory have "realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for the designated income level."

The Housing Element must calculate the realistic development capacity of sites listed on the inventory for the various income levels in view of the availability of sufficient water, sewer, and dry utilities, and must include a discussion of the methodology used to determine development potential, considering the community's past experience with converting existing uses to higher-density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment. An alternative way to show that a site or sites are appropriate to accommodate development to accommodate lower income households is to establish density requirements that meet the thresholds Section 65583.2 specifies, which is 30 units per acre for cities in a metropolitan county such as the County of Orange.

SB 166 went further by requiring cities that allow development at reduced densities now be prepared to meet remaining unmet RHNA need by income category within 180 days. If the

[3] Per California Public resources Code Section 21064.3, a major transit stop means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

[4] South County System Map https://www.octa.net/ebusbook/routePdf/SouthCounty.pdf

remaining sites in the inventory cannot accommodate the unmet RHNA by income category, the City must be prepared to rezone other sites where residential development is allowed regardless of any growth management restriction, open space or agricultural preservation policies. This provision wouldn't automatically negate development caps such as the restrictions applicable to residential development in the Airport Area and Newport Center identified in Table H32 of the Housing Element so long as the City is unable to identify sufficient sites in other zones. However, it will require detailed project-by-project monitoring and may require that the City rezone additional land to a high-density residential use during the Housing Element planning period in order to remain in compliance. In view of the no net loss provisions, the City may elect to zone more land for higher density residential development than is strictly required to satisfy the RHNA in order to ensure that sufficient sites are available in the event that some sites are approved at reduced densities.

Government Code Section 65583.2(c) stipulates that the inventory may not include a non-vacant site identified in a prior housing element or a vacant site identified in two or more consecutive planning periods that was not approved for developing housing to meet housing need unless the site can be developed at a higher density and is subject to a program in the housing element requiring rezoning within three years of start of planning period to allow residential by right for housing in which at least 20 percent of the units are affordable to lower income households. The sites inventory included in the 2008-2014 Housing Element and the 2014-2021 Housing Element relied heavily on the use of non-vacant sites. Therefore, any lower-income non-vacant sites that were listed in the prior housing elements and also planned for use in the upcoming 2021- 2029 Housing Element will be subject to the by-right and 20 percent inclusionary requirements. The intention of this requirement is to incentivize residential development on sites previously deemed suitable for housing but that have not seen development by increasing allowable density and streamlining the approval process.

An analysis of the inventory in current Newport Beach Housing Element is beyond the scope of this memo; however, in the course of updating the Housing Element, the City will need to assess how many sites from the current inventory can be carried forward under current zoning and how many would need to be rezoned in order to be carried forward. Additionally, depending on the City's assigned RHNA for the upcoming planning period, it may be necessary to identify other potential sites for residential development that were not included in the prior Housing Element. This could be done by using data from the County Assessor to conduct an assessed value ratio analysis to identify underutilized sites that are more likely to redevelop because they offer property owners an incentive to redevelop with uses that can command a higher sales price or rent. The Housing Element will need to be adopted by October 2021, which is likely before the updated General Plan will be ready. As such a critical consideration for the Housing Element will be ensuring adequate sites available for the 2021-2029 cycle.

Assembly Bills (AB) 671, 1255, and 1486

Collectively, these three bills signed into law by the Governor on October 10 would require local government agencies to prepare a list of surplus lands under its ownership and provide that to the State for inclusion in a digitized statewide inventory of surplus governmental lands suitable for residential development. Surplus land is defined as "land owned by any local agency that is

determined to be no longer necessary for the agency's use." Pursuant to these new laws, the Newport Beach Housing Element Update must provide a description of non-vacant sites owned by the City and details of whether there are any plans to dispose of the property during the planning period.

Assembly Bill 881, Assembly Bill 68, Senate Bill 13, and Assembly Bill 671

All four bills, signed by the Governor on October 10, are intended to facilitate production of accessory dwelling units (ADUs), or secondary housing units either attached or detached from a main house that exist on a lot with another house. The State sees these units as an innovative, affordable, effective option for adding much-needed housing in California. ADUs may be counted toward a community's RHNA.

