

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**TH 26d****ADDENDUM**

January 12, 2010

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM TH 26d**, COASTAL COMMISSION PERMIT APPLICATION **#5-09-141-(City of Newport Beach)** FOR THE COMMISSION MEETING OF **January 14, 2010**.

Changes to Staff Report

Commission staff recommends modifications and additions to Section III (Special Conditions) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

1] Page 3 – Modify Special Condition No. 2, as follows:

2. POLE VISUAL TREATMENT PLANS

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) sets of visual treatment plans for the poles that show how the exterior features of the poles will be softened and enhanced by a mix of architectural design and **earthtone** color**s (e.g. brown, gray, blue hues) and texturization (if necessary) to minimize their impact to public views from significant public viewpoints.**
- B.** The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2] Page 4 – Modify Special Condition No. 4, as follows:

4. NOISE/SOUND IMPACT MINIMIZATION

- A.** If construction noise exceeds 65 decibels (dB(A)) **at the noise source** sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of muffler, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels to 65 dB(A) or less **at the noise source**, construction within 500 feet of the location of any nesting birds shall cease and shall not recommence until either new sound mitigation can be employed that will reduce noise levels to 65 dB(A) or less **at the noise source** or nesting is complete.
- B.** As proposed by the applicant, sound generated by monthly testing of the system shall not exceed 65 dB(A) **at the source (poles)** in order to avoid significant adverse impacts to potential nesting birds.

Letter Received from the Public

The following letter has been received in opposition to the proposed project.

ATTN.
COASTAL COMMISSION

ITEM#
TH26d

I CAN NOT MAKE MEETING

PLS RECONSIDER PUTTING

THESE SIRENS AT EACH
"RIER" NOT BY OUR HOUSE.

THANK YOU.

SA. SCAFFICE
5701 SEASHORE
N.P.

CELL # 7142640066

RECEIVED
South Coast Region

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CALIFORNIA
COASTAL COMMISSION

PERMIT 5-09-141
APP. CITY OF NEWPORT BCH.
ITEM-TH26d

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

TH 26d

Filed: September 10, 2009
49th Day: October 29, 2009
180th Day: March 9, 2010
Staff: Fernie Sy-LB
Staff Report: December 22, 2009
Hearing Date: January 14-15, 2010
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-09-141

APPLICANT: City of Newport Beach

PROJECT LOCATION: 215 15th Street, 5800 Seashore Drive, and 2300 Channel Road, City of Newport Beach, County of Orange City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Installation of a Tsunami Warning System at three (3) different locations along the Balboa Peninsula comprised of a 50-foot tall pole with a 4.25-foot tall siren on top and additional improvements at the base of the pole at each location. The height of the entire structure will be 54.25'-feet tall.

SUMMARY OF STAFF RECOMMENDATION:

The primary issues addressed in the staff report are visual resources, biological resources, water quality, and public access. The applicant proposes to install a Tsunami Warning System along the Balboa Peninsula. Staff is recommending **APPROVAL** of the proposed project subject to **NINE (9) SPECIAL CONDITIONS** requiring: **1)** submittal of revised project plans; **2)** submittal of visual treatment plans for the pole; **3)** submittal of a nesting bird survey; **4)** adherence to noise/sound impact minimization; **5)** verification of construction and maintenance buffer; **6)** prohibition of the removal of any existing trees adjacent to the project sites; **7)** adherence to construction best management Practices; **8)** adherence to timing of construction and public access; and **9)** submittal of revised construction staging plans.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS: Approval in Concept No. 0889-2009 from the City of Newport Beach Planning Department dated June 24, 2009 and CEQA Categorical Exemption dated June 10, 2008.

SUBSTANTIVE FILE DOCUMENTS: Letter to the City of Newport Beach dated August 19, 2009; Letter to Commission staff from the City of Newport Beach dated September 8, 2009;

Letter to Commission staff from the City of Newport Beach dated November 17, 2009; and
Letter to Commission staff from the City of Newport Beach dated December 8, 2009.

LIST OF EXHIBITS:

1. Location Maps
2. Site Plan/Project Plans

**I. STAFF RECOMMENDATION, MOTION AND
RESOLUTION OF APPROVAL**

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission approve Coastal Development Permit No. 5-09-141 pursuant to the staff recommendation."