Assembly Bill (AB) 881 removes impediments to ADU construction by restricting local jurisdictions' permitting criteria, clarifying that ADUs must receive streamlined approval if constructed in existing garages, and eliminating local agencies' ability to require owner-occupancy for five years. Assembly Bill (AB) 68 makes major changes to facilitate the development of more ADUs, further reducing barriers to ADU approval and construction. Notably, the law prohibits the imposition of limits on lot coverage, floor area ratio, open space, and minimum lot size unless they allow for at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with 4-foot side and rear setbacks to be constructed. Senate Bill (SB) 13 prohibits jurisdictions from establishing a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than 850 square feet, and 1,000 square feet if the accessory dwelling unit contains more than one bedroom. It also creates a tiered fee structure which charges ADUs based on their size and location and addresses other barriers by lowering the application approval timeframe, creating an avenue to get unpermitted ADUs up to code, and enhancing an enforcement mechanism allowing the state to ensure that localities are following ADU statute. Assembly Bill (AB) 671 requires local governments' housing plans to encourage affordable ADU rentals and requires the state to develop a list of state grants and financial incentives for affordable ADUs.

The City of Newport Beach's current ADU regulations were adopted in February 2019 to conform to provisions enacted by the State legislature mandating a variety of requirements intended to make it easier for homeowners to construct such units. Since that time, the State has made some additional changes to the law including the revisions made by Assembly Bills 881, 68, 671, and Senate Bill 13 described above. Although cities and counties are subject to all of the State's ADU requirements regardless of whether local regulations have been updated to be consistent with the most recent changes, the City should review all existing provisions applicable to this type of housing and revise both the Zoning Code and any counter materials to ensure that City staff and property owners have access to the most current requirements. The Housing Element, which was

adopted in September 2013, will also need to be updated to reference the most recent version of the State law and the local regulations.

Assembly Bill 2797

In the Kalnel Gardens, LLC v. City of Los Angeles (2016), the Second District Court of Appeal ruled that the State Density Bonus Law is subordinate to the Coastal Act. In response, Assembly Bill (AB) 2797, requires the State Density Bonus Law be harmonized with the California Coastal Act so that both statutes can be given effect within the coastal zone so as to increase affordable housing in the coastal zone while protecting coastal resources and access. Specifically, AB 2797 requires that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted in a manner that is consistent with that law and the California Coastal Act of 1976.

Implications for Listen and Learn

The Southern California Association of Governments (SCAG) is currently in the process of developing the 6th cycle Regional Housing Needs Assessment (RHNA) allocation plan which will cover the planning period October 2021 through October 2029. The RHNA quantifies the need for housing within each jurisdiction in the SCAG region during the planning period and represents the amount of housing that must be planned for in a community's General Plan Housing Element according to State law. SCAG plans to release draft RHNA allocations in February 2020 and to formally adopt a RHNA allocation plan in October 2020. While the City of Newport Beach's RHNA allocation is not known at this time, based on the draft RHNA methodology currently being considered by SCAG, the City anticipates a total RHNA of approximately 2,750 units, substantially more than in the prior cycle. In this context, housing will undoubtably be a hot topic for the General Plan Update, and as such, Listen and Learn outreach represents an important opportunity to start a conversation with the community about housing before potentially controversial RHNA numbers are released.

Listen and Learn outreach can help set up for the Housing Element Update and the General Plan Update by:

- Informing community members about the legal requirements for the planning of housing and the levers available to the City to shape the location and character of housing (i.e., through objective standards) including criteria for identifying sites appropriate for affordable housing development;
- Engaging community members in a dialogue about demographic projections and future housing needs in Newport Beach, recognizing that new housing can help ensure that the community remains affordable to our children as they move out and start families, our parents as they get older, and the teachers, firefighters and other public servants who contribute to the quality of life of the community; the conversation should include a discussion of housing typologies suited to future demand, especially in view of new State law intended to facilitate production of affordable multi-family development and ADUs;
- Obtaining input that will help to identify areas that could be designated for additional affordable housing and help to assess the feasibility of establishing affordable housing overlay zoning;

- Seeking input on the elements of built form that contribute most to the desired character of the community in order to guide creating of objective standards that will help achieve design that enhances the visual character and sense of place in Newport Beach.