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

The Commission hereby **GRANTS** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. REVISED PROJECT PLANS

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of revised project plans (i.e. site plan, elevations, etc.) that show the pole located at 2300 Channel Place has been moved away from the beach, north approximately 125-feet near the Channel Place street end, in substantial conformance with the City's revised proposal.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. POLE VISUAL TREATMENT PLANS

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) sets of visual treatment plans for the poles that show how the exterior features of the poles will be softened and enhanced by a mix of architectural design and color.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. NESTING BIRD SURVEYS

By acceptance of this Coastal Development Permit, the applicant agrees to retain the services of a qualified independent biologist or environmental resource specialist with appropriate avian survey and noise monitoring qualifications acceptable to the Executive Director. The qualified biologist or resource specialist will conduct nesting surveys of the existing trees adjacent to the project sites (within 500-feet of any construction activities), just prior to commencement of any construction activities. Such surveys shall identify the presence of nests and eggs or young, of

black-crowned night herons, snowy egrets, great egrets, great blue herons or other sensitive species in or near the project site. All surveys shall be submitted to the Executive Director of the Coastal Commission for review and approval.

4. NOISE/SOUND IMPACT MINIMIZATION

- A. If construction noise exceeds 65 decibels (dB(A)) sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of muffler, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels to 65 dB(A) or less, construction within 500 feet of the location of any nesting birds shall cease and shall not recommence until either new sound mitigation can be employed that will reduce noise levels to 65 dB(A) or less or nesting is complete.
- B. As proposed by the applicant, sound generated by monthly testing of the system shall not exceed 65 dB(A) in order to avoid significant adverse impacts to potential nesting birds.

5. CONSTRUCTION AND MAINTENANCE BUFFER

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall consult with all necessary experts (e.g. fire, electrical, construction engineers, etc.) and provide verification that the distance between the proposed poles and existing trees is adequate to safely construct the proposed facilities and to maintain those facilities and the surrounding trees without necessitating removal or trimming of the existing trees. If this consultation reveals that tree trimming and/or removal would be necessary to accommodate the location of the poles, the applicant shall identify alternative pole locations that will not require trimming and/or removal of trees. Any proposed changes shall not occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. TREES

This permit does not authorize removal of any of the existing trees located adjacent to the project sites.

7. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. The permittee shall comply with the following construction-related requirements:
 - (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

8. TIMING OF CONSTRUCTION

By acceptance of this permit, the applicant agrees to minimize adverse impacts to public use of the public parks and public beach resulting from construction activities approved pursuant to Coastal Development Permit No. 5-09-141, as required below:

No construction shall occur during the "peak use" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

9. REVISED CONSTRUCTION STAGING PLANS

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the Executive Director's review and approval, two (2) full size sets of revised construction staging plans which indicate that the construction staging area(s) and construction corridor(s) will minimize public access impacts to the public parks and public beach.
- (1) The plan shall demonstrate that:
- (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
 - (b) Construction equipment, materials, or activity shall not be placed on the sandy beach outside of the immediate construction zone or grass area; and
 - (c) The construction staging area will gradually be reduced as less materials and equipment are necessary; and
 - (d) The construction access route will only be intermittently closed for transport of equipment and materials. When not in use for transportation of equipment and materials, it will be made available for uninterrupted public access; and
 - (e) The adjacent parking lot to the 5800 Seashore Drive project site proposed to be used as a construction staging area will not completely prohibit public use of this lot during construction.
 - (f) The proposed storage/staging area will not require removal of existing native vegetation and/or cause impacts to any sensitive habitat areas.
- (2) The plan shall include, at a minimum, the following components:
- (a) A site plan that depicts:
 - 1. limits of the staging area(s);
 - 2. construction corridor(s);
 - 3. construction site;
 - 4. location of construction fencing and temporary job trailers with respect to the existing parking lot, day use area and the sandy beach.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The project sites are located along the Balboa Peninsula at 215 15th Street, 5800 Seashore Drive and 2300 Channel Road in the City of Newport Beach, Orange County (Exhibits #1-2). Each of these sites are turf-area parks available for the public.

The proposed project involves the installation of a Tsunami Warning System at three (3) different park locations along the Balboa Peninsula comprised of a 16-inch diameter, 50-foot tall pole with a 4.25-foot tall siren (rated at 128 decibels (dB)) on top and additional improvements at the base of the pole at each location (Exhibit #2). The height of the entire structure will be 54.25-feet tall. The additional improvements include removing interfering improvements, constructing pole foundations, and furnishing and installing all related siren electrical and hardware components. No grading is proposed.

Besides being used in the event of a tsunami, the sirens will be tested once a month on the first Friday and will last for one (1) minute. During the tests, the sirens will be slowly revved up to a maximum of 65 decibels (dB(A)) and then wound down.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The protection of visual resources is an important aspect of the Coastal Act. The proposed project will occur along the Balboa Peninsula, where views of the bay, ocean and beach are available. The height of these proposed poles raise concerns as they may potentially have adverse impacts upon visual resources. These 54.25-foot tall poles exceed the height limit established in the City's certified Coastal Land Use Plan.

The City has submitted information showing that the proposed three (3) poles alternative was the least environmentally damaging alternative. In addition to the "siren" option, the City considered the use of "E-Alerts" and the "No-Project" option.

The "E-Alert" system would incorporate pre-recorded messages that would be sent out to every resident's phone. However, this system would not serve residents at the beach or out-of-town guests. Therefore, this option was determined to be not sufficient.

The "No-Project" option would only be considered if a tsunami was a very rare event (e.g. once every 10,000 years), however, Newport Beach has been subjected to two (2) tsunami events in the past 50 years. Therefore, this option was also not chosen.

For the siren system, the City solicited proposals from five (5) manufacturers. There were several systems proposed with the number of sirens ranging from three (3) to 18 (eighteen) in total. Based on field tests and reviews, the product produced by American Signal was selected since it produced an audible signal using just three (3) sirens that would cover the northern area of the City starting from the Santa Ana River to the southern area of the City at Little Corona Beach. The City states this was a critical issue as there are only limited locations on the Balboa Peninsula where a siren pole can be located within public-right-of-way at some distance (approximately 100-feet) from houses. Systems with more sirens would have required placing poles closer to homes and at many locations resulting in more visual impacts.

Furthermore, the City states that while some locations located away from the beach and off the peninsula were considered, the locations closer to the beach were more favorable since there would offer better beach coverage and that the sirens would be located nearer to the sections of the community that would benefit most from the warning system. In order to make the siren system even more effective, the City further states that they would institute an information program where residents and tourists will know to turn to the radio and television when the siren broadcasts a warning.

Commission staff asked if any existing poles located near the project locations could be used instead of installing new poles, but the existing poles do not have the sufficient height and also do not have the structural capability to support the sirens and other related equipment.

The proposed 54.25-foot tall poles will be located at three (3) separate locations along the Balboa Peninsula: 215 15th Street, 5800 Seashore Drive and 2300 Channel Road, which are all public parks.

The pole to be located at 215 15th Street will not additionally impact views of Newport Bay as there is already existing development (i.e. residential structures and the American Legion Building), power poles (approximately 45-50-feet tall), and trees (i.e. approximately 20-foot tall Magnolia trees, an approximately 40-foot tall tree, etc.) surrounding that location. Views of the bay will still be present with installation of the pole.

The pole to be located at 5800 Seashore Drive will also not additionally impact views of the ocean and beach as there is already existing development (i.e. residential structures) and trees (i.e. approximately 50-foot tall palm trees, etc.) surrounding that location as well. Views of the ocean and beach are already limited in that area by existing residential structures.

However, the location of the third pole at 2300 Channel road raises concerns as it will be located in an area where views of the ocean and beach are more prevalent and available. This site is located oceanward of existing surrounding residential development, but will be adjacent to a light pole (approximately 30-feet tall) and to trees (i.e. approximately 30-feet tall to 60-foot tall palm trees, etc.) similar to the previous other

two (2) locations. This public park is located at the end of Channel Place and is located adjacent to what is considered "The Wedge" a popular surf location located at the entrance of Newport Bay where views of the ocean and beach are more widely available. The City had proposed to site the pole at the most westward location of the public park adjacent to the sandy beach. The City's rationale for putting this pole at the end of the park was to move the siren away from houses so they would be less impacted by the monthly testing (to be discussed later). At this location, there would be 11 houses that be impacted within a 250-foot radius. In order to minimize the public visual impacts caused by placing a pole at this location, the City has decided to move the pole approximately 125-feet north and place it near the Channel Place street end. At this location, the City states that there would be 25 houses within a 250-foot radius; however, they are willing to move this pole so that visual impacts along the beach will be minimized. While the City has indicated that they intend to move this pole, no revised project plans have been submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit two (2) full size sets of revised project plans that show that the pole located at 2300 Channel Place has been moved away from the beach, north approximately 125-feet near the Channel Place street end, in substantial conformance with the City's revised proposal.