While the Listen and Learn process presents an opportunity to gather community input that can inform the development of new citywide objective standards for multi-family and mixed use projects, it may be prudent for the City to work on a separate, expedited timeline to establish objective standards for areas where adopted standards are insufficient or are inconsistent with the General Plan, such as in the Airport Area. This would ensure that there are sufficient interim objective standards in place to guide projects that may come forward in these areas while the General Plan Update is in progress. Community input gathered as part of the Listen and Learn process and the subsequent General Plan Update could then be used to refine and/or augment the interim standards.

SAFETY

Government Code 6530 (g) (2) - Flooding

This section of the California Government Code required an update to the Safety Element of the General Plan timed with the next update to the Housing Element on or after January 1, 2009 to address new requirements related to flooding. These requirements include the identification of flood hazard areas based on available data from the Federal Emergency Management Agency (FEMA), the provision of historical data on flood events, and the establishment of goals, policies, and objectives designed to avoid or minimize risks to new development from flooding. The current General Plan includes a discussion of flooding risk in Newport Beach and a map (Figure S3) depicting flood hazard areas. Goal S 5 and associated policies address flooding risk. As part of the General Plan Update, the maps and information will need to be updated based on the latest available data and the Element will need to be synchronized with the 2016 Local Hazard Mitigation Plan (LHMP).

Government Code 6530 (g) (3) - Wildfire

This section of the California Government Code requires an update to the Safety Element of the General Plan timed with the next update to the Housing Element on or after January 1, 2014, to address new requirements related to wildfire. These requirements include the identification of fire hazard severity zones, based on data from the California Department of Forestry and Fire Protection, the provision of historical data on wildfire events, the provision of additional information about wildfire hazard areas from the US Geological Survey, and the establishment of goals, policies, and objectives designed to avoid or minimize risks to new development from wildfire. The current General Plan includes a discussion of wildfire risk in Newport Beach and a map (Figure S4) depicting wildfire hazard areas. Goal S 6 and associated policies address wildfire risk. As part of the General Plan Update, the maps and information will need to be updated based on the latest available data and the Element will need to be synchronized with the 2016 LHMP.

Senate Bill 379

Senate Bill (SB) 379 requires all cities and counties to include climate adaptation and resiliency strategies in the safety elements of their general plans upon the next revision to the City's Local Hazard Mitigation Plan beginning January 1, 2017. The law requires that each community complete a vulnerability assessment to identify primary and secondary risks from climate change; to create a set of adaptation and resilience goals, policies and objectives address the risks identified in the vulnerability assessment; and to develop feasible implementation measures designed to carry out the goals, policies and objectives. To help with local vulnerability assessments, the California Energy Commission, in collaboration with UC Berkeley's Geospatial Innovation Facility, has developed the Cal-Adapt website, which offers a wealth of data on how climate change might affect California at the local level, including effects in Orange County and Newport Beach.

Implications for Listen and Learn

Publicly available data and information on natural hazards and the effects of climate change can be used to create maps and graphics that can help frame a discussion of issues and priorities for the community in the face of challenges that may result from climate change in the future.

ENVIRONMENTAL JUSTICE

Senate Bill 1000

Enacted into law in 2016, SB 1000 (California Code Section 65302(h)) requires that General Plans identify disadvantaged communities (DACs) within their jurisdiction and incorporate strategies to address the needs of those communities. DACs are defined by the State as areas most burdened by a combination of economic, health, and environmental factors, including poverty, high unemployment, pollution, and health conditions like asthma and heart disease. Specifically, the law requires that with the next update to two or more elements of the General Plan on or after January 1, 2018, a community with a DAC within its jurisdiction must adopt environmental justice goals, policies, and objectives into the General Plan, considering strategies to reduce pollution exposure as well as strategies to promote public facilities, food access, safe and sanitary homes, and physical activity. Further, the environmental justice goals, policies, and objectives must also promote civic engagement in the public decision-making process and prioritize improvements and programs that address the needs of DACs. The environmental justice goals, policies, and objectives may be included in a standalone element or incorporated into other elements of the General Plan.