The height of the proposed poles exceed the height limit of 35-feet established in the certified Coastal Land Use Plan (CLUP). The proposed poles will be 50-feet tall with a 4.25-foot tall siren on top. The City states that the 50-foot height is necessary in order to protect people closest to the siren as required by the Occupational Safety and Health Administration (OSHA). As compared to a 35-foot tall pole, a siren mounted on a 50-foot tall pole reduces the sound intensity by 3 decibels at "ground zero", which is at the base of the pole. For a siren rated at 128 dB, the sound pressure at the foot of a 50-foot tall pole is reduced to 35 Pascals. A prolonged exposure to sound pressure greater than 35-Pascals can cause hearing loss. In regards to the height of these poles exceeding the allowable height limits, the City says this is allowable since the Zoning Code has no authority to enforce any height regulations within the right-of-way in these parks. The City cited other cases where public works facilities exceed height limits, such as light standards and power poles.

In order to further reduce adverse visual impacts, Commission requested the City to provide additional analysis on an alternative that would use poles reduced to 35-feet in height with a reduced siren intensity that would provide the same Tsunami warning coverage area as the City's current proposal. According to the City's analysis, this would require 18 poles to be located along the Balboa Peninsula and would have used a "voice siren" system. This option was not chosen by the City because of the following reasons: 1) a smaller system is easier and less costly to maintain; 2) the large number of poles located all around the peninsula and harbor could create a sense of stress that is not warranted by the threat of a tsunami; and 3) a voice siren system would cost three times more compared to a typical siren system. The system would also have 15 more poles than are proposed, which would contribute to visual clutter and impacts.

The appearance of the proposed poles potentially have adverse visual impacts. Initially, the City proposed that the poles would be painted white to match the nautical theme of the area; however, that would actually increase any potential visual impacts. Thus, the City offered to paint them a color that would match the adjacent trees they would be located near. However, no specific plans have been submitted that show this proposal. Therefore, in order to additionally minimize visual impacts, the Commission imposes **SPECIAL CONDITION NO. 2**,

which requires the applicant to submit visual treatment plans for the poles that shows how the exterior features of the poles will be softened and enhanced by a mix of architectural design and color.

CONCLUSION

To minimize visual impacts, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO.1** requires the applicant to submit revised project plans that show that the pole located at 2300 Channel Place has been moved away from the beach, north approximately 125-feet near the Channel Place street end, in substantial conformance with the City's revised proposal. **SPECIAL CONDITION NO. 2** requires the applicant to submit visual treatment plans for the poles that shows how the exterior features of the poles will be softened and enhanced by a mix of architectural design and color. Therefore, as conditioned, the Commission finds that the proposed development conforms with Section 30251 of the Coastal Act.

C. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The protection of biological resources is an important aspect of the Coastal Act. The proposed poles will be located adjacent to trees that potentially may support nesting birds. The monthly testing of the siren system may result in significant adverse impacts to such nesting birds. The testing will take place once a month on the first Friday and will last for one (1) minute. During the tests, the sirens will be slowly revved up to a maximum of 65 decibels (dB(A)) and then wound down. Previously, the City conducted informal nesting bird surveys of the trees adjacent to the pole locations and determined that these trees, which are non-native, are not currently occupied by nesting birds.

In southern California, many wetlands have been filled or otherwise developed and birds such as herons and egrets have adapted by relocating their roosting and nesting sites to tall non-native trees, such as those adjacent to proposed project sites. In some cases, the Commission has found that such trees or stands of trees are ESHA. As stated previously, based on an informal survey conducted by the City, no known bird nests are found in the trees adjacent to the pole locations. However, it is unclear whether these surveys were completed in accordance with professional biological survey protocols and/or conducted with sufficient duration, during the appropriate season and by qualified professionals to assure its accuracy. Therefore, in order to verify the findings of this informal survey, the Commission is imposing **SPECIAL CONDITION NO. 3**, which requires submittal of a nesting bird survey just prior to commencement of any construction activities. If the survey shows that nesting birds are present within 500 feet of construction activities, the applicant must assure that construction noise does

not exceed 65 dB(A) and must halt construction if that decibel level is exceeded until measures have been put in place to reduce the construction noise to 65 dB(A) or less.

It has been determined that noise greater than 65 dB(A) can have significant adverse impacts to birds. Therefore, in order to make sure that the monthly siren testing, which reaches a maximum of 65 dB(A), does not impact birds, the Commission imposes **SPECIAL CONDITION NO. 4**, which prohibits sound generated by the monthly testing of the system to exceed 65 dB(A). By placing this Special Condition, significant adverse noise/sound impacts to potential nesting birds currently present or in the future will be avoided.

In order to make sure that during the course of construction of these poles, no trees, which may potentially have nesting birds, need to be removed or trimmed, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires verification that the distance between the proposed poles and existing trees is adequate for construction and maintenance so that the existing trees do not have to be removed or trimmed. Also, the Commission imposes **SPECIAL CONDITION NO. 6**, which prohibits the removal of any of the existing trees under this permit.

D. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City of Newport Beach's storm drain system and will ultimately drain to Newport Bay and the Pacific Ocean. Newport Bay is on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the harbor does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal established for this waterbody. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. Recent beach closures occurring throughout Orange County, including those in

Newport Beach have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

The construction will occur adjacent to the water. Construction of any kind adjacent to coastal waters has the potential to impact the marine environment. The Bay and ocean provide an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay and ocean habitat, water quality issues are essential in review of this project

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 7** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

CONCLUSION

To minimize impacts to water quality, **ONE (1) SPECIAL CONDITION** have been imposed. **SPECIAL CONDITION NO. 7** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Therefore, as conditioned, the Commission finds that the proposed development conforms with Section 30230 and 30231 of the Coastal Act.

E. PUBLIC ACCESS

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The protection of public access is an important aspect of the Coastal Act. The proposed poles will be installed in public park areas along the Balboa Peninsula. Construction of the proposed project may result in adverse impacts to public access of these public park areas ,as well as the coastline . In order to mitigate possible impacts to public access, the Commission has imposed **SPECIAL CONDITION NO. 8**, which prohibits construction from occurring during the peak use summer season.

For each of the project sites, the City has provided a narrative discussing where construction staging will take place:

- 1) For the Channel Place location, the contractor will be allowed to store equipment and material on a portion of the street. The adjacent alley will be open at all times.

- 2) For the 15th Street location, the adjacent parking lot will be the staging area. Street access will not be impacted and no detours or traffic control will be required.
- 3) For the Seashore Drive location, the adjacent parking lot will be the staging area. The parking lot will be closed to the public and will only be used by the contractor during construction. Street access will not be impacted and no detours or traffic control will be required.

The parking lot to be used for the Seashore Drive location serves as a parking lot for the public to access the nearby beach. Thus, complete closure of this parking lot to the public even during the non-peak use summer season will adversely impact public access to the coastline. Thus, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires the applicant to submit revised construction staging plans. The revised construction staging plans, besides providing how construction staging for the Channel Place and 15th Street location will take place, it will also provide information of the Seashore Drive location that will also not prohibit complete public use of any adjacent public parking lots that are near that project location.

CONCLUSION

In order to ensure public access to the parks and coastline is not hindered during construction, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 8** prohibits construction from occurring during the peak use summer season. **SPECIAL CONDITION NO. 9** requires the applicant to submit revised construction staging plans. Only as conditioned does the Commission find the proposed development is consistent with Sections 30213 and 30252 of the Coastal Act.

F. LOCAL COASTAL PROGRAM (LCP)

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a), the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a local coastal program, which conforms with the Chapter 3 policies of the Coastal Act.

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that this project is exempt from CEQA pursuant to Section 15303 (New Construction of Small Structures), Section 15304 (Minor Alterations to Land), and Section 15332 (In-Fill

Development Projects). Furthermore, the City of Newport Beach Attorney's Office reviewed the project and determined that a Categorical Exemption is appropriate based on the following: the footprint of the installation is small and the height of the poles is not unusual with respect to existing power poles or palm trees, and the low volume siren testing (65 dB(A)) performed on a monthly testing schedule is not impressively loud and other nearby cities perform similar tests. Additionally, all sirens will be located in turf-area parks with no native habitat.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Although the proposed development is exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, the proposed project is consistent with the visual resources, biological resources, water quality, and public access policies of the Coastal Act. Mitigation measures include: **1)** submittal of revised project plans; **2)** submittal of visual treatment plans for the pole; **3)** submittal of a nesting bird survey; **4)** adherence to noise/sound impact minimization; **5)** verification of construction and maintenance buffer; **6)** prohibition of the removal of any existing trees adjacent to the project sites; **7)** adherence to construction best management Practices; **8)** adherence to timing of construction and public access; and **9)** submittal of revised construction staging plans.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.