To identify DACs, the California Environmental Protection Agency has developed a mapping tool known as CalEnviroscreen, which is the standard used by State agencies for identifying DACs and is specifically identified in State law as the minimum requirement for general plans. CalEnviroscreen considers 20 different indicators related to pollution exposure, health, and socio-economic factors to rank 8,000 census tracts statewide. Tracts that rank in the 75th percentile (i.e., the top 25 percent) are classified as DACs. CalEnviroscreen identifies census tract

6059063604, a small portion of which is located within the City of Newport Beach, as a DAC. The principal indicators of concern contributing to the classification of this tract as a DAC relate to hazardous waste, toxic releases, groundwater contamination threats, and housing burden.

The portion of the tract classified as a DAC that is within the City of Newport Beach is located along West 16th Street and is currently developed with commercial uses. As such, there are no Newport Beach residents of this DAC; however, according to CalEnviroscreen data, issues related to water pollution and risk of toxic release also exist in other census tracts within the city. Therefore, the General Plan Update and its environmental impact report should endeavor to characterize and address the associated risks, which may be at issue in the part of the DAC within the City limit as well as in other areas of the city. Given the somewhat anomalous situation whereby only a tiny, commercial portion of the City is classified as a DAC, it is also advisable to consult with OPR regarding how best to satisfy the requirements of SB 1000 in the General Plan Update.

Assembly Bill 2616

Enacted in 2016, Assembly Bill (AB) 2616 authorizes local jurisdictions and the California Coastal Commission to consider environmental justice factors when deciding on coastal development permit applications. In response to this new law, the California Coastal Commission formally adopted an Environmental Justice Policy on March 8, 2019. The Policy identifies coastal access for disadvantaged communities as a priority and notes that the ongoing statewide housing affordability crisis "has pushed low-income Californians and communities of color further from the coast, limiting access for communities already facing disparities with respect to coastal access and may contribute to an increase in individuals experiencing homeless." Specifically, the Policy cites the intent of the Commission to "work with local governments to adopt local coastal program policies that allow for a broad range of housing types including affordable housing, ADUs, transitional/supportive housing, homeless shelters, residential density bonuses, farmworker housing, and workforce/employee housing, in a manner that protects coastal resources consistent with Chapter 3 of the Coastal Act." The Policy also seeks to address a trend in the conversion of existing visitor-serving coastal facilities to high-cost facilities and expresses the intent to adopt a strategy for increasing the number and variety of new lower-cost opportunities along the coast.

Implications for Listen and Learn

CalEnviroscreen provides a wealth of data that can be used to characterize pollution burden in Newport Beach. In conjunction with other sources of information, this data could be used to create maps and charts that convey context and inform a discussion about environmental health and related priorities for the General Plan Update.

The City of Newport Beach has approximately 30 miles of bay and ocean waterfront and about 63 percent of the City is in the Coastal Zone. The City's Local Coastal Program (LCP) was certified with an effective date of January 30, 2017, and as such the City can now issue Coastal Development Permits, subject to appeal to the California Coast Commission. Given the implications of AB 2797 discussed previously and the stated aim of the Coast Commission to promote a range of housing types on the coast, Newport Beach will need to explore options for housing in the coastal zone

while also carefully considering the consequences of sea level rise and climate change on the vulnerability of coastal residents. Additionally, while the current General Plan does contain policies that seek to promote public access to the coast (LU 6.19.10 and HB 6.1), there may be an opportunity to explore enhancing or expanding these as part of the Listen and Learn process.

OTHER ELEMENTS

The focus of this memo is on the recent State laws and their implications for the Newport Beach General Plan. As such, the review concentrates on portions of the existing General Plan that could be affected by those laws. The laws discussed above do not have implications for other elements, but that there may be other circumstances triggering the need for updates to other elements. City staff will be well placed to identify changes required to other elements and the Listen and Learn process will uncover other matters of importance to the community that should be addressed in the General Plan Update.